

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2035

By Representatives Kinzer, Rubin, Arpke, Billinger, A. Brown, Brunk, Burgess, Calloway, Carlson, Cassidy, Collins, Crum, DeGraaf, Donohoe, Fund, Garber, Goico, Goodman, Grange, Gregory, Gonzalez, Grosserode, Henry, Hermanson, Hildabrand, Hoffman, M. Holmes, Howell, Huebert, Kelley, Kerschen, Kiegerl, Knox, Landwehr, Mast, McLeland, Meier, Meigs, Montgomery, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Pauls, Peck, Powell, Rhoades, Ryckman, Scapa, Schwab, Siegfried, Smith, Suellentrop, Swanson, Tyson, Vickrey, Weber, Wetta, Williams and B. Wolf

1-19

1 AN ACT concerning abortion; regarding certain prohibitions on late-
2 term and partial birth abortion; amending K.S.A. 65-445, 65-6701,
3 65-6703, 65-6705 and 65-6721 and K.S.A. 2010 Supp. 65-6709 and
4 65-6710 and repealing the existing sections; also repealing K.S.A.
5 65-6713.

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

8 Section 1. K.S.A. 65-445 is hereby amended to read as follows:
9 65-445. (a) Every medical care facility shall keep written records of all
10 pregnancies which are lawfully terminated within such medical care
11 facility and shall annually submit a written report thereon to the
12 secretary of health and environment in the manner and form prescribed
13 by the secretary. Every person licensed to practice medicine and
14 surgery shall keep a record of all pregnancies which are lawfully
15 terminated by such person in a location other than a medical care
16 facility and shall annually submit a written report thereon to the
17 secretary of health and environment in the manner and form prescribed
18 by the secretary.

19 (b) Each report required by this section shall include the number
20 of pregnancies terminated during the period of time covered by the
21 report, the type of medical facility in which the pregnancy was
22 terminated, information required to be reported under *subsections (b)*
23 *and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and*
24 *subsection (c) of K.S.A. 65-6721*, and amendments thereto, if applicable
25 to the pregnancy terminated, and such other information as may be
26 required by the secretary of health and environment, but the report shall
27 not include the names of the persons whose pregnancies were so

1 terminated. *Each report required by subsections (b) and (c) of K.S.A.*
2 *65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A.*
3 *65-6721, and amendments thereto, shall specify the medical diagnosis*
4 *and condition constituting a substantial and irreversible impairment of*
5 *a major bodily function or the medical diagnosis and condition which*
6 *necessitated performance of an abortion to preserve the life of the*
7 *pregnant woman. Each report required by K.S.A. 65-6703, and*
8 *amendments thereto, shall include a sworn statement by the physician*
9 *performing the abortion and the referring physician that such*
10 *physicians are not legally or financially affiliated.*

11 (c) Information obtained by the secretary of health and
12 environment under this section shall be confidential and shall not be
13 disclosed in a manner that would reveal the identity of any person
14 licensed to practice medicine and surgery who submits a report to the
15 secretary under this section or the identity of any medical care facility
16 which submits a report to the secretary under this section, except that
17 such information, including information identifying such persons and
18 facilities may be disclosed to the state board of healing arts upon
19 request of the board for disciplinary action conducted by the board and
20 may be disclosed to the attorney general *or any district or county*
21 *attorney in this state* upon a showing that a reasonable cause exists to
22 believe that a violation of this act has occurred. Any information
23 disclosed to the state board of healing arts, ~~or~~ the attorney general *or*
24 *any district or county attorney* pursuant to this subsection shall be used
25 solely for the purposes of a disciplinary action or criminal proceeding.
26 Except as otherwise provided in this subsection, information obtained
27 by the secretary under this section may be used only for statistical
28 purposes and such information shall not be released in a manner which
29 would identify any county or other area of this state in which the
30 termination of the pregnancy occurred. A violation of this subsection
31 (c) is a class A nonperson misdemeanor.

32 (d) In addition to such criminal penalty under subsection (c), any
33 person licensed to practice medicine and surgery or medical care
34 facility whose identity is revealed in violation of this section may bring
35 a civil action against the responsible person or persons for any damages
36 to the person licensed to practice medicine and surgery or medical care
37 facility caused by such violation.

38 (e) For the purpose of maintaining confidentiality as provided by
39 subsections (c) and (d), reports of terminations of pregnancies required

1 by this section shall identify the person or facility submitting such
2 reports only by confidential code number assigned by the secretary of
3 health and environment to such person or facility and the department of
4 health and environment shall maintain such reports only by such
5 number.

6 *(f) The annual public report on abortions performed in Kansas*
7 *issued by the secretary of health and environment shall contain the*
8 *information required to be reported by this section to the extent such*
9 *information is not deemed confidential pursuant to this section. The*
10 *secretary of health and environment shall adopt rules and regulations*
11 *to implement this section. Such rules and regulations shall prescribe,*
12 *in detail, the information required to be kept by the physicians and*
13 *hospitals and the information required in the reports which must be*
14 *submitted to the secretary.*

15 *(g) The department of social and rehabilitation services shall*
16 *prepare and publish an annual report on the number of reports of child*
17 *sexual abuse received by the department from abortion providers. Such*
18 *report shall be categorized by the age of the victim and the month the*
19 *report was submitted to the department. The name of the victim and*
20 *any other identifying information shall be kept confidential by the*
21 *department and shall not be released as part of the public report.*

22 Sec. 2. K.S.A. 65-6701 is hereby amended to read as follows: 65-
23 6701. As used in this act:

24 (a) "Abortion" means the use of any means to intentionally
25 terminate a pregnancy except for the purpose of causing a live birth.
26 Abortion does not include: (1) The use of any drug or device that
27 inhibits or prevents ovulation, fertilization or the implantation of an
28 embryo; or (2) disposition of the product of *in vitro* fertilization prior to
29 implantation.

