

## SENATE BILL No. 146

By Senators Taddiken, Abrams, Apple, Bruce, Kelsey, Love, Lynn, Marshall, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Umbarger and Wagle

2-8

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1 AN ACT concerning abortion; regarding certain prohibitions on late-term  
2 and partial birth abortion; amending K.S.A. 65-445, 65-6701, 65-  
3 6703, 65-6705 and 65-6721 and K.S.A. 2010 Supp. 65-6709 and 65-  
4 6710 and repealing the existing sections; also repealing K.S.A. 65-  
5 6713.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-  
9 445. (a) Every medical care facility shall keep written records of all  
10 pregnancies which are lawfully terminated within such medical care  
11 facility and shall annually submit a written report thereon to the secretary  
12 of health and environment in the manner and form prescribed by the  
13 secretary. Every person licensed to practice medicine and surgery shall  
14 keep a record of all pregnancies which are lawfully terminated by such  
15 person in a location other than a medical care facility and shall annually  
16 submit a written report thereon to the secretary of health and environment  
17 in the manner and form prescribed by the secretary.

18 (b) Each report required by this section shall include the number of  
19 pregnancies terminated during the period of time covered by the report,  
20 the type of medical facility in which the pregnancy was terminated,  
21 information required to be reported under *subsections (b) and (c) of*  
22 *K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of*  
23 *K.S.A. 65-6721*, and amendments thereto, if applicable to the pregnancy  
24 terminated, and such other information as may be required by the  
25 secretary of health and environment, but the report shall not include the  
26 names of the persons whose pregnancies were so terminated. *Each report*  
27 *required by subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of*  
28 *K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721, and amendments*  
29 *thereto, shall specify the medical diagnosis and condition constituting a*  
30 *substantial and irreversible impairment of a major bodily function or the*  
31 *medical diagnosis and condition which necessitated performance of an*  
32 *abortion to preserve the life of the pregnant woman. Each report*  
33 *required by K.S.A. 65-6703, and amendments thereto, shall include a*  
34 *sworn statement by the physician performing the abortion and the*

1 *referring physician that such physicians are not legally or financially*  
2 *affiliated.*

3 (c) Information obtained by the secretary of health and environment  
4 under this section shall be confidential and shall not be disclosed in a  
5 manner that would reveal the identity of any person licensed to practice  
6 medicine and surgery who submits a report to the secretary under this  
7 section or the identity of any medical care facility which submits a report  
8 to the secretary under this section, except that such information, including  
9 information identifying such persons and facilities may be disclosed to  
10 the state board of healing arts upon request of the board for disciplinary  
11 action conducted by the board and may be disclosed to the attorney  
12 general *or any district or county attorney in this state* upon a showing  
13 that a reasonable cause exists to believe that a violation of this act has  
14 occurred. Any information disclosed to the state board of healing arts, ~~or~~  
15 the attorney general *or any district or county attorney* pursuant to this  
16 subsection shall be used solely for the purposes of a disciplinary action or  
17 criminal proceeding. Except as otherwise provided in this subsection,  
18 information obtained by the secretary under this section may be used only  
19 for statistical purposes and such information shall not be released in a  
20 manner which would identify any county or other area of this state in  
21 which the termination of the pregnancy occurred. A violation of this  
22 subsection (c) is a class A nonperson misdemeanor.

23 (d) In addition to such criminal penalty under subsection (c), any  
24 person licensed to practice medicine and surgery or medical care facility  
25 whose identity is revealed in violation of this section may bring a civil  
26 action against the responsible person or persons for any damages to the  
27 person licensed to practice medicine and surgery or medical care facility  
28 caused by such violation.

29 (e) For the purpose of maintaining confidentiality as provided by  
30 subsections (c) and (d), reports of terminations of pregnancies required by  
31 this section shall identify the person or facility submitting such reports  
32 only by confidential code number assigned by the secretary of health and  
33 environment to such person or facility and the department of health and  
34 environment shall maintain such reports only by such number.

