

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2792

By Committee on Federal and State Affairs

2-1

10 AN ACT relating to abortions; concerning minors; amending K.S.A. 65-
11 6704 and 65-6705 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 65-6704 is hereby amended to read as follows: 65-
15 6704. (a) Before the performance of an abortion upon a minor, a coun-
16 selor shall provide pregnancy information and counseling in a manner
17 that can be understood by the minor and allows opportunity for the mi-
18 nor's questions to be addressed. A parent or guardian, or a person 21 or
19 more years of age who is not associated with the abortion provider and
20 who has a personal interest in the minor's well-being, shall accompany
21 the minor and be involved in the minor's decision-making process re-
22 garding whether to have an abortion. *Such person accompanying the mi-*
23 *nor shall present a valid form of identification and declare such person's*
24 *relationship to the minor and to the known or probable father of the*
25 *unborn fetus. The minor shall present a valid form of identification and*
26 *verification of the minor's state of residence.* Such information and coun-
27 seling shall include:

28 (1) The alternatives available to the minor, including abortion, adop-
29 tion and other alternatives to abortion;

30 (2) an explanation that the minor may change a decision to have an
31 abortion at any time before the abortion is performed or may decide to
32 have an abortion at any time while an abortion may be legally performed;

33 (3) make available to the minor information on agencies available to
34 assist the minor and agencies from which birth control information is
35 available;

36 (4) discussion of the possibility of involving the minor's parent or
37 parents, other adult family members or guardian in the minor's decision-
38 making; and

39 (5) information regarding the provisions of K.S.A. 65-6705, *and*
40 *amendments thereto*, and the minor's rights under such provisions.

41 ~~*When a minor's state of residence is not Kansas, the physician perform-*~~
42 ~~*ing the abortion shall obey the legal parental notification requirements of*~~
43 ~~*the minor's state of residence whenever the requirements are stricter than*~~

1 ~~Kansas' requirements.~~

2 (b) After the performance of an abortion on a minor, a counselor shall
3 provide counseling to assist the minor in adjusting to any post-abortion
4 problems that the minor may have.

5 (c) After the counselor provides information and counseling to a mi-
6 nor as required by this section, the counselor shall have the minor sign
7 and date a statement setting forth the requirements of subsections (a)
8 and (b) and declaring that the minor has received information and coun-
9 seling in accordance with those requirements.

10 (d) The counselor shall also sign and date the statement and shall
11 include the counselor's business address and business telephone number.
12 The counselor shall keep a copy for the minor's medical record and shall
13 give the form to the minor or, if the minor requests and if the counselor
14 is not the attending physician, transmit the statement to the minor's at-
15 tending physician. Such medical record shall be maintained as otherwise
16 provided by law.

17 (e) The provision by a counselor of written materials which contain
18 information and counseling meeting the requirements of subsections (a)
19 and (b) and which is signed by the minor shall be presumed to be evidence
20 of compliance with the requirements of this section.

21 (f) The requirements of subsection (a) shall not apply when, in the
22 best medical judgment of the attending physician based on the facts of
23 the case, an emergency exists that threatens the health, safety or well-
24 being of the minor as to require an abortion. A physician who does not
25 comply with the requirements of this section by reason of this exception
26 shall state in the medical record of the abortion the medical indications
27 on which the physician's judgment was based.

28 Sec. 2. K.S.A. 65-6705 is hereby amended to read as follows: 65-
29 6705. (a) Before a person performs an abortion upon an unemancipated
30 minor, the person or the person's agent must give actual notice of the
31 intent to perform such abortion to one of the minor's parents or the
32 minor's legal guardian or must have written documentation that such
33 notice has been given unless, after receiving counseling as provided by
34 subsection (a) of K.S.A. 65-6704, *and amendments thereto*, the minor
35 objects to such notice being given. If the minor so objects, the minor may
36 petition, on her own behalf or by an adult of her choice, the district court
37 of any county of this state for a waiver of the notice requirement of this
38 subsection. If the minor so desires, the counselor who counseled the
39 minor as required by K.S.A. 65-6704, *and amendments thereto*, shall no-
40 tify the court and the court shall ensure that the minor or the adult pe-
41 titioning on the minor's behalf is given assistance in preparing and filing
42 the application. *Neither the counselor or abortion clinic staff shall accom-*
43 *pany or assist the minor in the court proceedings.*

