

HOUSE BILL No. 2313

By Representatives Sanders, Averkamp, Barth, Bergkamp, Bergquist, Blex, Bloom, Bryce, Buehler, Butler, W. Carpenter, Clifford, Collins, Delperdang, Ellis, Eplee, Essex, Estes, Fairchild, Garber, Goddard, Goetz, Hill, Hoffman, Howe, Howell, Howerton, Humphries, Lewis, Mason, Maughan, Moser, Murphy, Neelly, Owens, Penn, Pickert, Proctor, Resman, Rhiley, Schmoie, A. Smith, C. Smith, E. Smith, Sutton, Tarwater, Thomas, Thompson, Turk, Waggoner, Wasinger, White and K. Williams

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1 AN ACT concerning health and healthcare; creating the born-alive infants
2 protection act; providing legal protections for infants born alive;
3 requiring certain standards of care by healthcare providers for infants
4 who are born alive; providing criminal penalties and civil liability for
5 violations of the act; amending K.S.A. 65-445 and repealing the
6 existing section.

7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. The provisions of sections 1 through 9, and
10 amendments thereto, shall be known and may be cited as the born-alive
11 infants protection act.

12 New Sec. 2. As used in sections 2 through 8, and amendments
13 thereto:

14 (a) "Abortion" means the same as defined in K.S.A. 65-6701, and
15 amendments thereto.

16 (b) "Born alive" means the complete expulsion or extraction of a
17 human being from its mother, at any stage of development, who, after such
18 expulsion or extraction, breathes or has a beating heart, pulsation of the
19 umbilical cord or definite movement of voluntary muscles, regardless of
20 whether the umbilical cord has been cut and regardless of whether the
21 expulsion or extraction occurs as a result of natural or induced labor,
22 cesarean section or induced abortion.

23 (c) "Healthcare provider" means a physician, licensed physician
24 assistant, licensed advanced practice registered nurse or person licensed,
25 registered, certified or otherwise authorized to practice by the behavioral
26 sciences regulatory board.

27 (d) "Medical care facility" means the same as defined in K.S.A. 65-
28 425, and amendments thereto.

29 New Sec. 3. Whenever the terms "child," "human being" or "person"
30 are used in K.S.A. 2022 Supp. 21-5401, 21-5402, 21-5403, 21-5404, 21-
31 5405, 21-5406 and 21-5413(a) and (b), and amendments thereto, such

1 terms shall include each member of the species homo sapiens who is born
2 alive.

3 New Sec. 4. (a) In the event an abortion or attempted abortion results
4 in a child being born alive, any healthcare provider present at the time the
5 child is born alive shall:

6 (1) Exercise the same degree of professional skill, care and diligence
7 to preserve the life and health of the child as a reasonably diligent and
8 conscientious healthcare provider would render to any other child born
9 alive at the same gestational age; and

10 (2) ensure that the child who is born alive is immediately transported
11 ~~and admitted~~ to a hospital.

12 (b) Any healthcare provider or any employee of a medical care
13 facility who has knowledge of a failure to comply with the requirements of
14 subsection (a) shall immediately report such failure to an appropriate law
15 enforcement agency.

16 New Sec. 5. (a) Any person who knowingly or recklessly violates
17 section 4, and amendments thereto, shall be guilty of a severity level 10,
18 nonperson felony.

19 (b) Any person who intentionally performs or attempts to perform an
20 overt act that kills a child who is born alive during an abortion or
21 attempted abortion shall be guilty of a severity level 1, person felony.

22 (c) The provisions of this section shall not apply to the woman upon
23 whom the abortion is performed or attempted.

24 New Sec. 6. (a) The woman upon whom the abortion or attempted
25 abortion was performed, the father of the child born alive and, if the
26 woman has not attained 18 years of age at the time the abortion or
27 attempted abortion is performed, the parents or custodial guardian of the
28 woman upon whom the abortion or attempted abortion was performed may
29 bring a civil action for any violation of section 4, and amendments thereto,
30 to obtain appropriate relief.

31 (b) Any person who is not the woman upon whom the abortion or
32 attempted abortion was performed shall be barred from bringing any
33 action under this section if the pregnancy resulted from such person's
34 criminal conduct.

