
Be it enacted by the Legislature of the State of Kansas

Section 1. 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 subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721, and amendments thereto, and section 11, 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. Each report required by subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721, and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition which necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.

(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 or any district or county attorney in this state 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 or any district or county attorney 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.

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

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

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

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

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

(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 that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

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

(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 a fetus an unborn child in the mother's body.

(i) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

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

(k) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary-
medical means: that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce an abortion when the fetus unborn child is viable 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 the abortion and both physicians determine 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 impairment of a major bodily function of the pregnant woman.

(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 unborn child was determined to be nonviable and the medical basis of such determination;
(2) 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
(3) If a continuation of the pregnancy will cause a substantial and irreversible 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.

(b) (c) (1) Except in the case of a medical emergency, prior to
performing an abortion upon a woman, the physician shall determine the
1 gestational age of the <i>fetus unborn child</i> according to accepted obstetrical
2 and neonatal practice and standards applied by physicians in the same or
3 similar circumstances. If the physician determines the gestational age is
4 less than 22 weeks, the physician shall document as part of the medical
5 records of the woman the basis for the determination. The medical basis
6 for the determination of the gestational age of the unborn child shall also
7 be reported by the physician as part of the written report made by the
8 physician to the secretary of health and environment under K.S.A. 65-445,
9 and amendments thereto.
10 (2) If the physician determines the gestational age of the <i>fetus unborn child</i> is 22 or more weeks, prior to performing an abortion upon the
11 woman the physician shall determine if the <i>fetus unborn child</i> is viable by
12 using and exercising that degree of care, skill and proficiency commonly
13 exercised by the ordinary skillful, careful and prudent physician in the
14 same or similar circumstances. In making this determination of viability,
15 the physician shall perform or cause to be performed such medical
16 examinations and tests as are necessary to make a finding of the
17 gestational age of the <i>fetus unborn child</i> and shall enter such findings and
determinations of viability in the medical record of the woman.
18 (3) If the physician determines the gestational age of a <i>fetus an unborn child</i> is 22 or more weeks, and determines that the <i>fetus unborn child</i> is not viable and performs an abortion on the woman, the physician
19 shall report such determinations, the medical basis and the reasons for
20 such determinations in writing to the medical care facility in which the
21 abortion is performed for inclusion in the report of the medical care
22 facility to the secretary of health and environment under K.S.A. 65-445,
23 and amendments thereto, or if the abortion is not performed in a medical
24 care facility, the physician shall report such determinations, the medical
25 basis and the reasons for such determinations in writing to the secretary of
26 health and environment as part of the written report made by the physician
27 to the secretary of health and environment under K.S.A. 65-445, and
28 amendments thereto.
29 (4) If the physician who is to perform the abortion determines the
30 gestational age of a <i>fetus an unborn child</i> is 22 or more weeks, and
31 determines that the <i>fetus unborn child</i> is viable, both physicians under
32 subsection (a) determine in accordance with the provisions of subsection
33 (a) that an abortion is necessary to preserve the life of the pregnant woman
34 or that a continuation of the pregnancy will cause a substantial and
35 irreversible impairment of a major bodily function of the pregnant woman
36 and the physician performs an abortion on the woman, the physician who
37 performs the abortion shall report such determinations, the medical basis
38 and the reasons for such determinations and the basis , 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 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 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 in a medical care facility, the physician who performs the abortion shall report such determinations, the medical basis and the reasons for such determinations and the basis, 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 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 under K.S.A. 65-445, and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection for not less than five years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection for not less than five 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 paragraphs (1) and (2) of subsection (c);

(2) the contents of the written reports required under paragraphs (3) and (4) of subsection (c); 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 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 impairment of a major bodily function of the pregnant woman.

(e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, 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 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, 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) Nothing in this section shall be construed to restrict the authority of the board of healing arts to engage in a disciplinary action.

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

(f) 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.

