

HOUSE BILL No. 2007

By Representative F. Miller

1-7

AN ACT concerning abortion, prohibiting third trimester abortions; amending K.S.A. 65-6703 and 65-6721 and repealing the existing sections.

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

Section 1. 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 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 that: (1) *The pregnant woman is in her first or second trimester; and (A) the abortion is necessary to preserve the life of the pregnant woman; or* ~~(2)~~ *(B) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman; or (2) the pregnant woman is in her third trimester and the pregnancy is endangering her life.*

(b) For the purpose of this act, the third trimester means a gestational age of the fetus of 22 or more weeks.

~~(b)~~ *(c) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination.*

(2) If the physician determines the gestational age of the fetus is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the fetus is viable by 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. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the fetus and shall enter such findings and determinations of viability in the medical record of the woman.

1 (3) If the physician determines the gestational age of a fetus is 22 or
2 more weeks, and determines that the fetus is not viable and performs an
3 abortion on the woman, the physician shall report such determinations
4 and the reasons for such determinations in writing to the medical care
5 facility in which the abortion is performed for inclusion in the report of
6 the medical care facility to the secretary of health and environment under
7 K.S.A. 65-445 and amendments thereto or if the abortion is not per-
8 formed in a medical care facility, the physician shall report such deter-
9 minations and the reasons for such determinations in writing to the sec-
10 retary of health and environment as part of the written report made by
11 the physician to the secretary of health and environment under K.S.A.
12 65-445 and amendments thereto.

13 (4) If the physician who is to perform the abortion determines the
14 gestational age of a fetus is 22 or more weeks; and determines that the
15 fetus is viable, *and* both physicians under subsection (a) determine in
16 accordance with the provisions of *paragraph (2) of subsection (a) that the*
17 *pregnancy is endangering the life of the pregnant woman and* an abortion
18 is necessary to preserve the life of the pregnant woman ~~or that a contin-~~
19 ~~uation of the pregnancy will cause a substantial and irreversible impair-~~
20 ~~ment of a major bodily function of the pregnant woman and the physician~~
21 ~~performs an abortion on the woman,~~ the physician who performs the
22 abortion shall report such determinations, the reasons for such determi-
23 nations and the basis for the determination that an abortion is necessary
24 to preserve the life of the pregnant woman ~~or that a continuation of the~~
25 ~~pregnancy will cause a substantial and irreversible impairment of a major~~
26 ~~bodily function of the pregnant woman~~ in writing to the medical care
27 facility in which the abortion is performed for inclusion in the report of
28 the medical care facility to the secretary of health and environment under
29 K.S.A. 65-445 and amendments thereto ~~or if~~ *If* the abortion is not per-
30 formed in a medical care facility, the physician who performs the abortion
31 shall report such determinations, the reasons for such determinations and
32 the basis for the determination that an abortion is necessary to preserve
33 the life of the pregnant woman ~~or that a continuation of the pregnancy~~
34 ~~will cause a substantial and irreversible impairment of a major bodily~~
35 ~~function of the pregnant woman~~ in writing to the secretary of health and
36 environment as part of the written report made by the physician to the
37 secretary of health and environment under K.S.A. 65-445 and amend-
38 ments thereto.

39 (5) The physician shall retain the medical records required to be kept
40 under paragraphs (1) and (2) of this subsection (b) for not less than five
41 years and shall retain a copy of the written reports required under para-
42 graphs (3) and (4) of this subsection (b) for not less than five years.

43 (c) A woman upon whom an abortion is performed shall not be pros-

1 ecuted under this section for a conspiracy to violate this section pursuant
2 to K.S.A. 21-3302, and amendments thereto.

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

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

12 (f) If any provision of this section is held to be invalid or unconsti-
13 tutional, it shall be conclusively presumed that the legislature would have
14 enacted the remainder of this section without such invalid or unconsti-
15 tutional provision.

16 (g) Upon a first conviction of a violation of this section, a person shall
17 be guilty of a class A nonperson misdemeanor. Upon a second or subse-
18 quent conviction of a violation of this section, a person shall be guilty of
19 a severity level 10, nonperson felony.

20 Sec. 2. K.S.A. 65-6721 is hereby amended to read as follows: 65-
21 6721. (a) ~~No person shall perform or induce a partial birth abortion on a~~
22 ~~viable fetus unless such person is a physician and has a documented refer-~~
23 ~~ral from another physician not legally or financially affiliated with the~~
24 ~~physician performing or inducing the abortion and both physicians de-~~
25 ~~termine: (1) The abortion is necessary to preserve the life of the pregnant~~
26 ~~woman; or (2) a continuation of the pregnancy will cause a substantial~~
27 ~~and irreversible impairment of a major physical or mental function of the~~
28 ~~pregnant woman.~~

29 (b) As used in this section:

30 (1) "Partial birth abortion" means an abortion procedure which in-
31 cludes the deliberate and intentional evacuation of all or a part of the
32 intracranial contents of a viable fetus prior to removal of such otherwise
33 intact fetus from the body of the pregnant woman.

34 (2) "Partial birth abortion" shall not include the: (A) Suction curet-
35 tage abortion procedure; (B) suction aspiration abortion procedure; or
36 (C) dilation and evacuation abortion procedure involving dismemberment
37 of the fetus prior to removal from the body of the pregnant woman.

38 ~~(c) If a physician determines in accordance with the provisions of~~
39 ~~subsection (a) that a partial birth abortion is necessary and performs a~~
40 ~~partial birth abortion on the woman, the physician shall report such de-~~
41 ~~termination and the reasons for such determination in writing to the med-~~
42 ~~ical care facility in which the abortion is performed for inclusion in the~~
43 ~~report of the medical care facility to the secretary of health and environ-~~

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

8 ~~(d)~~ (c) A woman upon whom an abortion is performed shall not be
9 prosecuted under this section for a conspiracy to violate this section pur-
10 suant to K.S.A. 21-3302, and amendments thereto.

11 ~~(e)~~ (d) Nothing in this section shall be construed to create a right to
12 an abortion. Notwithstanding any provision of this section, a person shall
13 not perform an abortion that is prohibited by law.

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

16 Sec. 3. K.S.A. 65-6703 and 65-6721 are hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.

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