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

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

8 Sec. 2. K.S.A. 65-6701 is hereby amended to read as follows: 65-  
9 6701. As used in this act:

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

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

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

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

29 (e) "Medical emergency" means that condition which, on the basis  
30 of the physician's good faith clinical judgment, so complicates the  
31 medical condition of a pregnant woman as to necessitate the immediate  
32 abortion of her pregnancy to avert her death or for which a delay will  
33 create serious risk of substantial and irreversible impairment of a major  
34 bodily function.

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

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

38 (h) "Pregnant" or "pregnancy" means that female reproductive  
39 condition of having ~~a fetus~~ *an unborn child* in the mother's body.

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

43 (j) "Unemancipated minor" means any minor who has never been:

1 (1) Married; or (2) freed, by court order or otherwise, from the care,  
2 custody and control of the minor's parents.

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

12 Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-  
13 6703. (a) No person shall perform or induce an abortion when the ~~fetus~~  
14 ~~unborn child~~ is viable unless such person is a physician and has a  
15 documented referral from another physician not legally or financially  
16 affiliated with the physician performing or inducing the abortion and both  
17 physicians ~~determine~~ *provide a written determination, based upon a*  
18 *medical judgment arrived at using and exercising that degree of care,*  
19 *skill and proficiency commonly exercised by the ordinary skillful, careful*  
20 *and prudent physician in the same or similar circumstances and that*  
21 *would be made by a reasonably prudent physician, knowledgeable in the*  
22 *field, and knowledgeable about the case and the treatment possibilities*  
23 *with respect to the conditions involved, that: (1) The abortion is necessary*  
24 *to preserve the life of the pregnant woman; or (2) a continuation of the*  
25 *pregnancy will cause a substantial and irreversible impairment of a major*  
26 *bodily function of the pregnant woman.*

27 (b) *Except in the case of a medical emergency, a copy of the written*  
28 *documented referral and of the abortion-performing physician's written*  
29 *determination shall be provided to the pregnant woman no less than 30*  
30 *minutes prior to the initiation of the abortion. The written determination*  
31 *shall be time-stamped at the time it is delivered to the pregnant woman.*  
32 *The medical basis for the determination shall also be reported by the*  
33 *physician as part of the written report made by the physician to the*  
34 *secretary of health and environment under K.S.A. 65-445, and*  
35 *amendments thereto. Such determination shall specify:*

36 (1) *If the unborn child was determined to be nonviable and the*  
37 *medical basis of such determination;*

38 (2) *if the abortion is necessary to preserve the life of the pregnant*  
39 *woman and the medical basis of such determination, including the*  
40 *specific medical condition the physician believes would cause the death*  
41 *of the pregnant woman; or*

42 (3) *if a continuation of the pregnancy will cause a substantial and*  
43 *irreversible impairment of a major bodily function of the pregnant*

1 woman and the medical basis of such determination, including the  
2 specific medical condition the physician believes would constitute a  
3 substantial and irreversible impairment of a major bodily function of the  
4 pregnant woman.

5 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to  
6 performing an abortion upon a woman, the physician shall determine the  
7 gestational age of the ~~fetus~~ unborn child according to accepted obstetrical  
8 and neonatal practice and standards applied by physicians in the same or  
9 similar circumstances. If the physician determines the gestational age is  
10 less than 22 weeks, the physician shall document as part of the medical  
11 records of the woman the basis for the determination. *The medical basis*  
12 *for the determination of the gestational age of the unborn child shall also*  
13 *be reported by the physician as part of the written report made by the*  
14 *physician to the secretary of health and environment under K.S.A. 65-*  
15 *445, and amendments thereto.*

16 (2) If the physician determines the gestational age of the ~~fetus~~-  
17 unborn child is 22 or more weeks, prior to performing an abortion upon  
18 the woman the physician shall determine if the ~~fetus~~ unborn child is  
19 viable by using and exercising that degree of care, skill and proficiency  
20 commonly exercised by the ordinary skillful, careful and prudent  
21 physician in the same or similar circumstances. In making this  
22 determination of viability, the physician shall perform or cause to be  
23 performed such medical examinations and tests as are necessary to make  
24 a finding of the gestational age of the ~~fetus~~ unborn child and shall enter  
25 such findings and determinations of viability in the medical record of the  
26 woman.