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

Sec. 4. K.S.A. 65-6705 is hereby amended to read as follows: 65-6705. (a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of K.S.A. 65-6704, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor
who counseled the minor as required by K.S.A. 65-6704 shall notify the
court and the court shall ensure that the minor or the adult petitioning on
the minor's behalf is given assistance in preparing and filing the
application. Except in the case of a medical emergency or as otherwise
provided in this section, no person shall perform an abortion upon an
unemancipated minor, unless the person first obtains the notarized written
consent of the minor and both parents or the legal guardian of the minor.
    (1) If the minor's parents are divorced or otherwise unmarried and
living separate and apart, then the written consent of the parent with
primary custody, care and control of such minor shall be sufficient.
    (2) If the minor's parents are married and one parent is not available
to the person performing the abortion in a reasonable time and manner,
then the written consent of the parent who is available shall be sufficient.
    (3) If the minor's pregnancy was caused by sexual intercourse with
the minor's natural father, adoptive father, stepfather or legal guardian,
then the written consent of the minor's mother shall be sufficient. Notice of
such circumstances shall be reported to the proper authorities as provided
(b) After receiving counseling as provided by subsection (a) of K.S.A.
65-6704, and amendments thereto, the minor may object to the written
consent requirement set forth in subsection (a). If the minor so objects, the
minor may petition, on her own behalf or by an adult of her choice, the
district court of any county of this state for a waiver of the written consent
requirement. If the minor so desires, the counselor who counseled the
minor as required by K.S.A. 65-6704, and amendments thereto, shall notify
the court and the court shall ensure that the minor or the adult petitioning
on the minor's behalf is given assistance in preparing and filing the
petition. The minor may participate in proceedings in the court on the
minor's own behalf or through the adult petitioning on the minor's behalf.
The court shall provide a court-appointed counsel to represent the minor at
no cost to the minor.
    (c) Court proceedings under this section shall be anonymous and the
court shall ensure that the minor's identity is kept confidential. The court
shall order that a confidential record of the evidence in the proceeding be
maintained. All persons shall be excluded from hearings under this section
except the minor, her attorney and such other persons whose presence is
specifically requested by the applicant or her attorney.
    (d) Notice Consent shall be waived if the court finds by a
preponderance of the clear and convincing evidence that either: (1) The
minor is mature and well-informed enough to make the abortion decision
on her own; or (2) notification of a person the consent of the individuals
specified in subsection (a) would not be in the best interest of the minor.
    (e) A court that conducts proceedings under this section shall issue
written and specific factual findings and legal conclusions supporting its decision as follows:

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

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

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

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

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

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

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

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

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

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

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

(2) A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the-
exception of subsection (j)(1)(B) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. 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.

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

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

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

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

(o) The judicial record of any court proceedings initiated pursuant to
this section shall upon final determination by the court be compiled by the
court. One copy of the judicial record shall be given to the minor or an
adult chosen by the minor to bring the initial petition under this section. A
second copy of the judicial record shall be sent by the court to the
abortion provider who performed or will perform the abortion for
inclusion in the minor's medical records and shall be maintained by the
abortion provider for at least 10 years.

(p) The chief judge of each judicial district shall send annual reports
to the department of health and environment disclosing in a nonidentifying
manner:

(1) The number of minors seeking a bypass of the parental consent
requirements through court proceedings under this section;

(2) the number of petitions granted;

(3) the reasons for granting such petitions;

(4) any subsequent actions taken to protect the minor from domestic
or predator abuse;

(5) each minor's state of residence, age and disability status; and

(6) the gestational age of the unborn child if the petition is granted.

(o) (1) A custodial parent or legal guardian of the minor may
pursue civil remedies against individuals, including the physician and
abortion clinic staff, who violate the rights of parents, legal guardian or
the minor as set forth in this section.

(2) Such relief shall include:

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

(B) the cost of any subsequent medical treatment such minor might
require because of the abortion performed without parental consent or
knowledge, or without a court order, in violation of this section;

(C) statutory damages equal to three times the cost of the abortion;

and

(D) reasonable attorney fees.

(q) In the course of a judicial hearing to waive parental consent, if
the court has reason to suspect that a minor has been injured as a result of
physical, mental or emotional abuse or neglect or sexual abuse, the court
shall report the matter promptly as provided in subsection (c) of K.S.A.
2010 Supp. 38-2223, and amendments thereto. In the course of reporting
suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.

(r) 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.

