

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2218

By: By Representatives Kinzer, Arpke, Bilfinger, Boman, Brown, Brunk, Calloway, DeGraaf, Donohoe, Fund, Garber, Goico, Goodman, Gregory, Grosserode, Hedke, Henry, Hermanson, Hildabrand, Hoffman, M. Holmes, Howell, Kiegele, Kleeb, Knox, Landwehr, Mast, McLeland, Meigs, Mesa, Montgomery, O'Brien, O'Hara, Otto, Patton, Peck, Rhoades, Rubin, Ryckman, Scapa, Schwab, Siegfried, Smith, Suelentrop, Vickrey, Weber, Wetta and B. Wolf

2-8

1 AN ACT concerning abortion; relating to restrictions on late term
2 abortions; amending K.S.A. 65-445 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. The legislature hereby finds and declares that:

6 (a) Pain receptors (nociceptors) are present throughout the unborn
7 child's entire body by no later than 16 weeks after fertilization and nerves
8 link these receptors to the brain's thalamus and subcortical plate by no
9 later than 20 weeks;

10 (b) by eight weeks after fertilization, the unborn child reacts to
11 stimuli that would be recognized as painful if applied to an adult human,
12 for example, by recoiling;

13 (c) in the unborn child, application of such painful stimuli is
14 associated with significant increases in stress hormones known as the
15 stress response;

16 (d) subjection to such painful stimuli is associated with long-term
17 harmful neurodevelopmental effects, such as altered pain sensitivity and,
18 possibly, emotional, behavioral and learning disabilities later in life;

19 (e) for the purposes of surgery on unborn children, fetal anesthesia is
20 routinely administered and is associated with a decrease in stress
21 hormones compared to their level when painful stimuli is applied without
22 such anesthesia;

23 (f) the position, asserted by some medical experts, that the unborn
24 child is incapable of experiencing pain until a point later in pregnancy
25 than 20 weeks after fertilization predominately rests on the assumption
26 that the ability to experience pain depends on the cerebral cortex and
27 requires nerve connections between the thalamus and the cortex.
28 However, recent medical research and analysis, especially since 2007,

, the unborn child reacts to touch. By 20 weeks after fertilization

Balloon Amendments

Prepared by: Jason B. Long

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Files\Content.Outlook\W76F2N0GV218 Balloon amendment 1.odt

Senate Judiciary
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1 provides strong evidence for the conclusion that a functioning cortex is
2 not necessary to experience pain;

3 (g) substantial evidence indicates that children born missing the bulk
4 of the cerebral cortex, those with hydranencephaly, nevertheless
5 experience pain;

6 (h) in adults, stimulation or ablation of the cerebral cortex does not
7 alter pain perception, while stimulation or ablation of the thalamus does;

8 (i) substantial evidence indicates that structures used for pain
9 processing in early development differ from those of adults, using
10 different neural elements available at specific times during development,
11 such as the subcortical plate, to fulfill the role of pain processing;

12 (j) consequently, there is substantial medical evidence that an unborn
13 child is capable of experiencing pain by 20 weeks after fertilization; and

14 (k) it is the purpose of the state to assert a compelling state interest
15 in protecting the lives of unborn children from the stage at which
16 substantial medical evidence indicates that they are capable of feeling
17 pain.

18 New Sec. 2. As used in sections 1 through 3, and amendments
19 thereto:

20 (a) "Abortion" means the use or prescription of any instrument,
21 medicine, drug or any other substance or device to terminate the
22 pregnancy of a woman known to be pregnant with an intention other than
23 to increase the probability of a live birth, to preserve the life or health of
24 the child after live birth, or to remove a dead unborn child who died as
25 the result of natural causes in utero, accidental trauma or a criminal
26 assault on the pregnant woman or her unborn child, and which causes the
27 premature termination of the pregnancy.

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

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

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

33 (e) "Medical emergency" means a condition that, in reasonable
34 medical judgment, so complicates the medical condition of the pregnant
35 woman as to necessitate the immediate abortion of her pregnancy without
36 first determining gestational age to avert her death or for which a delay
37 necessary to determine gestational age will create serious risk of
38 substantial and irreversible physical impairment of a major bodily
39 function. No condition shall be deemed a medical emergency if based on
40 a claim or diagnosis that the woman will engage in conduct which would
41 result in her death or in substantial and irreversible physical impairment
42 of a major bodily function.

she intends to

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

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

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

7 New Sec. 3. (a) No person shall perform or induce, or attempt to
8 perform or induce an abortion upon a pain-capable unborn child unless
9 such person is a physician and has a documented referral from another
10 physician not legally or financially affiliated with the physician
11 performing or inducing, or attempting to perform or induce the abortion
12 and both physicians provide a written determination, based upon a
13 medical judgment arrived at using and exercising that degree of care, skill
14 and proficiency commonly exercised by the ordinary skillful, careful and
15 prudent physician in the same or similar circumstances and that would be
16 made by a reasonably prudent physician, knowledgeable in the field, and
17 knowledgeable about the case and the treatment possibilities with respect
18 to the conditions involved, that: (1) The abortion is necessary to preserve
19 the life of the pregnant woman; or (2) a continuation of the pregnancy
20 will cause a substantial and irreversible physical impairment of a major
21 bodily function of the pregnant woman. No such condition shall be
22 deemed to exist if it is based on a claim or diagnosis that the woman will
23 engage in conduct which ~~would~~ result in her death or in substantial and
24 irreversible physical impairment of a major bodily function.

she intends to

25 (b) Except in the case of a medical emergency, a copy of the written
26 documented referral and of the abortion-performing physician's written
27 determination shall be provided to the pregnant woman no less than 30
28 minutes prior to the initiation of the abortion. The written determination
29 shall be time-stamped at the time it is delivered to the pregnant woman.
30 The medical basis for the determination shall also be reported by the
31 physician as part of the written report made by the physician to the
32 secretary of health and environment under K.S.A. 65-445, and
33 amendments thereto. Such determination shall specify:

34 (1) If the abortion is necessary to preserve the life of the pregnant
35 woman and the medical basis of such determination, including the
36 specific medical condition the physician believes would cause the death
37 of the pregnant woman; or

38 (2) if a continuation of the pregnancy will cause a substantial and
39 irreversible physical impairment of a major bodily function of the
40 pregnant woman and the medical basis of such determination, including
41 the specific medical condition the physician believes would constitute a
42 substantial and irreversible impairment of a major bodily function of the