- 1 (b) The minor may participate in proceedings in the court on the
2 minor's own behalf or through the adult petitioning on the minor's behalf.
3 The court shall provide a court-appointed counsel to represent the minor
4 at no cost to the minor.
- 5 (c) Court proceedings under this section shall be anonymous and the
6 court shall ensure that the minor's identity is kept confidential. The court
7 shall order that a confidential record of the evidence in the proceeding
8 be maintained. All persons shall be excluded from hearings under this
9 section except the minor, her attorney and such other persons whose
10 presence is specifically requested by the applicant or her attorney.
- 11 (d) Notice shall be waived if the court finds by a preponderance of
12 the evidence that either: (1) The minor is mature and well-informed
13 enough to make the abortion decision on her own; or (2) notification of
14 a person specified in subsection (a) would not be in the best interest of
15 the minor.
- 16 (e) A court that conducts proceedings under this section shall issue
17 written and specific factual findings and legal conclusions supporting its
18 decision as follows:
- 19 (1) Granting the minor's application for waiver of notice pursuant to
20 this section, if the court finds that the minor is mature and well-enough
21 informed to make the abortion decision without notice to a person spec-
22 ified in subsection (a);
- 23 (2) granting the minor's application for waiver if the court finds that
24 the minor is immature but that notification of a person specified in sub-
25 section (a) would not be in the minor's best interest; or
- 26 (3) denying the application if the court finds that the minor is im-
27 mature and that waiver of notification of a person specified in subsection
28 (a) would not be in the minor's best interest.
- 29 (f) The court shall give proceedings under this section such prece-
30 dence over other pending matters as necessary to ensure that the court
31 may reach a decision promptly. The court shall issue a written order which
32 shall be issued immediately to the minor, or her attorney or other indi-
33 vidual designated by the minor to receive the order. If the court fails to
34 rule within 48 hours, excluding Saturdays and Sundays, of the time of the
35 filing of the minor's application, the application shall be deemed granted.
- 36 (g) An expedited anonymous appeal shall be available to any minor.
37 The record on appeal shall be completed and the appeal shall be per-
38 fected within five days from the filing of the notice to appeal.
- 39 (h) The supreme court shall promulgate any rules it finds are nec-
40 essary to ensure that proceedings under this act are handled in an expe-
41 ditious and anonymous manner.
- 42 (i) No fees shall be required of any minor who avails herself of the
43 procedures provided by this section.

- 1 (j) (1) No notice shall be required under this section if:
2 (A) The pregnant minor declares that the father of the fetus is one
3 of the persons to whom notice may be given under this section;
4 (B) in the best medical judgment of the attending physician based on
5 the facts of the case, an emergency exists that threatens the health, safety
6 or well-being of the minor as to require an abortion; or
7 (C) the person or persons who are entitled to notice have signed a
8 written, notarized waiver of notice which is placed in the minor's medical
9 record.
- 10 (2) A physician who does not comply with the provisions of this sec-
11 tion by reason of the exception of subsection (j)(1)(A) must inform the
12 minor that the physician is required by law to report the sexual abuse to
13 the department of social and rehabilitation services. A physician who does
14 not comply with the requirements of this section by reason of the excep-
15 tion of subsection (j)(1)(B) shall state in the medical record of the abortion
16 the medical indications on which the physician's judgment was based.
- 17 (k) Any person who intentionally performs an abortion with knowl-
18 edge that, or with reckless disregard as to whether, the person upon
19 whom the abortion is to be performed is an unemancipated minor, and
20 who intentionally and knowingly fails to conform to any requirement of
21 this section, is guilty of a class A person misdemeanor.
- 22 (l) Except as necessary for the conduct of a proceeding pursuant to
23 this section, it is a class B person misdemeanor for any individual or entity
24 to willfully or knowingly: (1) Disclose the identity of a minor petitioning
25 the court pursuant to this section or to disclose any court record relating
26 to such proceeding; or (2) permit or encourage disclosure of such minor's
27 identity or such record.
- 28 (m) *The court shall send reports to the department of health and*
29 *environment disclosing in a nonidentifying manner:*
30 (1) *The number of minors seeking a bypass of parental notification*
31 *through court proceedings under this section;*
32 (2) *the number granted;*
33 (3) *the reasons for granting the petition; and*
34 (4) *any subsequent actions taken in response to protecting the minor*
35 *from domestic or predator abuse.*
36 *The report shall further break down the data by judicial district, the*
37 *minor's state of residence, age and disability status.*
- 38 (n) *Parents of the minor may pursue civil remedies against individ-*
39 *uals, including the physician and clinic staff, who intentionally undermine*
40 *parental involvement and violate the minor's legal rights.*
- 41 **(o) In the course of a judicial hearing to waive parental notice,**
42 **if the court has reason to suspect that a minor has been injured as**
43 **a result of physical, mental or emotional abuse or neglect or sexual**

1 **abuse, the court shall report the matter promptly as provided in**
2 **subsection (c) or (e) of K.S.A. 38-1522, and amendments thereto.**
3 **In the course of reporting suspected child abuse or neglect to the**
4 **appropriate state authorities, nothing in this section shall abridge**
5 **or otherwise modify the anonymity or confidentiality provisions of**
6 **the judicial waiver proceeding as specified in subsection (c).**

7 **(p) A parent or guardian of a minor upon whom an abortion is**
8 **performed without the parent's or guardian's notice or knowledge**
9 **shall not be liable for the cost of any subsequent medical treatment**
10 **such minor might require as a result of such abortion unless such**
11 **abortion is performed in a medical emergency.**

12 Sec. 3. K.S.A. 65-6704 and 65-6705 are hereby repealed.

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