27 (3) If the physician determines the gestational age of a ~~fetus~~ an  
28 unborn child is 22 or more weeks, and determines that the ~~fetus~~ unborn  
29 child is not viable and performs an abortion on the woman, the physician  
30 shall report such determinations, *the medical basis* and the reasons for  
31 such determinations in writing to the medical care facility in which the  
32 abortion is performed for inclusion in the report of the medical care  
33 facility to the secretary of health and environment under K.S.A. 65-445,  
34 and amendments thereto, or if the abortion is not performed in a medical  
35 care facility, the physician shall report such determinations, *the medical*  
36 *basis* and the reasons for such determinations in writing to the secretary  
37 of health and environment as part of the written report made by the  
38 physician to the secretary of health and environment under K.S.A. 65-  
39 445, and amendments thereto.

40 (4) If the physician who is to perform the abortion determines the  
41 gestational age of a ~~fetus~~ an unborn child is 22 or more weeks, and  
42 determines that the ~~fetus~~ unborn child is viable, both physicians under  
43 subsection (a) determine in accordance with the provisions of subsection

1 (a) that an abortion is necessary to preserve the life of the pregnant  
2 woman or that a continuation of the pregnancy will cause a substantial  
3 and irreversible impairment of a major bodily function of the pregnant  
4 woman and the physician performs an abortion on the woman, the  
5 physician who performs the abortion shall report such determinations, *the*  
6 *medical basis and the reasons for such determinations and the basis* ,  
7 *including the specific medical diagnosis* for the determination that an  
8 abortion is necessary to preserve the life of the pregnant woman or that a  
9 continuation of the pregnancy will cause a substantial and irreversible  
10 impairment of a major bodily function of the pregnant woman *and the*  
11 *name of the referring physician required by subsection (a)* in writing to  
12 the medical care facility in which the abortion is performed for inclusion  
13 in the report of the medical care facility to the secretary of health and  
14 environment under K.S.A. 65-445, and amendments thereto, or if the  
15 abortion is not performed in a medical care facility, the physician who  
16 performs the abortion shall report such determinations, *the medical basis*  
17 *and the reasons for such determinations and the basis* , *including the*  
18 *specific medical diagnosis* for the determination that an abortion is  
19 necessary to preserve the life of the pregnant woman or that a  
20 continuation of the pregnancy will cause a substantial and irreversible  
21 impairment of a major bodily function of the pregnant woman *and the*  
22 *name of the referring physician required by subsection (a)* in writing to  
23 the secretary of health and environment as part of the written report made  
24 by the physician to the secretary of health and environment under K.S.A.  
25 65-445, and amendments thereto.

26 (5) The physician shall retain the medical records required to be kept  
27 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than  
28 ~~five~~ 10 years and shall retain a copy of the written reports required under  
29 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10  
30 years.

31 (d) *The secretary of health and environment shall adopt rules and*  
32 *regulations to administer this section. Such rules and regulations shall*  
33 *include:*

34 (1) *A detailed list of the information that must be kept by a physician*  
35 *under paragraphs (1) and (2) of subsection (c);*

36 (2) *the contents of the written reports required under paragraphs (3)*  
37 *and (4) of subsection (c); and*

38 (3) *detailed specifications regarding information that must be*  
39 *provided by a physician in order to comply with the obligation to disclose*  
40 *the medical basis and specific medical diagnosis relied upon in*  
41 *determining that an abortion is necessary to preserve the life of the*  
42 *pregnant woman or that a continuation of the pregnancy will cause a*  
43 *substantial and irreversible impairment of a major bodily function of the*

