SENATE BILL No. 297

By Committee on Federal and State Affairs

3-7

AN ACT concerning abortion; revising the definition of abortion; excluding certain procedures from the definition; amending K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6723 and 65-6742 and repealing the existing sections.

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

Section 1. 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. 2. 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. 3. 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. 4. 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. 5. 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. 6. K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6723 and 65-6742 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.