35 (c) The prevailing party in any action brought under this section may
36 be awarded reasonable attorney fees, except that if the prevailing party is
37 the defendant, then the court shall find that the plaintiff's action was
38 frivolous and brought in bad faith before the court and may award attorney
39 fees to such defendant.

40 New Sec. 7. In any civil or criminal action brought pursuant to
41 section 5 or 6, and amendments thereto, upon a motion by either party or
42 sua sponte, the court shall determine whether the anonymity of any woman
43 upon whom an abortion or attempted abortion was performed shall be

1 preserved if such woman does not give consent to the public disclosure of
2 her name. If the court determines that such woman's anonymity should be
3 preserved, then the court shall issue appropriate orders to the parties,
4 witnesses and counsel and shall direct that the court records of the
5 proceedings be sealed and all individuals who are not a party to the action,
6 witnesses or counsel be excluded from the courtroom or hearing room to
7 the extent necessary to safeguard the woman's identity from public
8 disclosure. Each such order shall be accompanied by specific written
9 findings explaining why the anonymity of the woman should be preserved
10 from public disclosure, why the order is essential to that end, how the
11 order is narrowly tailored to serve that interest and why no reasonable less
12 restrictive alternative exists. This section shall not be construed to conceal
13 the identity of the plaintiff or of witnesses from the defendant.

14 New Sec. 8. (a) Each medical care facility in which an infant is born
15 alive subsequent to an abortion or attempted abortion performed on the
16 mother of the infant shall submit an annual report to the secretary of health
17 and environment on the number of such infants in such form and manner
18 as prescribed by the secretary. Such report shall include:

19 (1) The approximate gestational age of the infant who was born alive
20 expressed in one of the following increments:

21 (A) Less than nine weeks;

22 (B) nine to 10 weeks;

23 (C) 11 to 12 weeks;

24 (D) 13 to 15 weeks;

25 (E) 16 to 20 weeks;

26 (F) 21 to 24 weeks;

27 (G) 25 to 30 weeks;

28 (H) 31 to 36 weeks; or

29 (I) 37 weeks to term;

30 (2) any medical actions taken to preserve the life of the infant who
31 was born alive;

32 (3) the outcome for such infants, including survival, death and
33 location of death, such as a clinic, hospital or ambulance, if known; and

34 (4) the medical conditions of infants who were born alive, including
35 conditions developed prior to and after the attempted abortion.

36 (b) The secretary may impose a civil fine in any amount not to exceed
37 \$500 on any medical care facility that fails to submit the required report
38 within 30 days after the date such report is due to be submitted to the
39 secretary. The secretary may impose an additional civil fine in an amount
40 not to exceed \$500 for each additional 30-day period that such medical
41 care facility fails to submit the required report. If a medical care facility
42 fails to submit a required report for more than one year following the date
43 that such report is due to be submitted to the secretary, or submits an

1 incomplete report during such time period and fails to correct the
2 deficiencies in such report, the secretary may bring a civil action for an
3 injunction to compel such medical care facility to submit the required
4 report.

5 New Sec. 9. If any provision, word, phrase or clause of sections 1
6 through 8, and amendments thereto, or the application thereof to any
7 person or circumstance is held invalid, such invalidity shall not affect the
8 provisions, words, phrases, clauses or applications of sections 1 through 8,
9 and amendments thereto, that can be given effect without the invalid
10 provision, word, phrase, clause or application and to this end, the
11 provisions, words, phrases and clauses of sections 1 through 8, and
12 amendments thereto, are declared severable.

13 Sec. 10. K.S.A. 65-445 is hereby amended to read as follows: 65-445.

14 (a) Every medical care facility shall keep written records of all pregnancies
15 ~~which~~ *that* are lawfully terminated within such medical care facility and
16 shall annually submit a written report thereon to the secretary of health and
17 environment in the manner and form prescribed by the secretary. Every
18 person licensed to practice medicine and surgery shall keep a record of all
19 pregnancies ~~which~~ *that* are lawfully terminated by such person in a
20 location other than a medical care facility and shall annually submit a
21 written report thereon to the secretary of health and environment in the
22 manner and form prescribed by the secretary.