1 *pregnant woman.*

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

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

8 (g) (1) *A woman upon whom an abortion is performed in violation*  
9 *of this section, the father, if married to the woman at the time of the*  
10 *abortion, and the parents or custodial guardian of the woman, if the*  
11 *woman has not attained the age of 18 years at the time of the abortion,*  
12 *may in a civil action obtain appropriate relief, unless, in a case where the*  
13 *plaintiff is not the woman upon whom the abortion was performed, the*  
14 *pregnancy resulted from the plaintiff's criminal conduct.*

15 (2) *Such relief shall include:*

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

18 (B) *statutory damages equal to three times the cost of the abortion;*  
19 *and*

20 (C) *reasonable attorney fees.*

21 (h) *The prosecution of violations of this section may be brought by*  
22 *the attorney general or by the district attorney or county attorney for the*  
23 *county where any violation of this section is alleged to have occurred.*

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

30 (f) (i) If any provision of this section is held to be invalid or  
31 unconstitutional, it shall be conclusively presumed that the legislature  
32 would have enacted the remainder of this section without such invalid or  
33 unconstitutional provision.

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

38 Sec. 4. K.S.A. 65-6705 is hereby amended to read as follows: 65-  
39 6705. (a) ~~Before a person performs an abortion upon an unemancipated~~  
40 ~~minor, the person or the person's agent must give actual notice of the~~  
41 ~~intent to perform such abortion to one of the minor's parents or the~~  
42 ~~minor's legal guardian or must have written documentation that such~~  
43 ~~notice has been given unless, after receiving counseling as provided by~~

1 subsection (a) of K.S.A. 65-6704, the minor objects to such notice being  
2 given. If the minor so objects, the minor may petition, on her own behalf  
3 or by an adult of her choice, the district court of any county of this state  
4 for a waiver of the notice requirement of this subsection. If the minor so  
5 desires, the counselor who counseled the minor as required by K.S.A. 65-  
6 6704 shall notify the court and the court shall ensure that the minor or the  
7 adult petitioning on the minor's behalf is given assistance in preparing  
8 and filing the application. *Except in the case of a medical emergency or*  
9 *as otherwise provided in this section, no person shall perform an*  
10 *abortion upon an unemancipated minor, unless the person first obtains*  
11 *the notarized written consent of the minor and both parents or the legal*  
12 *guardian of the minor.*

13 (1) *If the minor's parents are divorced or otherwise unmarried and*  
14 *living separate and apart, then the written consent of the parent with*  
15 *primary custody, care and control of such minor shall be sufficient.*

16 (2) *If the minor's parents are married and one parent is not*  
17 *available to the person performing the abortion in a reasonable time and*  
18 *manner, then the written consent of the parent who is available shall be*  
19 *sufficient.*

20 (3) *If the minor's pregnancy was caused by sexual intercourse with*  
21 *the minor's natural father, adoptive father, stepfather or legal guardian,*  
22 *then the written consent of the minor's mother shall be sufficient. Notice*  
23 *of such circumstances shall be reported to the proper authorities as*  
24 *provided in K.S.A. 2010 Supp. 38-2223, and amendments thereto.*

25 (b) *After receiving counseling as provided by subsection (a) of*  
26 *K.S.A. 65-6704, and amendments thereto, the minor may object to the*  
27 *written consent requirement set forth in subsection (a). If the minor so*  
28 *objects, the minor may petition, on her own behalf or by an adult of her*  
29 *choice, the district court of any county of this state for a waiver of the*  
30 *written consent requirement. If the minor so desires, the counselor who*  
31 *counseled the minor as required by K.S.A. 65-6704, and amendments*  
32 *thereto, shall notify the court and the court shall ensure that the minor or*  
33 *the adult petitioning on the minor's behalf is given assistance in*  
34 *preparing and filing the petition. The minor may participate in*  
35 *proceedings in the court on the minor's own behalf or through the adult*  
36 *petitioning on the minor's behalf. The court shall provide a court-*  
37 *appointed counsel to represent the minor at no cost to the minor.*

