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

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

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

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

(b) by eight weeks after fertilization, the unborn child reacts to touch. By 20 weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling;

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

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

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

(f) the position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;

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

(h) in adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does;
(i) substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing; 
(j) consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization; and 
(k) it is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

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

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.
(b) "Bodily function" means physical function. The term "bodily function" does not include mental or emotional functions.
(c) "Department" means the department of health and environment.
(d) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.
(e) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert her death or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
(f) "Pain-capable unborn child" means an unborn child having reached the gestational age of 22 weeks or more.
(g) "Physician" means a person licensed to practice medicine and surgery in this state.
(h) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body.

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

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

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

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

(c) (1) Except in the case of a medical emergency, prior to performing or inducing, or attempting to perform or induce an abortion upon a woman, the physician shall determine the gestational age of the unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to gestational age. The
physician shall document as part of the medical records of the woman the
basis for the determination of gestational age. The physician shall report
such determinations, the medical basis and the reasons for such
determinations in writing to the medical care facility in which the abortion
is performed or induced for inclusion in the report of the medical care
facility to the secretary of health and environment under K.S.A. 65-445,
and amendments thereto, or if the abortion is not performed or induced in
a medical care facility, the physician who performs or induces the abortion
shall report such determinations, the medical basis and the reasons for
such determinations in writing to the secretary of health and environment
as part of the written report made by the physician to the secretary of

(2) If the physician determines the gestational age of the unborn child
is 22 or more weeks, then no abortion of the pain-capable unborn child
shall be performed or induced, or attempted to be performed or induced
except as provided for in subsection (a). In such event, the physician who
performs or induces the abortion shall report such determinations, the
medical basis and the reasons for such determinations, including the
specific medical diagnosis for the determination that an abortion is
necessary to preserve the life of the pregnant woman or that a continuation
of the pregnancy will cause a substantial and irreversible physical
impairment of a major bodily function of the pregnant woman and the
name of the referring physician required by subsection (a) in writing to the
medical care facility in which the abortion is performed or induced for
inclusion in the report of the medical care facility to the secretary of health
and environment under K.S.A. 65-445, and amendments thereto, or if the
abortion is not performed or induced in a medical care facility, the
physician who performs or induces the abortion shall report such
determinations, the medical basis and the reasons for such determinations,
including the specific medical diagnosis for the determination that an
abortion is necessary to preserve the life of the pregnant woman or that a
continuation of the pregnancy will cause a substantial and irreversible
physical impairment of a major bodily function of the pregnant woman
and the name of the referring physician required by subsection (a) in
writing to the secretary of health and environment as part of the written
report made by the physician to the secretary of health and environment

(3) The physician shall retain the medical records required to be kept
under this subsection for not less than 10 years.

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

(1) A detailed list of the information that must be kept by a physician
under this section;
(2) the contents of the written reports required under this section; and
(3) detailed specifications regarding information that must be
provided by a physician in order to comply with the obligation to disclose
the medical basis and specific medical diagnosis relied upon in
determining gestational age and in determining that an abortion is
necessary to preserve the life of the pregnant woman, or that a
continuation of the pregnancy will cause a substantial and irreversible
physical impairment of a major bodily function of the pregnant woman.
(e) A woman upon whom an abortion is performed or induced, or
attempted to be performed or induced shall not be prosecuted under this
section for a conspiracy to violate this section pursuant to section 34 of
chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.
(f) Nothing in this section shall be construed to create a right to an
abortion. Notwithstanding any provision of this section, a person shall not
perform an abortion that is prohibited by law.
(g) (1) A woman upon whom an abortion is performed or induced in
violation of this section, the father, if married to the woman at the time of
the abortion, and the parents or custodial guardian of the woman, if the
woman has not attained the age of 18 years at the time of the abortion,
may in a civil action obtain appropriate relief, unless, in a case where the
plaintiff is not the woman upon whom the abortion was performed or
induced, the pregnancy resulted from the plaintiff’s criminal conduct.
(2) Such relief shall include:
(A) Money damages for all injuries, psychological and physical,
occasioned by the violation of this section;
(B) statutory damages equal to three times the cost of the abortion;
and
(C) reasonable attorney fees.
(h) The prosecution of violations of this section may be brought by
the attorney general or by the district attorney or county attorney for the
county where any violation of this section is alleged to have occurred.
(i) If any provision of this section is held to be invalid or
unconstitutional, it shall be conclusively presumed that the legislature
would have enacted the remainder of this section without such invalid or
unconstitutional provision.
(j) Upon a first conviction of a violation of this section, a person shall
be guilty of a class A person misdemeanor. Upon a second or subsequent
conviction of a violation of this section, a person shall be guilty of a
severity level 10, person felony.
Sec. 4. K.S.A. 65-445 is hereby amended to read as follows: 65-445.
(a) Every medical care facility shall keep written records of all pregnancies
which are lawfully terminated within such medical care facility and shall
annually submit a written report thereon to the secretary of health and
environment in the manner and form prescribed by the secretary. Every
person licensed to practice medicine and surgery shall keep a record of all
pregnancies which are lawfully terminated by such person in a location
other than a medical care facility and shall annually submit a written report
thereon to the secretary of health and environment in the manner and form
prescribed by the secretary.

(b) Each report required by this section shall include the number of
pregnancies terminated during the period of time covered by the report, the
type of medical facility in which the pregnancy was terminated,
information required to be reported under K.S.A. 65-6703 and section 3,
and amendments thereto if applicable to the pregnancy terminated, and
such other information as may be required by the secretary of health and
environment, but the report shall not include the names of the persons
whose pregnancies were so terminated.

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

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

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

New Sec. 5. Nothing in this act shall be construed to repeal any
statute dealing with abortion, but shall be considered supplemental to such
other statutes.

Sec. 6. K.S.A. 65-445 is hereby repealed.

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