

Abortion Restrictions and Declaration that Life Begins at Fertilization; HB 2253

HB 2253 prohibits certain abortions related to the gender of the unborn child, revises the general and late-term abortion statutes, and declares that the life of each human being begins at fertilization.

Abortion Solely Because of the Unborn Child's Sex

The bill prohibits persons from performing or inducing abortions or attempting to perform or induce abortions in instances where the person has knowledge the pregnant woman is seeking an abortion solely on account of the sex of the unborn child.

The bill allows the following persons, unless the pregnancy resulted from the plaintiff's criminal conduct, to obtain appropriate relief in a civil action:

- A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion (in violation of the law enacted by the bill);
- The father, if married to the woman at the time of the abortion; and
- The parents or custodial guardians of the woman, if she has not attained the age of 18 at the time of the abortion.

Relief as applied in the bill includes:

- Money damages for all injuries, psychological and physical, occasioned by the violation;
- Statutory damages equal to three times the cost of the abortion;
- Injunctive relief; and
- Reasonable attorney fees.

The bill further provides that a woman upon whom an abortion is performed cannot be prosecuted under the provisions created by the bill for a conspiracy to violate these provisions pursuant to KSA 2012 Supp. 21-5302. The bill provides that nothing in the provisions is to be construed to create a right to an abortion. Notwithstanding any provision of the section of law created by the bill, a person will not be allowed to perform an abortion that is prohibited by law.

The bill provides that upon a first conviction for violation of the section of law created by the bill, a person will be guilty of a class A person misdemeanor. Upon a second or subsequent provision, a person will be guilty of a severity level 10, person felony.

“Abortion,” as used in the bill, 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.

Revised Abortion Statutes; Declaration that Life Begins at Fertilization

The bill also revises the general and late-term abortion statutes, the Woman’s-Right-To-Know Act, and the state tax statutes. In addition, the bill adds a new statutory provision that declares the life of each human being begins at fertilization, with all state laws to be interpreted and construed to protect the rights, privileges, and immunities of the unborn child, subject only to the *U.S. Constitution* and the judicial decisions and interpretations of the U.S. Supreme Court.

The bill further provides that nothing in the new provisions shall apply to an abortion that is necessary to preserve the life of the pregnant woman.

The bill prohibits the use of public funding, tax credits, tax preferences, and state-provided public health care services from being used in any manner to facilitate abortions or in facilities where abortions are performed. The bill clarifies a restriction in the tax credit laws regarding health care deductions and limits a prohibition to include only expenses paid or incurred for abortion coverage.

The bill also prohibits any school district and its employees, agents, and education service providers from offering abortion services. The bill restricts school districts from allowing an abortion services provider and its employees, agents, and volunteers from offering, sponsoring or furnishing any course materials or instruction related to human sexuality or sexually transmitted diseases.

A statute applying to late-term restrictions is amended to include a reference to attempts to perform or induce an abortion as being prohibited. The bill redefines one term currently in statute, “medical emergency,” regarding a pregnant woman, and adds these two definitions for the terms “bodily function” and “fertilization” in the general abortion statutes:

- “Medical emergency” regarding a pregnant woman 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 the death of the woman 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.” The concluding new language states that “no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.”

- “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.
- “Fertilization” means the fusion of a human spermatozoon with a human ovum.

The Secretary of the Department of Health and Environment (KDHE) is required to provide information about Down Syndrome and other prenatally or postnatally diagnosed conditions and is permitted to authorize and oversee certain activities, including the awarding of grants, contracts or cooperative agreements to eligible entities. Information about counseling assistance for medically challenging pregnancies and perinatal hospice services is required as an addition to a KDHE listing of websites for national perinatal assistance. The Secretary is required to submit a report on or before January 12, 2015, to the Legislature and the Governor on the effectiveness of the grants, contracts and cooperative agreements.

The bill also amends the Woman’s Right to Know Act to prescribe new language for signage to be posted in an office, clinic, or other facility in which abortions are performed. Additional new language also is required in certain printed materials to inform pregnant women about the development of an unborn child, legal responsibilities for the unborn child, and a link to the KDHE website materials and organizations to assist the pregnant woman.

The bill addresses the University of Kansas Hospital Authority, and amends the law regarding abortions to allow for an abortion to be performed at the hospital in the case of a medical emergency as defined in the bill. In addition, the bill allows any member of the physician faculty of the University of Kansas School of Medicine to perform abortions whenever an abortion is performed outside the scope of any member’s employment and on property not controlled by the University of Kansas Hospital Authority.

The bill includes a severability clause, should any provision or clause be held invalid.