38 (c) *Court proceedings under this section shall be anonymous and the*  
39 *court shall ensure that the minor's identity is kept confidential. The court*  
40 *shall order that a confidential record of the evidence in the proceeding be*  
41 *maintained. All persons shall be excluded from hearings under this*  
42 *section except the minor, her attorney and such other persons whose*  
43 *presence is specifically requested by the applicant or her attorney.*



1 (d) ~~Notice Consent~~ shall be waived if the court finds by a  
2 ~~preponderance of the~~ *clear and convincing* evidence that either: (1) The  
3 minor is mature and well-informed enough to make the abortion decision  
4 on her own; or (2) ~~notification of a person~~ *the consent of the individuals*  
5 specified in subsection (a) would not be in the best interest of the minor.

6 (e) A court that conducts proceedings under this section shall issue  
7 written and specific factual findings and legal conclusions supporting its  
8 decision as follows:

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

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

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

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

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

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

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

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

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

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

43 (C) ~~the person or persons who are entitled to notice have signed a~~

1 written, notarized waiver of notice which is placed in the minor's medical  
2 record. .

3 ~~(2) A physician who does not comply with the provisions of this~~  
4 ~~section by reason of the exception of subsection (j)(1)(A) must inform the~~  
5 ~~minor that the physician is required by law to report the sexual abuse to~~  
6 ~~the department of social and rehabilitation services. A physician who does~~  
7 ~~not comply with the requirements of this section by reason of the~~  
8 ~~exception of subsection (j)(1)(B) A physician acting pursuant to this~~  
9 ~~subsection shall state in the medical record of the abortion the medical~~  
10 ~~indications on which the physician's judgment was based. The medical~~  
11 ~~basis for the determination shall also be reported by the physician as~~  
12 ~~part of the written report made by the physician to the secretary of health~~  
13 ~~and environment under K.S.A. 65-445, and amendments thereto.~~

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

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

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

43 (n) *In determining if a minor is mature and well-enough informed to*

1 *make the abortion decision without parental consent, the court shall take*  
2 *into account the minor's experience level, perspective and judgment. In*  
3 *assessing the minor's experience level, the court shall consider, along*  
4 *with any other relevant factors, the minor's age, experience working*  
5 *outside the home, living away from home, traveling on her own, handling*  
6 *personal finances and making other significant decisions. In assessing*  
7 *the minor's perspective, the court shall consider, along with any other*  
8 *relevant factors, what steps the minor has taken to explore her options*  
9 *and the extent to which she considered and weighed the potential*  
10 *consequences of each option. In assessing the minor's judgment, the*  
11 *court shall consider, along with any other relevant factors, her conduct*  
12 *since learning of her pregnancy and her intellectual ability to understand*  
13 *her options and to make informed decisions.*

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

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

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

27 *(2) the number of petitions granted;*

28 *(3) the reasons for granting such petitions;*

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

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

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

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

37 *(2) Such relief shall include:*

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

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

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

1 *and*

2 (D) *reasonable attorney fees.*

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

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

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

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

23 (1) The name of the physician who will perform the abortion;

24 (2) a description of the proposed abortion method;

25 (3) a description of risks related to the proposed abortion method,  
26 including risks to the woman's reproductive health and alternatives to the  
27 abortion that a reasonable patient would consider material to the decision  
28 of whether or not to undergo the abortion;

29 (4) the probable gestational age of the *fetus unborn child* at the time  
30 the abortion is to be performed and that Kansas law requires the  
31 following: "No person shall perform or induce an abortion when the *fetus*  
32 *unborn child* is viable unless such person is a physician and has a  
33 documented referral from another physician not financially associated  
34 with the physician performing or inducing the abortion and both  
35 physicians determine that: (1) The abortion is necessary to preserve the  
36 life of the pregnant woman; or (2) ~~that~~ a continuation of the pregnancy  
37 will cause a substantial and irreversible impairment of a major bodily  
38 function of the pregnant woman." If the child is born alive, the attending  
39 physician has the legal obligation to take all reasonable steps necessary to  
40 maintain the life and health of the child;

41 (5) the probable anatomical and physiological characteristics of the  
42 *fetus unborn child* at the time the abortion is to be performed;

43 (6) the contact information for free counseling assistance for

1 medically challenging pregnancies and the contact information for free  
2 perinatal hospice services;

3 (7) the medical risks associated with carrying a ~~fetus~~ *an unborn*  
4 *child* to term; and

5 (8) any need for anti-Rh immune globulin therapy, if she is Rh  
6 negative, the likely consequences of refusing such therapy and the cost of  
7 the therapy.