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

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

(1) The name of the physician who will perform the abortion;
(2) A description of the proposed abortion method;
(3) A description of risks related to the proposed abortion method, including risks to the woman’s reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
(4) The probable gestational age of the fetus unborn child at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the fetus unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
(5) The probable anatomical and physiological characteristics of the fetus unborn child at the time the abortion is to be performed;
(6) The contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services;
(7) The medical risks associated with carrying a fetus an unborn child to term; and
(8) Any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.
(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

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

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

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

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

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

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

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

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.
(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

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

1. Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;
2. Informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;
3. Offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;
4. Certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and
5. Obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

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

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

1. Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;
2. Offers the woman the opportunity to listen to the heartbeat of her unborn child;
3. Certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and
4. Obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

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

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

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

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

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

(l) For purposes of this section:

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

(2) The term "medically challenging pregnancy" means a pregnancy where the fetus unborn child is diagnosed as having: (1) (A) A severe anomaly; or (2) (B) an illness, disease or defect which is invariably fatal.

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

(1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, a list of providers of free ultrasound services and adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials
described in this section are comprehensive and do not directly or
indirectly promote, exclude or discourage the use of any agency or service
described in this section. The materials shall also contain a toll-free 24-
hour a day 24-hour-a-day telephone number which may be called to
obtain, orally, such a list and description of agencies in the locality of the
caller and of the services they offer. The materials shall state that it is
unlawful for any individual to coerce a woman to undergo an abortion, that
any physician who performs an abortion upon a woman without her
informed consent may be liable to her for damages. Kansas law permits
adoptive parents to pay costs of prenatal care, childbirth and neonatal care.
The materials shall include the following statement:
"Many public and private agencies exist to provide counseling and
information on available services. You are strongly urged to seek their
assistance to obtain guidance during your pregnancy. In addition, you are
couraged to seek information on abortion services, alternatives to
abortion, including adoption, and resources available to post-partum
mothers. The law requires that your physician or the physician's agent
provide the enclosed information."

(2) Printed materials that inform the pregnant woman of the probable
anatomical and physiological characteristics of the fetus unborn child at
two-week gestational increments from fertilization to full term, including
pictures or drawings representing the development of a fetus an unborn
child at two-week gestational increments, and any relevant information on
the possibility of the fetus' unborn child's survival. Any such pictures or
drawings shall contain the dimensions of the fetus unborn child and shall
be realistic. The material shall include the statement that abortion
terminates the life of a whole, separate, unique, living human being. The
materials shall be objective, nonjudgmental and designed to convey only
accurate scientific information about the fetus unborn child at the various
gestational ages. The material shall also contain objective information
describing the methods of abortion procedures commonly employed, the
medical risks commonly associated with each such procedure and the
medical risks associated with carrying a fetus an unborn child to term.

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

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

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

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

Sec. 7. K.S.A. 65-6721 is hereby amended to read as follows: 65-6721. (a) No person shall perform or induce a partial birth abortion on a viable fetus an 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 the abortion and both physicians determine: (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 impairment of a major physical or mental function of the pregnant woman. such person is a physician and has a documented referral from another physician who is licensed to practice in this state, and who is not legally or financially affiliated with the physician performing or inducing the abortion and both physicians provide a written determination, based upon a medical judgment 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 the partial birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) As used in this section:

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

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

(c) (1) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination, the medical basis, including the specific medical diagnosis and the reasons for such determination in writing to the medical care facility in which the abortion is performed 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 in a medical care facility, the physician shall report the reasons for such determination, the medical basis, including the specific medical diagnosis, and the reasons for such determination 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 under K.S.A. 65-445, and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than five 10 years.

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

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

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

(d) (1) The father, if married to the woman at the time of the abortion, and, if the woman has not attained the age of 18 years at the time of the abortion, the parents or custodial guardian of the woman, 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, the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(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.

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

(e) (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.

(f) (g) Upon conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

New Sec. 8. 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. 9. As used in sections 8 through 10, 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. 10. (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 health and environment under K.S.A. 65-445, and amendments thereto.

(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 under K.S.A. 65-445, and amendments thereto.

(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.

New Sec. 11. Nothing in sections 8 through 10 shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes.

New Sec. 12. As used in sections 12 through 22, and amendments thereto:

(a) “Abortion” has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto.

