

SENATE BILL No. 297

By Committee on Federal and State Affairs

3-7

1 AN ACT concerning abortion; revising the definition of abortion;
2 excluding certain procedures from the definition; amending K.S.A. 40-
3 2,190, 65-4a01, 65-6701, 65-6723 and 65-6742 and repealing the
4 existing sections.
5

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

7 Section 1. K.S.A. 40-2,190 is hereby amended to read as follows: 40-
8 2,190. (a) Any individual or group health insurance policy, medical service
9 plan, contract, hospital service corporation contract, hospital and medical
10 service corporation contract, fraternal benefit society or health
11 maintenance organization, municipal group-funded pool and the state
12 employee health care benefits plan which is delivered, issued for delivery,
13 amended or renewed on or after July 1, 2011, shall exclude coverage for
14 elective abortions, unless the procedure is necessary to preserve the life of
15 the mother. Coverage for abortions may be obtained through an optional
16 rider for which an additional premium is paid. The premium for the
17 optional rider shall be calculated so that it fully covers the estimated cost
18 of covering elective abortions per enrollee as determined on an average
19 actuarial basis.

20 (b) No health insurance exchange established within this state or any
21 health insurance exchange administered by the federal government or its
22 agencies within this state shall offer health insurance contracts, plans, or
23 policies that provide coverage for elective abortions, nor shall any health
24 insurance exchange operating within this state offer coverage for elective
25 abortions through the purchase of an optional rider.

26 (c) For the purposes of this section:

27 (1) ~~"Abortion" means the use or prescription of any instrument,~~
28 ~~medicine, drug or any other substance or device to terminate the~~
29 ~~pregnancy of a woman known to be pregnant with an intention other than~~
30 ~~to increase the probability of a live birth, to preserve the life or health of~~
31 ~~the child after live birth, or to remove a dead unborn child who died as the~~
32 ~~result of natural causes in utero, accidental trauma or a criminal assault on~~
33 ~~the pregnant woman or her unborn child and which causes the premature~~
34 ~~termination of the pregnancy same as defined in K.S.A. 65-6701, and~~
35 ~~amendments thereto.~~

36 (2) "Elective" means an abortion for any reason other than to prevent

1 the death of the mother upon whom the abortion is performed; ~~provided,~~
2 *except* that an abortion may not be deemed one to prevent the death of the
3 mother based on a claim or diagnosis that ~~she~~ *such mother* will engage in
4 conduct ~~which~~ *that* will result in ~~her~~ *such mother's* death.

5 ~~(d) The provisions of this section shall be effective from and after~~
6 ~~July 1, 2011.~~

7 Sec. 2. K.S.A. 65-4a01 is hereby amended to read as follows: 65-
8 4a01. As used in K.S.A. 65-4a01 through 65-4a12, and amendments
9 thereto:

10 (a) "Abortion" means ~~the use or prescription of any instrument,~~
11 ~~medicine, drug or any other substance or device to terminate the~~
12 ~~pregnancy of a woman known to be pregnant with an intention other than~~
13 ~~to increase the probability of a live birth, to preserve the life or health of~~
14 ~~the child after live birth, or to remove a dead unborn child who died as the~~
15 ~~result of natural causes in utero, accidental trauma or a criminal assault on~~
16 ~~the pregnant woman or her unborn child, and which causes the premature~~
17 ~~termination of the pregnancy same as defined in K.S.A. 65-6701, and~~
18 ~~amendments thereto.~~

19 (b) "Ambulatory surgical center" means an ambulatory surgical
20 center as defined in K.S.A. 65-425, and amendments thereto.

21 (c) "Bodily function" means physical functions only. The term
22 "bodily function" does not include mental or emotional functions.

23 (d) "Clinic" means any facility, other than a hospital or ambulatory
24 surgical center, in which any second or third trimester; or five or more first
25 trimester abortions are performed in a month.

26 (e) "Department" means the department of health and environment.

27 (f) "Elective abortion" means an abortion for any reason other than to
28 prevent the death of the mother upon whom the abortion is performed;
29 ~~provided,~~ *except* that an abortion may not be deemed one to prevent the
30 death of the mother based on a claim or diagnosis that ~~she~~ *such mother*
31 will engage in conduct ~~which~~ *that* would result in ~~her~~ *such mother's* death.

32 (g) "Facility" means any clinic, hospital or ambulatory surgical
33 center; in which any second or third trimester elective abortion; or five or
34 more first trimester elective abortions are performed in a month, excluding
35 any abortion performed due to a medical emergency.

36 (h) "Gestational age" ~~has the same meaning ascribed thereto~~ *means*
37 *the same as defined* in K.S.A. 65-6701, and amendments thereto, and shall
38 be determined pursuant to K.S.A. 65-6703, and amendments thereto.

39 (i) "Hospital" means a hospital as defined in ~~subsection (a) or (b)~~ of
40 K.S.A. 65-425(a) or (b), and amendments thereto.