8 (b) At least 24 hours before the abortion, the physician who is to  
9 perform the abortion, the referring physician or a qualified person has  
10 informed the woman in writing that:

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

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

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

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

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

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

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

41 (e) The woman certifies in writing on a form provided by the  
42 department, prior to the abortion, that the information required to be  
43 provided under subsections (a), (b) and (d) has been provided and that she

1 has met with the physician who is to perform the abortion on an  
2 individual basis as provided under subsection (c). All physicians who  
3 perform abortions shall report the total number of certifications received  
4 monthly to the department. The department shall make the number of  
5 certifications received available on an annual basis.

6 (f) Prior to the performance of the abortion, the physician who is to  
7 perform the abortion or the physician's agent receives a copy of the  
8 written certification prescribed by subsection (e) of this section.

9 (g) The woman is not required to pay any amount for the abortion  
10 procedure until the 24-hour waiting period has expired.

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

14 (1) Informs the woman that she has the right to view the ultrasound  
15 image of her unborn child, at no additional expense to her;

16 (2) informs the woman that she has the right to receive a physical  
17 picture of the ultrasound image, at no additional expense to her;

18 (3) offers the woman the opportunity to view the ultrasound image  
19 and receive a physical picture of the ultrasound image;

20 (4) certifies in writing that the woman was offered the opportunity  
21 to view the ultrasound image and receive a physical picture of the  
22 ultrasound image at least 30 minutes prior to the performance of the  
23 abortion; and

24 (5) obtains the woman's signed acceptance or rejection of the  
25 opportunity to view the ultrasound image and receive a physical picture  
26 of the ultrasound image.

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

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

36 (1) Informs the woman that she has the right to listen to the  
37 heartbeat of her unborn child, at no additional expense to her;

38 (2) offers the woman the opportunity to listen to the heartbeat of her  
39 unborn child;

40 (3) certifies in writing that the woman was offered the opportunity to  
41 listen to the heartbeat of her unborn child at least 30 minutes prior to the  
42 performance of the abortion; and

43 (4) obtains the woman's signed acceptance or rejection of the

1 opportunity to listen to the heartbeat of her unborn child.

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

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

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

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

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

32 (l) For purposes of this section, :

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

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

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

1 (1) Geographically indexed printed materials designed to inform the  
2 woman of public and private agencies and services available to assist a  
3 woman through pregnancy, upon childbirth and while her child is  
4 dependent, including but not limited to, a list of providers of free  
5 ultrasound services and adoption agencies. The materials shall include a  
6 comprehensive list of the agencies, a description of the services they offer  
7 and the telephone numbers and addresses of the agencies; and inform the  
8 woman about available medical assistance benefits for prenatal care,  
9 childbirth and neonatal care and about the support obligations of the  
10 father of a child who is born alive. The department shall ensure that the  
11 materials described in this section are comprehensive and do not directly  
12 or indirectly promote, exclude or discourage the use of any agency or  
13 service described in this section. The materials shall also contain a toll-  
14 free ~~24-hour-a-day~~ *24-hour-a-day* telephone number which may be called  
15 to obtain, orally, such a list and description of agencies in the locality of  
16 the caller and of the services they offer. The materials shall state that it is  
17 unlawful for any individual to coerce a woman to undergo an abortion,  
18 that any physician who performs an abortion upon a woman without her  
19 informed consent may be liable to her for damages. Kansas law permits  
20 adoptive parents to pay costs of prenatal care, childbirth and neonatal  
21 care. The materials shall include the following statement:

22 "Many public and private agencies exist to provide counseling and  
23 information on available services. You are strongly urged to seek their  
24 assistance to obtain guidance during your pregnancy. In addition, you are  
25 encouraged to seek information on abortion services, alternatives to  
26 abortion, including adoption, and resources available to post-partum  
27 mothers. The law requires that your physician or the physician's agent  
28 provide the enclosed information."