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

(c) "Clinic" means any facility, other than a hospital or ambulatory surgical center, in which any second or third trimester, or five or more first
trimester abortions are performed in a month.
(d) "Department" means the department of health and environment.
(e) "Facility" means any clinic, hospital or ambulatory surgical center, in which any second or third trimester, or five or more first trimester abortions are performed in a month.
(f) "Gestational age" has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto, and shall be determined pursuant to K.S.A. 65-6703, and amendments thereto.
(g) "Hospital" means a hospital as defined in subsection (a) or (b) of K.S.A. 65-425, and amendments thereto.
(h) "Physician" has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto.
(i) "Secretary" means the secretary of the department of health and environment.

New Sec. 13. (a) A facility shall be licensed in accordance with sections 12 through 22, and amendments thereto.
(b) Any facility seeking licensure for the performance of abortions shall submit an application for such license to the department on forms and in the manner required by the secretary. Such application shall contain such information as the secretary may reasonably require, including affirmative evidence of the ability of the applicant to comply with such reasonable standards and rules and regulations adopted pursuant to section 20, and amendments thereto.
(c) Upon receipt of such application and verification by the department that the applicant is in compliance with all applicable laws and rules and regulations, the secretary shall issue a license to the applicant.
(d) A license issued under this section shall be posted in a conspicuous place in a public area within the facility. The issuance of a license does not guarantee adequacy of individual care, treatment, personal safety, fire safety or the well-being of any occupant of such facility. A license is not assignable or transferable.
(e) A license shall be effective for one year following the date of issuance. A license issued under this section shall apply only to the premises described in the application and in the license issued thereon, and only one location shall be described in each license.
(f) At the time application for a license is made the applicant shall pay a license fee in the amount of $500. Fees paid pursuant to this section shall not be refunded by the secretary.
(g) The secretary may make exceptions to the standards set forth in law or in rules and regulations when it is determined that the health and welfare of the community require the services of the hospital or ambulatory surgical center and that the exceptions, as granted, will have no significant adverse impact on the health, safety or welfare of the
patients of such hospital or ambulatory surgical center.

New Sec. 14. Applicants for an annual license renewal shall file an application with the department and pay the license fee in accordance with section 13, and amendments thereto. Applicants for an annual license renewal shall also be subject to a licensing inspection in accordance with section 16, and amendments thereto.

New Sec. 15. (a) No proposed facility shall be named, nor may any existing facility have its name changed to, the same or similar name as any other facility licensed pursuant to sections 12 through 22, and amendments thereto. If the facility is affiliated with one or more other facilities with the same or similar name, then the facility shall have the geographic area in which it is located as part of its name.

(b) Within 30 days after the occurrence of any of the following, a facility shall apply for an amended license by submitting such application to the department:

(1) A change of ownership either by purchase or lease; or
(2) a change in the facility's name or address.

New Sec. 16. (a) The secretary shall make or cause to be made such inspections and investigations of each facility at least twice each calendar year and at such other times as the secretary determines necessary to protect the public health and safety and to implement and enforce the provisions of sections 12 through 22, and amendments thereto, and rules and regulations adopted pursuant to section 20, and amendments thereto. At least one inspection shall be made each calendar year without providing prior notice to the facility. For that purpose, authorized agents of the secretary shall have access to a facility during regular business hours.

(b) Information received by the secretary through filed reports, inspections or as otherwise authorized under sections 12 through 22, and amendments thereto, shall not be disclosed publicly in such manner as to identify individuals. Under no circumstances shall patient medical or other identifying information be made available to the public, and such information shall always be treated by the department as confidential.

New Sec. 17. (a) When the secretary determines that a facility is in violation of any applicable law or rule and regulation relating to the operation or maintenance of such facility, the secretary, upon proper notice, may deny, suspend or revoke the license of such facility, or assess a monetary penalty after notice and an opportunity for hearing has been given to the licensee in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the secretary and the facility may enter into a stipulation which shall be binding upon the secretary and the facility entering into such stipulation and the secretary may enter its findings of fact and enforcement order
based upon such stipulation without the necessity of filing any formal
charges or holding hearings in the case. An enforcement order based upon
a stipulation may order any disciplinary action authorized by this section,
against the facility entering into such stipulation.