30 (b) "Counselor" means a person who is: (1) Licensed to practice
31 medicine and surgery; (2) licensed to practice psychology; (3) licensed
32 to practice professional or practical nursing; (4) registered to practice
33 professional counseling; (5) licensed as a social worker; (6) the holder
34 of a master's or doctor's degree from an accredited graduate school of
35 social work; (7) registered to practice marriage and family therapy; (8)
36 a licensed physician assistant; or (9) a currently ordained member of
37 the clergy or religious authority of any religious denomination or
38 society. Counselor does not include the physician who performs or
39 induces the abortion or a physician or other person who assists in

- 1 performing or inducing the abortion.
- 2 (c) "Department" means the department of health and
3 environment.
- 4 (d) "Gestational age" means the time that has elapsed since the
5 first day of the woman's last menstrual period.
- 6 (e) "Medical emergency" means that condition which, on the basis
7 of the physician's good faith clinical judgment, so complicates the
8 medical condition of a pregnant woman as to necessitate the immediate
9 abortion of her pregnancy to avert her death or for which a delay will
10 create serious risk of substantial and irreversible impairment of a major
11 bodily function.
- 12 (f) "Minor" means a person less than 18 years of age.
- 13 (g) "Physician" means a person licensed to practice medicine and
14 surgery in this state.
- 15 (h) "Pregnant" or "pregnancy" means that female reproductive
16 condition of having a ~~fetus~~ *an unborn child* in the mother's body.
- 17 (i) "Qualified person" means an agent of the physician who is a
18 psychologist, licensed social worker, registered professional counselor,
19 registered nurse or physician.
- 20 (j) "Unemancipated minor" means any minor who has never been:
21 (1) Married; or (2) freed, by court order or otherwise, from the care,
22 custody and control of the minor's parents.
- 23 (k) "Viable" means ~~that stage of gestation when, in the best~~
24 ~~medical judgment of the attending physician, the fetus is capable of~~
25 ~~sustained survival outside the uterus without the application of~~
26 ~~extraordinary medical means.~~ *that stage of fetal development when it is*
27 *the physician's judgment according to accepted obstetrical or neonatal*
28 *standards of care and practice applied by physicians in the same or*
29 *similar circumstances that there is a reasonable probability that the life*
30 *of the child can be continued indefinitely outside the mother's womb*
31 *with natural or artificial life-supportive measures.*
- 32 Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-
33 6703. (a) No person shall perform or induce an abortion when the ~~fetus~~
34 *unborn child* is viable unless such person is a physician and has a
35 documented referral from another physician not legally or financially
36 affiliated with the physician performing or inducing the abortion and
37 both physicians ~~determine~~ *provide a written determination, based upon*
38 *a medical judgment arrived at using and exercising that degree of care,*
39 *skill and proficiency commonly exercised by the ordinary skillful,*

1 *careful and prudent physician in the same or similar circumstances and*
2 *that would be made by a reasonably prudent physician, knowledgeable*
3 *in the field, and knowledgeable about the case and the treatment*
4 *possibilities with respect to the conditions involved, that: (1) The*
5 *abortion is necessary to preserve the life of the pregnant woman; or (2)*
6 *a continuation of the pregnancy will cause a substantial and irreversible*
7 *impairment of a major bodily function of the pregnant woman.*

8 *(b) Except in the case of a medical emergency, a copy of the*
9 *written documented referral and of the abortion-performing physician's*
10 *written determination shall be provided to the pregnant woman no less*
11 *than 30 minutes prior to the initiation of the abortion. The written*
12 *determination shall be time-stamped at the time it is delivered to the*
13 *pregnant woman. The medical basis for the determination shall also*
14 *be reported by the physician as part of the written report made by the*
15 *physician to the secretary of health and environment under K.S.A. 65-*
16 *445, and amendments thereto. Such determination shall specify:*

17 *(1) If the unborn child was determined to be nonviable and the*
18 *medical basis of such determination;*

19 *(2) if the abortion is necessary to preserve the life of the pregnant*
20 *woman and the medical basis of such determination, including the*
21 *specific medical condition the physician believes would cause the death*
22 *of the pregnant woman; or*

23 *(3) if a continuation of the pregnancy will cause a substantial and*
24 *irreversible impairment of a major bodily function of the pregnant*
25 *woman and the medical basis of such determination, including the*
26 *specific medical condition the physician believes would constitute a*
27 *substantial and irreversible impairment of a major bodily function of*
28 *the pregnant woman.*

29 ~~(b)~~ *(c) (1) Except in the case of a medical emergency, prior to*
30 *performing an abortion upon a woman, the physician shall determine*
31 *the gestational age of the fetus unborn child according to accepted*
32 *obstetrical and neonatal practice and standards applied by physicians in*
33 *the same or similar circumstances. If the physician determines the*
34 *gestational age is less than 22 weeks, the physician shall document as*
35 *part of the medical records of the woman the basis for the*
36 *determination. The medical basis for the determination of the*
37 *gestational age of the unborn child shall also be reported by the*
38 *physician as part of the written report made by the physician to the*
39 *secretary of health and environment under K.S.A. 65-445, and*

1 *amendments thereto.*

2 (2) If the physician determines the gestational age of the ~~fetus~~
3 *unborn child* is 22 or more weeks, prior to performing an abortion upon
4 the woman the physician shall determine if the ~~fetus~~ *unborn child* is
5 viable by using and exercising that degree of care, skill and proficiency
6 commonly exercised by the ordinary skillful, careful and prudent
7 physician in the same or similar circumstances. In making this
8 determination of viability, the physician shall perform or cause to be
9 performed such medical examinations and tests as are necessary to
10 make a finding of the gestational age of the ~~fetus~~ *unborn child* and shall
11 enter such findings and determinations of viability in the medical
12 record of the woman.

