

HOUSE BILL No. 2264

AN ACT concerning health and healthcare; relating to abortion; requiring certain notifications that a medication abortion may be reversed; excluding certain procedures from the definition of abortion; amending K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723 and 65-6742 and repealing the existing sections.

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

New Section 1. (a) As used in this section:

(1) "Abortion" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(2) "Medication abortion" means the use or prescription of any drug for the purpose of inducing an abortion.

(3) "Medical emergency" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(b) (1) Any private office, freestanding surgical outpatient clinic, hospital or other medical care facility or clinic or any pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post a conspicuous sign that is clearly visible to patients and customers, that is printed with lettering that is legible and at least $\frac{3}{4}$ of an inch boldfaced type and that reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources."

The notice shall also include information about the department of health and environment website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) (A) Any private office or freestanding surgical outpatient clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in each patient waiting room and patient consultation room used by patients seeking medication abortions.

(B) A hospital or other medical care facility or clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion that is not a private office or freestanding surgical outpatient clinic shall post the sign required by paragraph (1) in each patient admission area used by patients seeking medication abortions that use mifepristone.

(C) A pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in the area inside the premises where customers are provided prescription medications and on the exterior of the premises in the area where customers are provided prescription medications via a drive-through window.

(c) (1) Except in the case of a medical emergency, no physician shall provide, induce or attempt to provide or induce a medication abortion that use mifepristone without informing the woman, in writing, in the manner prescribed by K.S.A. 65-6709, and amendments thereto, and also either by telephone or in person, at least 24 hours prior to the medication abortion:

(A) That it may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and

(B) information on reversing the effects of a medication abortion that uses mifepristone is available on the department of health and environment's website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) After a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of

performing a medication abortion, the physician or an agent of the physician shall provide a legible, written notice to the patient that includes the same information as required under subsection (b)(1).

(d) When a medical emergency compels the performance of a medication abortion that use mifepristone, the physician shall inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

(e) Within 90 days after the effective date of this section, the department of health and environment shall cause to be published, in English and in each language that is the primary language of 2% or more of the state's population, in print and on the website required to be maintained under K.S.A. 65-6710, and amendments thereto, comprehensible materials designed to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The website shall also include other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(f) 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.

(g) The department of health and environment shall assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital or other clinic or facility that fails to post a sign required by subsection (b). Each day that a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant woman, is performed in any private office, freestanding surgical outpatient clinic, hospital or other facility or clinic when the required sign is not posted during a portion of that day's business hours when patients or prospective patients are present shall be a separate violation. The department of health and environment shall remit all moneys received from fines under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state general fund.

(h) (1) If a physician provides a medication abortion using mifepristone in violation of this section, the following individuals may bring a civil action in a court of competent jurisdiction against the physician for actual damages, exemplary and punitive damages and any other appropriate relief:

(A) A woman to whom such medication abortion has been provided;

(B) the father of the unborn child who was subject to such medication abortion; or

(C) any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

(2) Notwithstanding any other provision of law, any action commenced in accordance with this subsection shall be filed within two years after the later of:

(A) The date of the discovery of the violation under this section; or

(B) the conclusion of a related criminal case.

(3) In any action brought under this section, the court shall award reasonable attorney fees and costs to:

(A) A prevailing plaintiff; or

(B) a prevailing defendant upon a finding that the action was

frivolous and brought in bad faith.

(4) Except for the woman to whom the medication abortion was provided, no action may be brought by any person whose criminal conduct resulted in the pregnancy, and any such person shall not be awarded any damages in any action brought pursuant to this section.

(i) In any civil or criminal proceeding or action brought under this section, the court shall rule whether the anonymity of any woman to whom a medication abortion has been provided, induced or attempted to be provided or induced shall be preserved from public disclosure, if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced or attempted to be provided or induced, any person, other than a public official, who brings an action under this section shall do so under a pseudonym. This subsection shall not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

(j) If any provision of this section, or any application thereof to any person or circumstance, is held invalid by court order, then such invalidity shall not affect the remainder of this section and any application thereof to any person or circumstance that can be given effect without such invalid provision or application, and to this end, the provisions of this section are declared to be severable.

(k) The provisions of this section shall be a part of and supplemental to the woman's-right-to-know act.

Sec. 2. K.S.A. 40-2,190 is hereby amended to read as follows: 40-2,190. (a) Any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization, municipal group-funded pool and the state employee health care benefits plan which is delivered, issued for delivery, amended or renewed on or after July 1, 2011, shall exclude coverage for elective abortions, unless the procedure is necessary to preserve the life of the mother. Coverage for abortions may be obtained through an optional rider for which an additional premium is paid. The premium for the optional rider shall be calculated so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis.

(b) No health insurance exchange established within this state or any health insurance exchange administered by the federal government or its agencies within this state shall offer health insurance contracts, plans, or policies that provide coverage for elective abortions, nor shall any health insurance exchange operating within this state offer coverage for elective abortions through the purchase of an optional rider.