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



1 ~~fetus~~ *an unborn child* to term.

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

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

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

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

19 Sec. 7. K.S.A. 65-6721 is hereby amended to read as follows: 65-  
20 6721. (a) No person shall perform or induce a partial birth abortion on a  
21 ~~viable fetus~~ *an unborn child* unless ~~such person is a physician and has a~~  
22 ~~documented referral from another physician not legally or financially~~  
23 ~~affiliated with the physician performing or inducing the abortion and both~~  
24 ~~physicians determine: (1) The abortion is necessary to preserve the life of~~  
25 ~~the pregnant woman; or (2) a continuation of the pregnancy will cause a~~  
26 ~~substantial and irreversible impairment of a major physical or mental~~  
27 ~~function of the pregnant woman. such person is a physician and has a~~  
28 ~~documented referral from another physician who is licensed to practice~~  
29 ~~in this state, and who is not legally or financially affiliated with the~~  
30 ~~physician performing or inducing the abortion and both physicians~~  
31 ~~provide a written determination, based upon a medical judgment that~~  
32 ~~would be made by a reasonably prudent physician, knowledgeable in the~~  
33 ~~field and knowledgeable about the case and the treatment possibilities~~  
34 ~~with respect to the conditions involved, that the partial birth abortion is~~  
35 ~~necessary to save the life of a mother whose life is endangered by a~~  
36 ~~physical disorder, physical illness or physical injury, including a life-~~  
37 ~~endangering physical condition caused by or arising from the pregnancy~~  
38 ~~itself.~~

39 (b) As used in this section: ,

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

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

14       (c) (1) If a physician determines in accordance with the provisions  
15 of subsection (a) that a partial birth abortion is necessary and performs a  
16 partial birth abortion on the woman, the physician shall report such  
17 determination, *the medical basis, including the specific medical diagnosis*  
18 and the reasons for such determination in writing to the medical care  
19 facility in which the abortion is performed for inclusion in the report of  
20 the medical care facility to the secretary of health and environment under  
21 K.S.A. 65-445, and amendments thereto, or if the abortion is not  
22 performed in a medical care facility, the physician shall report ~~the reasons~~  
23 ~~for~~ such determination, *the medical basis, including the specific medical*  
24 *diagnosis, and the reasons for such determination* in writing to the  
25 secretary of health and environment as part of the written report made by  
26 the physician to the secretary of health and environment under K.S.A. 65-  
27 445, and amendments thereto. The physician shall retain a copy of the  
28 written reports required under this subsection for not less than ~~five~~ 10  
29 years.

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

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

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

38       (d) (1) *The father, if married to the woman at the time of the*  
39 *abortion, and, if the woman has not attained the age of 18 years at the*  
40 *time of the abortion, the parents or custodial guardian of the woman,*  
41 *may in a civil action obtain appropriate relief, unless, in a case where the*  
42 *plaintiff is not the woman upon whom the abortion was performed, the*  
43 *pregnancy resulted from the plaintiff's criminal conduct or the plaintiff*

1 *consented to the abortion.*

2 *(2) Such relief shall include:*

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

5 *(B) statutory damages equal to three times the cost of the abortion;*  
6 *and*

7 *(C) reasonable attorney fees.*

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

11 ~~(e)~~ *(f)* 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)~~ *(g)* Upon conviction of a violation of this section, a person shall  
15 be guilty of a severity level ~~4~~ *8* person felony.

16 Sec. 8. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and 65-  
17 6721 and K.S.A. 2010 Supp. 65-6709 and 65-6710 are hereby repealed.

18 Sec. 9. This act shall take effect and be in force from and after its  
19 publication in the Kansas register.