13 (3) If the physician determines the gestational age of a ~~fetus~~ *an*
14 *unborn child* is 22 or more weeks, and determines that the ~~fetus~~ *unborn*
15 *child* is not viable and performs an abortion on the woman, the
16 physician shall report such determinations, *the medical basis* and the
17 reasons for such determinations in writing to the medical care facility in
18 which the abortion is performed for inclusion in the report of the
19 medical care facility to the secretary of health and environment under
20 K.S.A. 65-445, and amendments thereto, or if the abortion is not
21 performed in a medical care facility, the physician shall report such
22 determinations, *the medical basis* and the reasons for such
23 determinations in writing to the secretary of health and environment as
24 part of the written report made by the physician to the secretary of
25 health and environment under K.S.A. 65-445, and amendments thereto.

26 (4) If the physician who is to perform the abortion determines the
27 gestational age of a ~~fetus~~ *an unborn child* is 22 or more weeks, and
28 determines that the ~~fetus~~ *unborn child* is viable, both physicians under
29 subsection (a) determine in accordance with the provisions of
30 subsection (a) that an abortion is necessary to preserve the life of the
31 pregnant woman or that a continuation of the pregnancy will cause a
32 substantial and irreversible impairment of a major bodily function of
33 the pregnant woman and the physician performs an abortion on the
34 woman, the physician who performs the abortion shall report such
35 determinations, *the medical basis and the reasons* for such
36 determinations ~~and the basis~~, *including the specific medical diagnosis*
37 for the determination that an abortion is necessary to preserve the life
38 of the pregnant woman or that a continuation of the pregnancy will
39 cause a substantial and irreversible impairment of a major bodily

1 function of the pregnant woman *and the name of the referring*
2 *physician required by subsection (a)* in writing to the medical care
3 facility in which the abortion is performed for inclusion in the report of
4 the medical care facility to the secretary of health and environment
5 under K.S.A. 65-445, and amendments thereto, or if the abortion is not
6 performed in a medical care facility, the physician who performs the
7 abortion shall report such determinations, *the medical basis and the*
8 *reasons for such determinations and the basis , including the specific*
9 *medical diagnosis* for the determination that an abortion is necessary to
10 preserve the life of the pregnant woman or that a continuation of the
11 pregnancy will cause a substantial and irreversible impairment of a
12 major bodily function of the pregnant woman *and the name of the*
13 *referring physician required by subsection (a)* in writing to the
14 secretary of health and environment as part of the written report made
15 by the physician to the secretary of health and environment under
16 K.S.A. 65-445, and amendments thereto.

17 (5) The physician shall retain the medical records required to be
18 kept under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less
19 than ~~five~~ 10 years and shall retain a copy of the written reports required
20 under paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than
21 ~~five~~ 10 years.

22 (d) *The secretary of health and environment shall adopt rules and*
23 *regulations to administer this section. Such rules and regulations shall*
24 *include:*

25 (1) *A detailed list of the information that must be kept by a*
26 *physician under paragraphs (1) and (2) of subsection (c);*

27 (2) *the contents of the written reports required under paragraphs*
28 *(3) and (4) of subsection (c); and*

29 (3) *detailed specifications regarding information that must be*
30 *provided by a physician in order to comply with the obligation to*
31 *disclose the medical basis and specific medical diagnosis relied upon*
32 *in determining that an abortion is necessary to preserve the life of the*
33 *pregnant woman or that a continuation of the pregnancy will cause a*
34 *substantial and irreversible impairment of a major bodily function of*
35 *the pregnant woman.*

36 ~~(e)~~ (e) A woman upon whom an abortion is performed shall not be
37 prosecuted under this section for a conspiracy to violate this section
38 pursuant to K.S.A. 21-3302, and amendments thereto.

39 ~~(f)~~ (f) Nothing in this section shall be construed to create a right to

1 an abortion. Notwithstanding any provision of this section, a person
2 shall not perform an abortion that is prohibited by law.

3 (g) (1) *A woman upon whom an abortion is performed in*
4 *violation of this section, the father, if married to the woman at the time*
5 *of the abortion, and the parents or custodial guardian of the woman, if*
6 *the woman has not attained the age of 18 years at the time of the*
7 *abortion, may in a civil action obtain appropriate relief, unless, in a*
8 *case where the plaintiff is not the woman upon whom the abortion was*
9 *performed, the pregnancy resulted from the plaintiff's criminal conduct.*

10 (2) *Such relief shall include:*

11 (A) *Money damages for all injuries, psychological and physical,*
12 *occasioned by the violation of this section;*

13 (B) *statutory damages equal to three times the cost of the*
14 *abortion; and*

15 (C) *reasonable attorney fees.*

16 (h) *The prosecution of violations of this section may be brought by*
17 *the attorney general or by the district attorney or county attorney for*
18 *the county where any violation of this section is alleged to have*
19 *occurred.*

20 (i) **Nothing in this section shall be construed to restrict the**
21 **authority of the board of healing arts to engage in a disciplinary**
22 **action.**

23 ~~(e) As used in this section, "viable" means that stage of fetal~~
24 ~~development when it is the physician's judgment according to accepted~~
25 ~~obstetrical or neonatal standards of care and practice applied by~~
26 ~~physicians in the same or similar circumstances that there is a~~
27 ~~reasonable probability that the life of the child can be continued~~
28 ~~indefinitely outside the mother's womb with natural or artificial life-~~
29 ~~supportive measures.~~

30 ~~(f)~~ (j) If any provision of this section is held to be invalid or
31 unconstitutional, it shall be conclusively presumed that the legislature
32 would have enacted the remainder of this section without such invalid
33 or unconstitutional provision.

34 ~~(g)~~ (k) Upon a first conviction of a violation of this section, a
35 person shall be guilty of a class A nonperson misdemeanor. Upon a
36 second or subsequent conviction of a violation of this section, a person
37 shall be guilty of a severity level 10, nonperson felony.