(c) The secretary may temporarily suspend or temporarily limit the
license of any facility in accordance with the emergency adjudicative
proceedings under the Kansas administrative procedure act if the
secretary determines that there is cause to believe that grounds exist under
this section for immediate action authorized by this section against the
facility and that the facility's continuation in operation would constitute an
imminent danger to the public health and safety.

(d) Violations of sections 12 through 22, and amendments thereto, or
of any rules and regulations adopted thereunder shall be deemed one of the
following:

(1) Class I violations are those that the secretary determines to
present an imminent danger to the health, safety or welfare of the patients
of the facility or a substantial probability that death or serious physical
harm could result therefrom. A physical condition or one or more
practices, means, methods or operations in use in a facility may constitute
such a violation. The condition or practice constituting a class I violation
shall be abated or eliminated immediately unless a fixed period of time, as
stipulated by the secretary, is required for correction. Each day such
violation shall exist after expiration of such time shall be considered a
subsequent violation.

(2) Class II violations are those, other than class I violations, that the
secretary determines to have a direct or immediate relationship to the
health, safety or welfare of the facility's patients. The citation of a class II
violation shall specify the time within which the violation is required to be
corrected. Each day such violation shall exist after expiration of such time
shall be considered a subsequent violation.

(3) Class III violations are those that are not classified as class I or II,
or those that are against the best practices as interpreted by the secretary.
The citation of a class III violation shall specify the time within which the
violation is required to be corrected. Each day such violation shall exist after expiration of such time
shall be considered a subsequent violation.

(e) The secretary shall consider the following factors when
determining the severity of a violation:

(1) Specific conditions and their impact or potential impact on the
health, safety or welfare of the facility's patients;
(2) efforts by the facility to correct the violation;
(3) overall conditions of the facility;
(4) the facility's history of compliance; and
(5) any other pertinent conditions that may be applicable.
Any monetary penalty assessed by the secretary shall be assessed in accordance with the following fine schedule:

1. For class I violations the following number of violations within a 24-month period shall result in the corresponding fine amount:
   - (A) One violation, a fine of not less than $200 and not more than $1,000;
   - (B) two violations, a fine of not less than $500 and not more than $2,000;
   - (C) three violations, a fine of not less than $1,000 and not more than $5,000; and
   - (D) four or more violations, a fine of $5,000.

2. For class II violations the following number of violations within a 24-month period shall result in the corresponding fine amount:
   - (A) One violation, a fine of not less than $100 and not more than $200;
   - (B) two violations, a fine of not less than $200 and not more than $1,000;
   - (C) three violations, a fine of not less than $500 and not more than $2,000;
   - (D) four violations, a fine of not less than $1,000 and not more than $5,000; and
   - (E) five or more violations, a fine of $5,000.

3. For class III violations the following number of violations within a 24-month period shall result in the corresponding fine amount:
   - (A) One violation, there shall be no fine;
   - (B) two violations, a fine of not less than $100 and not more than $500;
   - (C) three violations, a fine of not less than $200 and not more than $1,000;
   - (D) four violations, a fine of not less than $500 and not more than $2,000;
   - (E) five violations, a fine of not less than $1,000 and not more than $5,000; and
   - (F) six or more violations, a fine of $5,000.

New Sec. 18. Except in the case of a medical emergency, as defined in K.S.A. 65-6701, and amendments thereto, an abortion performed when the gestational age of the unborn child is 22 weeks or more shall be performed in a licensed hospital or ambulatory surgical center. All other abortions shall be performed in a licensed hospital, ambulatory surgical center or facility.

New Sec. 19. (a) It shall be unlawful to operate a facility within Kansas without possessing a valid license issued annually by the secretary pursuant to section 12, and amendments thereto, with no requirement of
culpable mental state.

(b) It shall be unlawful for a person to perform or induce an abortion in a facility unless such person is a physician, with clinical privileges at a hospital located within 30 miles of the facility, with no requirement of culpable mental state.

(c) Violation of subsection (a) or (b) is a class A nonperson misdemeanor and shall constitute unprofessional conduct under K.S.A. 65-2837, and amendments thereto.

New Sec. 20. (a) The secretary shall adopt rules and regulations for the licensure of facilities for the performance of abortions.