41 (j) "Medical emergency" means ~~a condition that, in a reasonable~~
42 ~~medical judgment, so complicates the medical condition of the pregnant~~
43 ~~woman as to necessitate the immediate abortion of her pregnancy to avert~~

1 her death, or for which a delay necessary to comply with the applicable
2 statutory requirements will create serious risk of substantial and
3 irreversible physical impairment of a major bodily function. No condition
4 shall be deemed a medical emergency if based on a claim or diagnosis that
5 the woman will engage in conduct which would result in her death or in
6 substantial and irreversible physical impairment of a major bodily function
7 *the same as defined in K.S.A. 65-6701, and amendments thereto.*

8 (k) "Physician" ~~has the same meaning ascribed thereto~~ *means the*
9 *same as defined in K.S.A. 65-6701, and amendments thereto.*

10 (l) "Secretary" means the secretary of the department of health and
11 environment.

12 Sec. 3. K.S.A. 65-6701 is hereby amended to read as follows: 65-
13 6701. As used in K.S.A. 65-6701 through 65-6721, and amendments
14 thereto:

15 (a) (1) "Abortion" means the use or prescription of any instrument,
16 medicine, drug or any other ~~substance or device~~ *means to terminate the*
17 *pregnancy of a woman known to be pregnant with an intention other than*
18 *to increase the probability of a live birth, to preserve the life or health of*
19 *the child after live birth, or to remove a dead unborn child who died as the*
20 *result of natural causes in utero, accidental trauma or a criminal assault on*
21 *the pregnant woman or her unborn child, and which causes the premature*
22 *termination of the pregnancy knowing that such termination will, with*
23 *reasonable likelihood, result in the death of the unborn child.*

24 (2) *Such use or prescription is not an "abortion" if done with the*
25 *intent to:*

26 (A) *Preserve the life or health of the unborn child;*

27 (B) *increase the probability of a live birth;*

28 (C) *remove a dead unborn child who died as the result of natural*
29 *causes in utero, accidental trauma or a criminal assault on the pregnant*
30 *woman or the unborn child; or*

31 (D) *remove an ectopic pregnancy.*

32 (3) *"Abortion" does not include the prescription, dispensing,*
33 *administration, sale or use of any method of contraception.*

34 (b) "Bodily function" means physical functions only. The term
35 "bodily function" does not include mental or emotional functions.

36 (c) "Counselor" means a person who is: (1) Licensed to practice
37 medicine and surgery; (2) licensed to practice professional or practical
38 nursing; (3) the following persons licensed to practice behavioral sciences:
39 Licensed psychologists, licensed master's level psychologists, licensed
40 clinical psychotherapists, licensed social workers, licensed specialist
41 clinical social workers, licensed marriage and family therapists, licensed
42 clinical marriage and family therapists, licensed professional counselors,
43 licensed clinical professional counselors; (4) a licensed physician assistant;

1 or (5) a currently ordained member of the clergy or religious authority of
2 any religious denomination or society. Counselor does not include the
3 physician who performs or induces the abortion or a physician or other
4 person who assists in performing or inducing the abortion.

5 (d) "Department" means the department of health and environment.

6 (e) "Fertilization" means the fusion of a human spermatozoon with a
7 human ovum.

8 (f) "Gestational age" means the time that has elapsed since the first
9 day of the woman's last menstrual period.

10 (g) "Medical emergency" means a condition that, in reasonable
11 medical judgment, so complicates the medical condition of the pregnant
12 woman as to necessitate the immediate abortion of ~~her~~ *such woman's*
13 pregnancy to avert the death of the woman or for which a delay necessary
14 to comply with the applicable statutory requirements will create serious
15 risk of substantial and irreversible physical impairment of a major bodily
16 function. No condition shall be deemed a medical emergency if based on a
17 claim or diagnosis that ~~the~~ *such* woman will engage in conduct ~~which that~~
18 would result in ~~her~~ *such woman's* death or in substantial and irreversible
19 physical impairment of a major bodily function.

20 (h) "Minor" means a person less than 18 years of age.

21 (i) "Physician" means a person licensed to practice medicine and
22 surgery in this state.

23 (j) "Pregnant" or "pregnancy" means that female reproductive
24 condition of having an unborn child in the mother's body.

25 (k) "Qualified person" means an agent of the physician who is a
26 psychologist, licensed social worker, licensed professional counselor,
27 licensed marriage and family therapist, licensed master's level
28 psychologist, licensed clinical psychotherapist, registered nurse or
29 physician.

30 (l) "Unemancipated minor" means any minor who has never been: (1)
31 Married; or (2) freed, by court order or otherwise, from the care, custody
32 and control of the minor's parents.

33 (m) "Viable" means that stage of fetal development when it is the
34 physician's judgment according to accepted obstetrical or neonatal
35 standards of care and practice applied by physicians in the same or similar
36 circumstances that there is a reasonable probability that the life of the child
37 can be continued indefinitely outside the mother's womb with natural or
38 artificial life-supportive measures.