38 Sec. 4. K.S.A. 65-6705 is hereby amended to read as follows: 65-
39 6705. (a) ~~Before a person performs an abortion upon an unemancipated~~

1 ~~minor, the person or the person's agent must give actual notice of the~~
2 ~~intent to perform such abortion to one of the minor's parents or the~~
3 ~~minor's legal guardian or must have written documentation that such~~
4 ~~notice has been given unless, after receiving counseling as provided by~~
5 ~~subsection (a) of K.S.A. 65-6704, the minor objects to such notice~~
6 ~~being given. If the minor so objects, the minor may petition, on her~~
7 ~~own behalf or by an adult of her choice, the district court of any county~~
8 ~~of this state for a waiver of the notice requirement of this subsection. If~~
9 ~~the minor so desires, the counselor who counseled the minor as~~
10 ~~required by K.S.A. 65-6704 shall notify the court and the court shall~~
11 ~~ensure that the minor or the adult petitioning on the minor's behalf is~~
12 ~~given assistance in preparing and filing the application. Except in the~~
13 ~~case of a medical emergency or as otherwise provided in this section,~~
14 ~~no person shall perform an abortion upon an unemancipated minor,~~
15 ~~unless the person first obtains the notarized written consent of the~~
16 ~~minor and both parents or the legal guardian of the minor.~~

17 (1) *If the minor's parents are divorced or otherwise unmarried and*
18 *living separate and apart, then the written consent of the parent with*
19 *primary custody, care and control of such minor shall be sufficient.*

20 (2) *If the minor's parents are married and one parent is not*
21 *available to the person performing the abortion in a reasonable time*
22 *and manner, then the written consent of the parent who is available*
23 *shall be sufficient.*

24 (3) *If the minor's pregnancy was caused by sexual intercourse*
25 *with the minor's natural father, adoptive father, stepfather or legal*
26 *guardian, then the written consent of the minor's mother shall be*
27 *sufficient. Notice of such circumstances shall be reported to the proper*
28 *authorities as provided in K.S.A. 2010 Supp. 38-2223, and amendments*
29 *thereto.*

30 (b) *After receiving counseling as provided by subsection (a) of*
31 *K.S.A. 65-6704, and amendments thereto, the minor may object to the*
32 *written consent requirement set forth in subsection (a). If the minor so*
33 *objects, the minor may petition, on her own behalf or by an adult of*
34 *her choice, the district court of any county of this state for a waiver of*
35 *the written consent requirement. If the minor so desires, the counselor*
36 *who counseled the minor as required by K.S.A. 65-6704, and*
37 *amendments thereto, shall notify the court and the court shall ensure*
38 *that the minor or the adult petitioning on the minor's behalf is given*
39 *assistance in preparing and filing the petition. The minor may*

1 participate in proceedings in the court on the minor's own behalf or
2 through the adult petitioning on the minor's behalf. The court shall
3 provide a court-appointed counsel to represent the minor at no cost to
4 the minor.

5 (c) Court proceedings under this section shall be anonymous and
6 the court shall ensure that the minor's identity is kept confidential. The
7 court shall order that a confidential record of the evidence in the
8 proceeding be maintained. All persons shall be excluded from hearings
9 under this section except the minor, her attorney and such other persons
10 whose presence is specifically requested by the applicant or her
11 attorney.

12 (d) ~~Notice Consent~~ shall be waived if the court finds by a
13 ~~preponderance of the~~ *clear and convincing* evidence that either: (1) The
14 minor is mature and well-informed enough to make the abortion
15 decision on her own; or (2) ~~notification of a person~~ *the consent of the*
16 *individuals* specified in subsection (a) would not be in the best interest
17 of the minor.

18 (e) A court that conducts proceedings under this section shall issue
19 written and specific factual findings and legal conclusions supporting
20 its decision as follows:

21 (1) Granting the minor's application for waiver of ~~notice consent~~
22 pursuant to this section, if the court finds that the minor is mature and
23 well-enough informed to make the abortion decision without ~~notice to a~~
24 ~~person~~ *the consent of the individuals* specified in subsection (a);

25 (2) granting the minor's application for waiver *of consent* if the
26 court finds that the minor is immature but that ~~notification of a person~~
27 *consent of the individuals* specified in subsection (a) would not be in
28 the minor's best interest; or

29 (3) denying the application if the court finds that the minor is
30 immature and that waiver of ~~notification of a person~~ *the consent of the*
31 *individuals* specified in subsection (a) would not be in the minor's best
32 interest.

33 (f) The court shall give proceedings under this section such
34 precedence over other pending matters as necessary to ensure that the
35 court may reach a decision promptly. The court shall issue a written
36 order which shall be issued immediately to the minor, or her attorney or
37 other individual designated by the minor to receive the order. If the
38 court fails to rule within 48 hours, excluding Saturdays and Sundays, of
39 the time of the filing of the minor's application, the application shall be

1 deemed granted.

2 (g) An expedited anonymous appeal shall be available to any
3 minor. The record on appeal shall be completed and the appeal shall be
4 perfected within five days from the filing of the notice to appeal.

5 (h) The supreme court shall promulgate any rules it finds are
6 necessary to ensure that proceedings under this act are handled in an
7 expeditious and anonymous manner.

8 (i) No fees shall be required of any minor who avails herself of the
9 procedures provided by this section.