(b) The secretary shall adopt rules and regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reporting, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, information on and access to patient follow-up care and any other areas of medical practice necessary to carry out the purposes of sections 12 through 22, and amendments thereto, for facilities for the performance of abortions. At a minimum these rules and regulations shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations;
2. dressing rooms for staff and patients;
3. appropriate lavatory areas;
4. areas for preprocedure hand washing;
5. private procedure rooms;
6. adequate lighting and ventilation for abortion procedures;
7. surgical or gynecologic examination tables and other fixed equipment;
8. postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients’ needs;
9. emergency exits to accommodate a stretcher or gurney;
10. areas for cleaning and sterilizing instruments; and
11. adequate areas for the secure storage of medical records and necessary equipment and supplies.

(c) The secretary shall adopt rules and regulations to prescribe facility supplies and equipment standards, including supplies and equipment, that are required to be immediately available for use or in an emergency. At a minimum these rules and regulations shall:

1. Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the facility anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period;
(2) require that the number or amount of equipment and supplies at the facility is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient;

(3) prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power;

(4) prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the facility or operated by facility staff;

(5) require ultrasound equipment in facilities; and

(6) require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

(d) The secretary shall adopt rules and regulations relating to facility personnel. At a minimum these rules and regulations shall require that:

(1) The facility designate a medical director of the facility who is licensed to practice medicine and surgery in Kansas;

(2) physicians performing surgery in a facility are licensed to practice medicine and surgery in Kansas, demonstrate competence in the procedure involved and are acceptable to the medical director of the facility;

(3) a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available;

(4) another individual is present in the room during a pelvic examination or during the abortion procedure and if the physician is male then the other individual shall be female;

(5) a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the facility when abortions are performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged;

(6) surgical assistants receive training in the specific responsibilities of the services the surgical assistants provide; and

(7) volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules and regulations adopted by the director for different types of volunteers based on their responsibilities.

(e) The secretary shall adopt rules and regulations relating to the medical screening and evaluation of each facility patient. At a minimum these rules and regulations shall require:

(1) A medical history including the following:

(A) Reported allergies to medications, antiseptic solutions or latex;

(B) obstetric and gynecologic history; and
(C) past surgeries;

(2) a physical examination including a bimanual examination estimating uterine size and palpation of the adnexa;

(3) the appropriate laboratory tests including:

(A) For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure;

(B) a test for anemia as indicated;

(C) rh typing, unless reliable written documentation of blood type is available; and

(D) other tests as indicated from the physical examination;

(4) an ultrasound evaluation for all patients who elect to have an abortion of an unborn child. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in the operation of ultrasound equipment as prescribed in rules and regulations. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the unborn child; and

(5) that the physician is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations and shall verify the estimate in the patient’s medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient’s medical history file.

(f) The secretary shall adopt rules and regulations relating to the abortion procedure. At a minimum these rules and regulations shall require:

(1) That medical personnel is available to all patients throughout the abortion procedure;

(2) standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations;

(3) appropriate use of local anesthesia, analgesia and sedation if ordered by the physician;

(4) the use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions; and

(5) the use of appropriate monitoring of the vital signs and other defined signs and markers of the patient’s status throughout the abortion
procedure and during the recovery period until the patient’s condition is
deemed to be stable in the recovery room.

(g) The secretary shall adopt rules and regulations that prescribe
minimum recovery room standards. At a minimum these rules and
regulations shall require that:

1. Immediate postprocedure care consists of observation in a
   supervised recovery room for as long as the patient’s condition warrants;

2. the facility arrange hospitalization if any complication beyond the
   management capability of the staff occurs or is suspected;

3. a licensed health professional who is trained in the management
   of the recovery area and is capable of providing basic cardiopulmonary
   resuscitation and related emergency procedures remains on the premises of
   the facility until all patients are discharged;

4. a physician or a nurse who is advanced cardiovascular life support
   certified shall remain on the premises of the facility until all patients are
   discharged and to facilitate the transfer of emergency cases if
   hospitalization of the patient or viable unborn child is necessary. A
   physician or nurse shall be readily accessible and available until the last
   patient is discharged;

5. a physician or trained staff member discusses Rho(d) immune
   globulin with each patient for whom it is indicated and assures it is offered
   to the patient in the immediate postoperative period or that it will be
   available to her within 72 hours after completion of the abortion
   procedure. If the patient refuses, a refusal form approved by the
   department shall be signed by the patient and a witness and included in the
   medical record;