23 (b) Each report required by this section shall include the number of
24 pregnancies terminated during the period of time covered by the report, the
25 type of medical facility in which the pregnancy was terminated,
26 information required to be reported under ~~subsections (b) and (c) of K.S.A.~~
27 ~~65-6703(b) and (c), subsection (j) of K.S.A. 65-6705(j), subsection (e) of~~
28 ~~K.S.A. 65-6721(c) and K.S.A. 65-6724,~~ and amendments thereto, if
29 applicable to the pregnancy terminated, *information required to be*
30 *reported under section 8, and amendments thereto,* and such other
31 information as may be required by the secretary of health and
32 environment, but the report shall not include the names of the persons
33 whose pregnancies were so terminated *or upon whom an attempted*
34 *abortion was performed.* Each report required by ~~subsections (b) and (c) of~~
35 ~~K.S.A. 65-6703(b) and (c), subsection (j) of K.S.A. 65-6705(j) and~~
36 ~~subsection (e) of K.S.A. 65-6721(c),~~ and amendments thereto, shall
37 specify the medical diagnosis and condition constituting a substantial and
38 irreversible impairment of a major bodily function or the medical
39 diagnosis and condition ~~which~~ *that* necessitated performance of an
40 abortion to preserve the life of the pregnant woman. Each report required
41 by K.S.A. 65-6703, and amendments thereto, shall include a sworn
42 statement by the physician performing the abortion and the referring
43 physician that such physicians are not legally or financially affiliated.

1 (c) Information obtained by the secretary of health and environment
2 under this section shall be confidential and shall not be disclosed in a
3 manner that would reveal the identity of any person licensed to practice
4 medicine and surgery who submits a report to the secretary under this
5 section or the identity of any medical care facility~~which~~ that submits a
6 report to the secretary under this section, except that such information,
7 including information identifying such persons and facilities may be
8 disclosed to the state board of healing arts upon request of the board for
9 disciplinary action conducted by the board and may be disclosed to the
10 attorney general or any district or county attorney in this state upon a
11 showing that a reasonable cause exists to believe that a violation of this act
12 has occurred. Any information disclosed to the state board of healing arts,
13 the attorney general or any district or county attorney pursuant to this
14 subsection shall be used solely for the purposes of a disciplinary action or
15 criminal proceeding. Except as otherwise provided in this subsection,
16 information obtained by the secretary under this section may be used only
17 for statistical purposes and such information shall not be released in a
18 manner~~which~~ that would identify any county or other area of this state in
19 which the termination of the pregnancy occurred. A violation of this
20 subsection (c) is a class A nonperson misdemeanor. *The provisions of this*
21 *subsection shall expire on July 1, 2028, unless the legislature reviews and*
22 *reenacts such provisions in accordance with K.S.A. 45-229, and*
23 *amendments thereto, prior to July 1, 2028.*

24 (d) In addition to such criminal penalty under subsection (c), any
25 person licensed to practice medicine and surgery or medical care facility
26 whose identity is revealed in violation of this section may bring a civil
27 action against the responsible person or persons for any damages to the
28 person licensed to practice medicine and surgery or medical care facility
29 caused by such violation.

30 (e) For the purpose of maintaining confidentiality as provided by
31 subsections (c) and (d), reports~~of terminations of pregnancies~~ required by
32 this section shall identify the person or facility submitting such reports
33 only by confidential code number assigned by the secretary of health and
34 environment to such person or facility and the department of health and
35 environment shall maintain such reports only by such number.

36 (f) The annual public report on abortions performed in Kansas issued
37 by the secretary of health and environment shall contain the information
38 required to be reported by this section to the extent such information is not
39 deemed confidential pursuant to this section. The secretary of health and
40 environment shall adopt rules and regulations to implement this section.
41 Such rules and regulations shall prescribe, in detail, the information
42 required to be kept by the physicians and hospitals and the information
43 required in the reports~~which~~ that must be submitted to the secretary.

1 (g) The Kansas department for children and families shall prepare and
2 publish an annual report on the number of reports of child sexual abuse
3 received by the department from abortion providers. Such report shall be
4 categorized by the age of the victim and the month the report was
5 submitted to the department. The name of the victim and any other
6 identifying information shall be kept confidential by the department and
7 shall not be released as part of the public report.

8 Sec. 11. K.S.A. 65-445 is hereby repealed.

9 Sec. 12. This act shall take effect and be in force from and after its
10 publication in the statute book.