10 (j) (1) No ~~notice consent~~ shall be required under this section if:

11 ~~(A) The pregnant minor declares that the father of the fetus is one~~
12 ~~of the persons to whom notice may be given under this section;~~

13 ~~(B) in the best medical judgment of the attending physician based~~
14 ~~on the facts of the case, an emergency exists that threatens the health,~~
15 ~~safety or well-being of the minor as to require an abortion; or~~

16 ~~(C) the person or persons who are entitled to notice have signed a~~
17 ~~written, notarized waiver of notice which is placed in the minor's~~
18 ~~medical record.~~

19 ~~(2) A physician who does not comply with the provisions of this~~
20 ~~section by reason of the exception of subsection (j)(1)(A) must inform~~
21 ~~the minor that the physician is required by law to report the sexual~~
22 ~~abuse to the department of social and rehabilitation services. A~~
23 ~~physician who does not comply with the requirements of this section by~~
24 ~~reason of the exception of subsection (j)(1)(B) A physician acting~~
25 ~~pursuant to this subsection shall state in the medical record of the~~
26 ~~abortion the medical indications on which the physician's judgment was~~
27 ~~based. The medical basis for the determination shall also be reported~~
28 ~~by the physician as part of the written report made by the physician to~~
29 ~~the secretary of health and environment under K.S.A. 65-445, and~~
30 ~~amendments thereto.~~

31 (k) Any person who intentionally performs an abortion with
32 knowledge that, or with reckless disregard as to whether, the person
33 upon whom the abortion is to be performed is an unemancipated minor,
34 and who intentionally and knowingly fails to conform to any
35 requirement of this section, is guilty of a class A person misdemeanor.

36 (l) Except as necessary for the conduct of a proceeding pursuant to
37 this section, it is a class B person misdemeanor for any individual or
38 entity to willfully or knowingly: (1) Disclose the identity of a minor
39 petitioning the court pursuant to this section or to disclose any court

1 record relating to such proceeding; or (2) permit or encourage
2 disclosure of such minor's identity or such record.

3 *(m) Prior to conducting proceedings under this section, the court*
4 *may require the minor to participate in an evaluation and counseling*
5 *session with a mental health professional. Such evaluation and*
6 *counseling session shall be for the purpose of developing trustworthy*
7 *and reliable expert opinion concerning the minor's sufficiency of*
8 *knowledge, insight, judgment and maturity with regard to her abortion*
9 *decision in order to aid the court in its decision and to make the state's*
10 *resources available to the court for this purpose. Persons conducting*
11 *such sessions may employ the information and materials referred to in*
12 *K.S.A. 65-6708 et seq., and amendments thereto, in examining how*
13 *well the minor is informed about pregnancy, fetal development,*
14 *abortion risks and consequences and abortion alternatives, and should*
15 *also endeavor to verify that the minor is seeking an abortion of her*
16 *own free will and is not acting under intimidation, threats, abuse,*
17 *undue pressure or extortion by any other persons. The results of such*
18 *evaluation and counseling shall be reported to the court by the most*
19 *expeditious means, commensurate with security and confidentiality, to*
20 *assure receipt by the court prior to or at the proceedings initiated*
21 *pursuant to this section.*

22 *(n) In determining if a minor is mature and well-enough informed*
23 *to make the abortion decision without parental consent, the court shall*
24 *take into account the minor's experience level, perspective and*
25 *judgment. In assessing the minor's experience level, the court shall*
26 *consider, along with any other relevant factors, the minor's age,*
27 *experience working outside the home, living away from home, traveling*
28 *on her own, handling personal finances and making other significant*
29 *decisions. In assessing the minor's perspective, the court shall*
30 *consider, along with any other relevant factors, what steps the minor*
31 *has taken to explore her options and the extent to which she considered*
32 *and weighed the potential consequences of each option. In assessing*
33 *the minor's judgment, the court shall consider, along with any other*
34 *relevant factors, her conduct since learning of her pregnancy and her*
35 *intellectual ability to understand her options and to make informed*
36 *decisions.*

37 *(o) The judicial record of any court proceedings initiated pursuant*
38 *to this section shall upon final determination by the court be compiled*
39 *by the court. One copy of the judicial record shall be given to the*

1 *minor or an adult chosen by the minor to bring the initial petition*
2 *under this section. A second copy of the judicial record shall be sent by*
3 *the court to the abortion provider who performed or will perform the*
4 *abortion for inclusion in the minor's medical records and shall be*
5 *maintained by the abortion provider for at least 10 years.*
6 *(p) The chief judge of each judicial district shall send annual*
7 *reports to the department of health and environment disclosing in a*
8 *nonidentifying manner:*
9 *(1) The number of minors seeking a bypass of the parental consent*
10 *requirements through court proceedings under this section;*
11 *(2) the number of petitions granted;*
12 *(3) the reasons for granting such petitions;*
13 *(4) any subsequent actions taken to protect the minor from*
14 *domestic or predator abuse;*
15 *(5) each minor's state of residence, age and disability status; and*
16 *(6) the gestational age of the unborn child if the petition is*
17 *granted.*
18 *(o) (1) A custodial parent or legal guardian of the minor may*
19 *pursue civil remedies against individuals, including the physician and*
20 *abortion clinic staff, who violate the rights of parents, legal guardian*
21 *or the minor as set forth in this section.*
22 *(2) Such relief shall include:*
23 *(A) Money damages for all injuries, psychological and physical,*
24 *occasioned by the violation of this section;*
25 *(B) the cost of any subsequent medical treatment such minor*
26 *might require because of the abortion performed without parental*
27 *consent or knowledge, or without a court order, in violation of this*
28 *section;*
29 *(C) statutory damages equal to three times the cost of the*
30 *abortion; and*
31 *(D) reasonable attorney fees.*
32 *(q) In the course of a judicial hearing to waive parental consent, if*
33 *the court has reason to suspect that a minor has been injured as a*
34 *result of physical, mental or emotional abuse or neglect or sexual*
35 *abuse, the court shall report the matter promptly as provided in*
36 *subsection (c) of K.S.A. 2010 Supp. 38-2223, and amendments thereto.*
37 *In the course of reporting suspected child abuse or neglect to the*
38 *appropriate state authorities, nothing in this section shall abridge or*
39 *otherwise modify the anonymity or confidentiality provisions of the*

1 *judicial waiver proceeding as specified in this section.*

2 *(r) Nothing in this section shall be construed to create a right to*
3 *an abortion. Notwithstanding any provision of this section, a person*
4 *shall not perform an abortion that is prohibited by law.*