6. written instructions with regard to postabortion coitus, signs of
   possible problems and general aftercare are given to each patient. Each
   patient shall have specific instructions regarding access to medical care for
   complications, including a telephone number to call for medical
   emergencies;

7. there is a specified minimum length of time that a patient remains
   in the recovery room by type of abortion procedure and gestational age of
   the unborn child;

8. the physician assures that a licensed health professional from the
   facility makes a good faith effort to contact the patient by telephone, with
   the patient’s consent, within 24 hours after surgery to assess the patient’s
   recovery; and

9. equipment and services are located in the recovery room to
   provide appropriate emergency resuscitative and life support procedures
   pending the transfer of the patient or viable unborn child to the hospital.

(h) The secretary shall adopt rules and regulations that prescribe
standards for follow-up visits. At a minimum these rules and regulations
shall require that:

(1) A postabortion medical visit is offered and scheduled within four weeks after the abortion, if accepted by the patient, including a medical examination and a review of the results of all laboratory tests;

(2) a urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs or induces abortions shall be consulted; and

(3) the physician performing or inducing the abortion, or a person acting on behalf of the physician performing or inducing the abortion, shall make all reasonable efforts to ensure that the patient returns for a subsequent examination so that the physician can assess the patient's medical condition. A brief description of the efforts made to comply with this requirements, including the date, time and identification by name of the person making such efforts, shall be included in the patient's medical record.

(i) The secretary shall adopt rules and regulations to prescribe minimum facility incident reporting. At a minimum these rules and regulations shall require that:

(1) The facility records each incident resulting in a patient’s or viable unborn child's serious injury occurring at a facility and shall report them in writing to the department within 10 days after the incident. For the purposes of this paragraph, “serious injury” means an injury that occurs at a facility and that creates a serious risk of substantial impairment of a major body organ;

(2) if a patient’s death occurs, other than an unborn child's death properly reported pursuant to law, the facility shall report such death to the department of health and environment not later than the next department business day; and

(3) incident reports are filed with the department of health and environment and appropriate professional regulatory boards.

(j) (1) The secretary shall adopt rules and regulations requiring each facility to establish and maintain an internal risk management program which, at a minimum, shall consist of:

(A) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(B) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(C) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk manager of the facility.
(2) As used in this subsection, the term “reportable incident” means an act by a health care provider which:
(A) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or
(B) may be grounds for disciplinary action by the appropriate licensing agency.

(k) The rules and regulations adopted by the secretary pursuant to this section do not limit the ability of a physician or other health care professional to advise a patient on any health issue. The secretary periodically shall review and update current practice and technology standards under sections 12 through 22, and amendments thereto, and based on current practice or technology adopt by rules and regulations alternative practice or technology standards found by the secretary to be as effective as those enumerated in sections 12 through 22, and amendments thereto.

(l) The provisions of sections 12 through 22, and amendments thereto, and the rules and regulations adopted pursuant thereto shall be in addition to any other laws and rules and regulations which are applicable to facilities defined as clinics under section 12, and amendments thereto.

(m) In addition to any other penalty provided by law, whenever in the judgment of the secretary of health and environment any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this section, or any rules and regulations adopted under the provisions of this section, the secretary shall make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the secretary that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond.

New Sec. 21. (a) No abortion shall be performed or induced by any person other than a physician licensed to practice medicine in the state of Kansas. When RU-486 (mifepristone) or any drug is used for the purpose of inducing an abortion, the drug must be administered in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug to the patient.

(b) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make all reasonable efforts to ensure that the patient returns 12 to 18 days after the administration or use of such drug for a subsequent examination so that the physician can confirm that the pregnancy has been terminated and assess the patient's medical condition. A brief description of the efforts made to comply with this subsection, including the date, time and identification by name of the person making such efforts, shall be included in the patient's medical
A violation of this section shall constitute unprofessional conduct under K.S.A. 65-2837, and amendments thereto.

Nothing in sections 12 through 21, and amendments thereto, shall be construed as creating or recognizing a right to abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

The provisions of sections 12 through 22, and amendments thereto, are declared to be severable, and if any provision, or the application thereof, to any person shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of sections 12 through 22, and amendments thereto.


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