(c) For the purposes of this section:

(1) ~~"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 same as defined in K.S.A. 65-6701, and amendments thereto.~~

(2) "Elective" means an abortion for any reason other than to

prevent the death of the mother upon whom the abortion is performed; ~~provided, except~~ that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that ~~she~~ *such mother* will engage in conduct ~~which~~ *that* will result in ~~her~~ *such mother's* death.

~~(d) The provisions of this section shall be effective from and after July 1, 2011.~~

Sec. 3. K.S.A. 65-4a01 is hereby amended to read as follows: 65-4a01. As used in K.S.A. 65-4a01 through 65-4a12, 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 same as defined 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) "Bodily function" means physical functions only. The term "bodily function" does not include mental or emotional functions.

(d) "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.

(e) "Department" means the department of health and environment.

(f) "Elective abortion" means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; ~~provided, except~~ that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that ~~she~~ *such mother* will engage in conduct ~~which~~ *that* would result in ~~her~~ *such mother's* death.

(g) "Facility" means any clinic, hospital or ambulatory surgical center; in which any second or third trimester elective abortion; or five or more first trimester elective abortions are performed in a month, excluding any abortion performed due to a medical emergency.

~~(h) "Gestational age" has the same meaning ascribed thereto means the same as defined in K.S.A. 65-6701, and amendments thereto, and shall be determined pursuant to K.S.A. 65-6703, and amendments thereto.~~

(i) "Hospital" means a hospital as defined in ~~subsection (a) or (b)~~ of K.S.A. 65-425(a) or (b), and amendments thereto.

~~(j) "Medical emergency" means a condition that, in a reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay necessary to comply with the applicable statutory requirements 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 would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

~~(k) "Physician" has the same meaning ascribed thereto means the same as defined in K.S.A. 65-6701, and amendments thereto.~~

(l) "Secretary" means the secretary of the department of health and environment.

Sec. 4. K.S.A. 65-6701 is hereby amended to read as follows: 65-6701. As used in K.S.A. 65-6701 through 65-6721, and amendments thereto:

(a) (1) "Abortion" means the use or prescription of any instrument, medicine, drug or any other ~~substance or device~~ *means* 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 knowing that such termination will, with reasonable likelihood, result in the death of the unborn child.~~

(2) *Such use or prescription is not an "abortion" if done with the intent to:*

(A) *Preserve the life or health of the unborn child;*

(B) *increase the probability of a live birth;*

(C) *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 the unborn child; or*

(D) *remove an ectopic pregnancy.*

(3) *"Abortion" does not include the prescription, dispensing, administration, sale or use of any method of contraception.*

(b) "Bodily function" means physical functions only. The term "bodily function" does not include mental or emotional functions.

(c) "Counselor" means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master's level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors; (4) a licensed physician assistant; or (5) 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.

(d) "Department" means the department of health and environment.

(e) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(f) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(g) "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~~ *such woman's* pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements 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~~ *such* woman will engage in conduct ~~which~~ *that* would result in ~~her~~ *such woman's* death or in substantial and irreversible physical impairment of a major bodily function.

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

(i) "Physician" means a person licensed to practice medicine and surgery in this state.

(j) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body.

(k) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, licensed marriage and family therapist, licensed master's level psychologist, licensed clinical psychotherapist, registered nurse or physician.

(l) "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.

(m) "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.

Sec. 5. K.S.A. 65-6708 is hereby amended to read as follows: 65-6708. K.S.A. 65-6701 and K.S.A. 65-6708 ~~to through 65-6715, inclusive,~~ and amendments thereto, *and section 1, and amendments thereto*, shall be known and may be cited as the woman's-right-to-know act.

Sec. 6. K.S.A. 65-6723 is hereby amended to read as follows: 65-6723. As used in K.S.A. 65-6722 through 65-6724, 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 same as defined in K.S.A. 65-6701, and amendments thereto.~~

(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 to avert her death or for which a delay necessary to comply with the applicable statutory requirements 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 would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

(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.

Sec. 7. K.S.A. 65-6742 is hereby amended to read as follows: 65-6742. As used in K.S.A. 65-6741 through 65-6749, 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 same as defined in K.S.A. 65-6701, and amendments thereto.~~

(b) (1) "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.

(2) The term "dismemberment abortion" does not include an abortion ~~which~~ *that* uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, ~~although it does include.~~ "Dismemberment abortion" includes an abortion in which a dismemberment abortion, as defined in ~~subsection (b)(1) paragraph (1),~~ is used to cause the death of an unborn child, but suction is subsequently used to extract fetal parts after the death of the unborn child.

(c) "Knowingly" ~~shall have the same meaning attributed to such term means the same as defined~~ in K.S.A. 2022 Supp. 21-5202, and amendments thereto.

(d) "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 to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements 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 would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

Sec. 8. K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723 and 65-6742 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.