5 Sec. 5. K.S.A. 2010 Supp. 65-6709 is hereby amended to read as
6 follows: 65-6709. No abortion shall be performed or induced without
7 the voluntary and informed consent of the woman upon whom the
8 abortion is to be performed or induced. Except in the case of a medical
9 emergency, consent to an abortion is voluntary and informed only if:

10 (a) At least 24 hours before the abortion the physician who is to
11 perform the abortion or the referring physician has informed the
12 woman in writing of:

13 (1) The name of the physician who will perform the abortion;

14 (2) a description of the proposed abortion method;

15 (3) a description of risks related to the proposed abortion method,
16 including risks to the woman's reproductive health and alternatives to
17 the abortion that a reasonable patient would consider material to the
18 decision of whether or not to undergo the abortion;

19 (4) the probable gestational age of the ~~fetus~~ *unborn child* at the
20 time the abortion is to be performed and that Kansas law requires the
21 following: "No person shall perform or induce an abortion when the
22 ~~fetus~~ *unborn child* is viable unless such person is a physician and has a
23 documented referral from another physician not financially associated
24 with the physician performing or inducing the abortion and both
25 physicians determine that: (1) The abortion is necessary to preserve the
26 life of the pregnant woman; or (2) ~~that~~ a continuation of the pregnancy
27 will cause a substantial and irreversible impairment of a major bodily
28 function of the pregnant woman." If the child is born alive, the
29 attending physician has the legal obligation to take all reasonable steps
30 necessary to maintain the life and health of the child;

31 (5) the probable anatomical and physiological characteristics of
32 the ~~fetus~~ *unborn child* at the time the abortion is to be performed;

33 (6) the contact information for free counseling assistance for
34 medically challenging pregnancies and the contact information for free
35 perinatal hospice services;

36 (7) the medical risks associated with carrying a ~~fetus~~ *an unborn*
37 *child* to term; and

38 (8) any need for anti-Rh immune globulin therapy, if she is Rh
39 negative, the likely consequences of refusing such therapy and the cost

1 of the therapy.

2 (b) At least 24 hours before the abortion, the physician who is to
3 perform the abortion, the referring physician or a qualified person has
4 informed the woman in writing that:

5 (1) Medical assistance benefits may be available for prenatal care,
6 childbirth and neonatal care, and that more detailed information on the
7 availability of such assistance is contained in the printed materials
8 given to her and described in K.S.A. 65-6710, and amendments thereto;

9 (2) the informational materials in K.S.A. 65-6710, and
10 amendments thereto, are available in printed form and online, and
11 describe the ~~fetus~~ *unborn child*, list agencies which offer alternatives to
12 abortion with a special section listing adoption services and list
13 providers of free ultrasound services;

14 (3) the father of the ~~fetus~~ *unborn child* is liable to assist in the
15 support of her child, even in instances where he has offered to pay for
16 the abortion except that in the case of rape this information may be
17 omitted; ~~and~~

18 (4) the woman is free to withhold or withdraw her consent to the
19 abortion at any time prior to invasion of the uterus without affecting her
20 right to future care or treatment and without the loss of any state or
21 federally-funded benefits to which she might otherwise be entitled; *and*

22 (5) *the abortion will terminate the life of a whole, separate,*
23 *unique, living human being.*

24 (c) At least 30 minutes prior to the abortion procedure, prior to
25 physical preparation for the abortion and prior to the administration of
26 medication for the abortion, the woman shall meet privately with the
27 physician who is to perform the abortion and such person's staff to
28 ensure that she has an adequate opportunity to ask questions of and
29 obtain information from the physician concerning the abortion.

30 (d) At least 24 hours before the abortion, the woman is given a
31 copy of the informational materials described in K.S.A. 65-6710, and
32 amendments thereto. If the woman asks questions concerning any of
33 the information or materials, answers shall be provided to her in her
34 own language.

35 (e) The woman certifies in writing on a form provided by the
36 department, prior to the abortion, that the information required to be
37 provided under subsections (a), (b) and (d) has been provided and that
38 she has met with the physician who is to perform the abortion on an
39 individual basis as provided under subsection (c). All physicians who

1 perform abortions shall report the total number of certifications
2 received monthly to the department. The department shall make the
3 number of certifications received available on an annual basis.

4 (f) Prior to the performance of the abortion, the physician who is
5 to perform the abortion or the physician's agent receives a copy of the
6 written certification prescribed by subsection (e) of this section.

7 (g) The woman is not required to pay any amount for the abortion
8 procedure until the 24-hour waiting period has expired.

9 (h) A physician who will use ultrasound equipment preparatory to
10 or in the performance of the abortion, at least 30 minutes prior to the
11 performance of the abortion:

12 (1) Informs the woman that she has the right to view the
13 ultrasound image of her unborn child, at no additional expense to her;

14 (2) informs the woman that she has the right to receive a physical
15 picture of the ultrasound image, at no additional expense to her;

16 (3) offers the woman the opportunity to view the ultrasound image
17 and receive a physical picture of the ultrasound image;

18 (4) certifies in writing that the woman was offered the opportunity
19 to view the ultrasound image and receive a physical picture of the
20 ultrasound image at least 30 minutes prior to the performance of the
21 abortion; and

22 (5) obtains the woman's signed acceptance or rejection of the
23 opportunity to view the ultrasound image and receive a physical picture
24 of the ultrasound image.

25 If the woman accepts the offer and requests to view the ultrasound
26 image, receive a physical picture of the ultrasound image or both, her
27 request shall be granted by the physician at no additional expense to the
28 woman. The physician's certification shall be time-stamped at the time
29 the opportunity to view the ultrasound image and receive a physical
30 picture of the ultrasound image was offered.