39 Sec. 4. K.S.A. 65-6723 is hereby amended to read as follows: 65-
40 6723. As used in K.S.A. 65-6722 through 65-6724, and amendments
41 thereto:

42 (a) "Abortion" means ~~the use or prescription of any instrument,~~
43 ~~medicine, drug or any other substance or device to terminate the~~

1 pregnancy of a woman known to be pregnant with an intention other than
2 to increase the probability of a live birth, to preserve the life or health of
3 the child after live birth, or to remove a dead unborn child who died as the
4 result of natural causes in utero, accidental trauma or a criminal assault on
5 the pregnant woman or her unborn child, and which causes the premature
6 termination of the pregnancy *same as defined in K.S.A. 65-6701, and*
7 *amendments thereto.*

8 (b) "Bodily function" means physical function. The term "bodily
9 function" does not include mental or emotional functions.

10 (c) "Department" means the department of health and environment.

11 (d) "Gestational age" means the time that has elapsed since the first
12 day of the woman's last menstrual period.

13 (e) ~~"Medical emergency" means a condition that, in reasonable~~
14 ~~medical judgment, so complicates the medical condition of the pregnant~~
15 ~~woman as to necessitate the immediate abortion of her pregnancy to avert~~
16 ~~her death or for which a delay necessary to comply with the applicable~~
17 ~~statutory requirements will create serious risk of substantial and~~
18 ~~irreversible physical impairment of a major bodily function. No condition~~
19 ~~shall be deemed a medical emergency if based on a claim or diagnosis that~~
20 ~~the woman will engage in conduct which would result in her death or in~~
21 ~~substantial and irreversible physical impairment of a major bodily function~~
22 ~~the same as defined in K.S.A. 65-6701, and amendments thereto.~~

23 (f) "Pain-capable unborn child" means an unborn child having
24 reached the gestational age of 22 weeks or more.

25 (g) "Physician" means a person licensed to practice medicine and
26 surgery in this state.

27 (h) "Pregnant" or "pregnancy" means that female reproductive
28 condition of having an unborn child in the mother's body.

29 Sec. 5. K.S.A. 65-6742 is hereby amended to read as follows: 65-
30 6742. As used in K.S.A. 65-6741 through 65-6749, and amendments
31 thereto:

32 (a) ~~"Abortion" means the use or prescription of any instrument,~~
33 ~~medicine, drug or any other substance or device to terminate the~~
34 ~~pregnancy of a woman known to be pregnant with an intention other than~~
35 ~~to increase the probability of a live birth, to preserve the life or health of~~
36 ~~the child after live birth, or to remove a dead unborn child who died as the~~
37 ~~result of natural causes in utero, accidental trauma or a criminal assault on~~
38 ~~the pregnant woman or her unborn child, and which causes the premature~~
39 ~~termination of the pregnancy same as defined in K.S.A. 65-6701, and~~
40 ~~amendments thereto.~~

41 (b) (1) "Dismemberment abortion" means, with the purpose of
42 causing the death of an unborn child, knowingly dismembering a living
43 unborn child and extracting such unborn child one piece at a time from the

1 uterus through the use of clamps, grasping forceps, tongs, scissors or
2 similar instruments that, through the convergence of two rigid levers, slice,
3 crush or grasp a portion of the unborn child's body in order to cut or rip it
4 off.

5 (2) The term "dismemberment abortion" does not include an abortion
6 ~~which~~ *that* uses suction to dismember the body of the unborn child by
7 sucking fetal parts into a collection container; ~~although it does include.~~
8 *"Dismemberment abortion" includes* an abortion in which a
9 dismemberment abortion, as defined in ~~subsection (b)(1)~~ *paragraph (1)*, is
10 used to cause the death of an unborn child, but suction is subsequently
11 used to extract fetal parts after the death of the unborn child.

12 (c) "Knowingly" ~~shall have the same meaning attributed to such term~~
13 *means the same as defined* in K.S.A. 2022 Supp. 21-5202, and
14 amendments thereto.

15 (d) "Medical emergency" ~~means a condition that, in reasonable~~
16 ~~medical judgment, so complicates the medical condition of the pregnant~~
17 ~~woman as to necessitate the immediate abortion of her pregnancy to avert~~
18 ~~the death of the woman or for which a delay necessary to comply with the~~
19 ~~applicable statutory requirements will create serious risk of substantial and~~
20 ~~irreversible physical impairment of a major bodily function. No condition~~
21 ~~shall be deemed a medical emergency if based on a claim or diagnosis that~~
22 ~~the woman will engage in conduct which would result in her death or in~~
23 ~~substantial and irreversible physical impairment of a major bodily function~~
24 *the same as defined in K.S.A. 65-6701, and amendments thereto.*

25 Sec. 6. K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6723 and 65-6742 are
26 hereby repealed.

27 Sec. 7. This act shall take effect and be in force from and after its
28 publication in the statute book.