31 (i) A physician who will use heart monitor equipment preparatory
32 to or in the performance of the abortion, at least 30 minutes prior to the
33 performance of the abortion:

34 (1) Informs the woman that she has the right to listen to the
35 heartbeat of her unborn child, at no additional expense to her;

36 (2) offers the woman the opportunity to listen to the heartbeat of
37 her unborn child;

38 (3) certifies in writing that the woman was offered the opportunity
39 to listen to the heartbeat of her unborn child at least 30 minutes prior to

1 the performance of the abortion; and

2 (4) obtains the woman's signed acceptance or rejection of the
3 opportunity to listen to the heartbeat of her unborn child.

4 If the woman accepts the offer and requests to listen to the heartbeat
5 of her unborn child, her request shall be granted by the physician at no
6 additional expense to the woman. The physician's certification shall be
7 time-stamped at the time the opportunity to listen to the heartbeat of her
8 unborn child was offered.

9 (j) The physician's certification required by subsections (h) and (i)
10 together with the pregnant woman's signed acceptance or rejection of
11 such offer shall be placed in the woman's medical file in the physician's
12 office and kept for 10 years. However, in the case of a minor, the
13 physician shall keep a copy of the certification and the signed
14 acceptance or rejection in the minor's medical file for five years past
15 the minor's majority, but in no event less than 10 years.

16 (k) Any private office, freestanding surgical outpatient clinic or
17 other facility or clinic in which abortions are performed shall
18 conspicuously post a sign in a location so as to be clearly visible to
19 patients. The sign required pursuant to this subsection shall be printed
20 with lettering that is legible and shall be at least three quarters of an
21 inch boldfaced type which reads:

22 Notice: It is against the law for anyone, regardless of their
23 relationship to you, to force you to have an abortion. By law, we cannot
24 perform an abortion on you unless we have your freely given and
25 voluntary consent. It is against the law to perform an abortion on you
26 against your will. You have the right to contact any local or state law
27 enforcement agency to receive protection from any actual or threatened
28 physical abuse or violence. You have the right to change your mind at
29 any time prior to the actual abortion and request that the abortion
30 procedure cease.

31 The provisions of this subsection shall not apply to any private
32 office, freestanding surgical outpatient clinic or other facility or clinic
33 which performs abortions only when necessary to prevent the death of
34 the pregnant woman.

35 (l) For purposes of this section; :

36 (1) *The term "human being" means an individual living member of*
37 *the species of homo sapiens, including the unborn human being during*
38 *the entire embryonic and fetal ages from fertilization to full gestation.*

39 (2) The term "medically challenging pregnancy" means a

1 pregnancy where the ~~fetus~~ *unborn child* is diagnosed as having: ~~(1)~~ (A)
2 A severe anomaly; or ~~(2)~~ (B) an illness, disease or defect which is
3 invariably fatal.

4 Sec. 6. K.S.A. 2010 Supp. 65-6710 is hereby amended to read as
5 follows: 65-6710. (a) The department shall cause to be published and
6 distributed widely, within 30 days after the effective date of this act,
7 and shall update on an annual basis, the following easily
8 comprehensible informational materials:

9 (1) Geographically indexed printed materials designed to inform
10 the woman of public and private agencies and services available to
11 assist a woman through pregnancy, upon childbirth and while her child
12 is dependent, including but not limited to, a list of providers of free
13 ultrasound services and adoption agencies. The materials shall include
14 a comprehensive list of the agencies, a description of the services they
15 offer and the telephone numbers and addresses of the agencies; and
16 inform the woman about available medical assistance benefits for
17 prenatal care, childbirth and neonatal care and about the support
18 obligations of the father of a child who is born alive. The department
19 shall ensure that the materials described in this section are
20 comprehensive and do not directly or indirectly promote, exclude or
21 discourage the use of any agency or service described in this section.
22 The materials shall also contain a toll-free ~~24-hour-a-day~~ *24-hour-a-day*
23 telephone number which may be called to obtain, orally, such a list and
24 description of agencies in the locality of the caller and of the services
25 they offer. The materials shall state that it is unlawful for any individual
26 to coerce a woman to undergo an abortion, that any physician who
27 performs an abortion upon a woman without her informed consent may
28 be liable to her for damages. Kansas law permits adoptive parents to
29 pay costs of prenatal care, childbirth and neonatal care. The materials
30 shall include the following statement:

31 "Many public and private agencies exist to provide counseling and
32 information on available services. You are strongly urged to seek their
33 assistance to obtain guidance during your pregnancy. In addition, you
34 are encouraged to seek information on abortion services, alternatives to
35 abortion, including adoption, and resources available to post-partum
36 mothers. The law requires that your physician or the physician's agent
37 provide the enclosed information."

38 (2) Printed materials that inform the pregnant woman of the
39 probable anatomical and physiological characteristics of the ~~fetus~~

1 *unborn child* at two-week gestational increments from fertilization to
2 full term, including pictures or drawings representing the development
3 of ~~a fetus~~ *an unborn child* at two-week gestational increments, and any
4 relevant information on the possibility of the ~~fetus'~~ *unborn child's*
5 survival. Any such pictures or drawings shall contain the dimensions of
6 the ~~fetus~~ *unborn child* and shall be realistic. *The material shall include*
7 *the statement that abortion terminates the life of a whole, separate,*
8 *unique, living human being.* The materials shall be objective,
9 nonjudgmental and designed to convey only accurate scientific
10 information about the ~~fetus~~ *unborn child* at the various gestational ages.
11 The material shall also contain objective information describing the
12 methods of abortion procedures commonly employed, the medical risks
13 commonly associated with each such procedure and the medical risks
14 associated with carrying ~~a fetus~~ *an unborn child* to term.

15 (3) A certification form to be used by physicians or their agents
16 under subsection (e) of K.S.A. 65-6709, and amendments thereto,
17 which will list all the items of information which are to be given to
18 women by physicians or their agents under the woman's-right-to-know
19 act.

20 (4) A standardized video containing all of the information
21 described in paragraphs (1) and (2). In addition, the video shall show
22 ultrasound images, using the best available ultrasound technology, of ~~a~~
23 ~~fetus~~ *an unborn child* at two week gestational increments.

24 (b) The print materials required under this section shall be printed
25 in a typeface large enough to be clearly legible. The informational
26 video shall be published in digital video disc format. All materials
27 required to be published under this section shall also be published
28 online on the department's website. All materials shall be made
29 available in both English and Spanish language versions.

30 (c) The materials required under this section shall be available at
31 no cost from the department upon request and in appropriate number to
32 any person, facility or hospital.

33 Sec. 7. K.S.A. 65-6721 is hereby amended to read as follows: 65-
34 6721. (a) No person shall perform or induce a partial birth abortion on a
35 ~~viable fetus~~ *an unborn child* unless ~~such person is a physician and has a~~
36 ~~documented referral from another physician not legally or financially~~
37 ~~affiliated with the physician performing or inducing the abortion and~~
38 ~~both physicians determine: (1) The abortion is necessary to preserve the~~
39 ~~life of the pregnant woman; or (2) a continuation of the pregnancy will~~

1 ~~cause a substantial and irreversible impairment of a major physical or~~
2 ~~mental function of the pregnant woman.~~ *such person is a physician and*
3 *has a documented referral from another physician who is licensed to*
4 *practice in this state, and who is not legally or financially affiliated*
5 *with the physician performing or inducing the abortion and both*
6 *physicians provide a written determination, based upon a medical*
7 *judgment that would be made by a reasonably prudent physician,*
8 *knowledgeable in the field and knowledgeable about the case and the*
9 *treatment possibilities with respect to the conditions involved, that the*
10 *partial birth abortion is necessary to save the life of a mother whose*
11 *life is endangered by a physical disorder, physical illness or physical*
12 *injury, including a life-endangering physical condition caused by or*
13 *arising from the pregnancy itself.*

14 (b) As used in this section: ,

15 (+) "partial birth abortion" means an abortion procedure ~~which~~
16 ~~includes the deliberate and intentional evacuation of all or a part of the~~
17 ~~intracranial contents of a viable fetus prior to removal of such~~
18 ~~otherwise intact fetus from the body of the pregnant woman.~~

19 (2) "Partial birth abortion" shall not include the: (A) Suction-
20 eurette abortion procedure; (B) suction aspiration abortion procedure;
21 or (C) dilation and evacuation abortion procedure involving
22 dismemberment of the fetus prior to removal from the body of the
23 pregnant woman: *in which the person performing the abortion*
24 *deliberately and intentionally vaginally delivers a living unborn child*
25 *until, in the case of a head-first presentation, the entire head of the*
26 *unborn child is outside the body of the mother; or, in the case of a*
27 *breech presentation, any part of the trunk of the unborn child past the*
28 *navel is outside the body of the mother; for the purpose of performing*
29 *an overt act that the person knows will kill the partially delivered living*
30 *unborn child, and performs the overt act, other than completion of*
31 *delivery, that kills the partially delivered living unborn child.*

32 (c) (1) If a physician determines in accordance with the
33 provisions of subsection (a) that a partial birth abortion is necessary and
34 performs a partial birth abortion on the woman, the physician shall
35 report such determination, *the medical basis, including the specific*
36 *medical diagnosis* and the reasons for such determination in writing to
37 the medical care facility in which the abortion is performed for
38 inclusion in the report of the medical care facility to the secretary of
39 health and environment under K.S.A. 65-445, and amendments thereto,

1 or if the abortion is not performed in a medical care facility, the
 2 physician shall report ~~the reasons for~~ such determination, *the medical*
 3 *basis, including the specific medical diagnosis, and the reasons for*
 4 *such determination* in writing to the secretary of health and
 5 environment as part of the written report made by the physician to the
 6 secretary of health and environment under K.S.A. 65-445, and
 7 amendments thereto. The physician shall retain a copy of the written
 8 reports required under this subsection for not less than ~~five~~ 10 years.

9 (2) *The secretary of health and environment shall adopt rules and*
 10 *regulations to administer this section. Such rules and regulations shall*
 11 *include:*

12 (A) *A detailed list of the contents of the written reports required*
 13 *under paragraph (1) of this subsection; and*

14 (B) *detailed information that must be provided by a physician to*
 15 *insure that the specific medical basis and clinical diagnosis regarding*
 16 *the woman is reported.*

17 (d) (1) *The father, if married to the woman at the time of the*
 18 *abortion, and, if the woman has not attained the age of 18 years at the*
 19 *time of the abortion, the parents or custodial guardian of the woman,*
 20 *may in a civil action obtain appropriate relief, unless, in a case where*
 21 *the plaintiff is not the woman upon whom the abortion was performed,*
 22 *the pregnancy resulted from the plaintiff's criminal conduct or the*
 23 *plaintiff consented to the abortion.*

24 (2) *Such relief shall include:*

25 (A) *Money damages for all injuries, psychological and physical,*
 26 *occasioned by the violation of this section;*

27 (B) *statutory damages equal to three times the cost of the*
 28 *abortion; and*

29 (C) *reasonable attorney fees.*

30 ~~(e)~~ (e) *A woman upon whom an abortion is performed shall not be*
 31 *prosecuted under this section for a conspiracy to violate this section*
 32 *pursuant to K.S.A. 21-3302, and amendments thereto.*

33 ~~(e)~~ (f) *Nothing in this section shall be construed to create a right to*
 34 *an abortion. Notwithstanding any provision of this section, a person*
 35 *shall not perform an abortion that is prohibited by law.*

36 ~~(g)~~ (g) *Upon conviction of a violation of this section, a person shall*
 37 *be guilty of a severity level ~~10~~ 8 person felony.*

38 Sec. 8. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and
 39 65-6721 and K.S.A. 2010 Supp. 65-6709 and 65-6710 are hereby

1 repealed.

2 Sec. 9. This act shall take effect and be in force from and after its
3 publication in the Kansas register.