

House Substitute for SENATE BILL No. 34

By Committee on Federal and State Affairs

3-23

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

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

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

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

35 (c) Information obtained by the secretary of health and environment
36 under this section shall be confidential and shall not be disclosed in a

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

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

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

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

39 (g) *The department of social and rehabilitation services shall prepare*
40 *and publish an annual report on the number of reports of child sexual*
41 *abuse received by the department from abortion providers. Such report*
42 *shall be categorized by the age of the victim and the month the report was*
43 *submitted to the department. The name of the victim and any other*

1 *identifying information shall be kept confidential by the department and*
2 *shall not be released as part of the public report.*

3 Sec. 2. K.S.A. 65-6701 is hereby amended to read as follows: 65-
4 6701. As used in this act:

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

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

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

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

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

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

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

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

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

37 (j) "Unemancipated minor" means any minor who has never been: (1)
38 Married; or (2) freed, by court order or otherwise, from the care, custody
39 and control of the minor's parents.

40 (k) "Viable" means ~~that stage of gestation when, in the best medical~~
41 ~~judgment of the attending physician, the fetus is capable of sustained~~
42 ~~survival outside the uterus without the application of extraordinary~~
43 ~~medical means: that stage of fetal development when it is the physician's~~

1 *judgment according to accepted obstetrical or neonatal standards of care*
2 *and practice applied by physicians in the same or similar circumstances*
3 *that there is a reasonable probability that the life of the child can be*
4 *continued indefinitely outside the mother's womb with natural or artificial*
5 *life-supportive measures.*

6 Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-
7 6703. (a) No person shall perform or induce an abortion when the ~~fetus~~
8 *unborn child* is viable unless such person is a physician and has a
9 documented referral from another physician not legally or financially
10 affiliated with the physician performing or inducing the abortion and both
11 physicians ~~determine~~ *provide a written determination, based upon a*
12 *medical judgment arrived at using and exercising that degree of care, skill*
13 *and proficiency commonly exercised by the ordinary skillful, careful and*
14 *prudent physician in the same or similar circumstances and that would be*
15 *made by a reasonably prudent physician, knowledgeable in the field, and*
16 *knowledgeable about the case and the treatment possibilities with respect*
17 *to the conditions involved, that: (1) The abortion is necessary to preserve*
18 *the life of the pregnant woman; or (2) a continuation of the pregnancy will*
19 *cause a substantial and irreversible impairment of a major bodily function of*
20 *the pregnant woman.*

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

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

32 *(2) if the abortion is necessary to preserve the life of the pregnant*
33 *woman and the medical basis of such determination, including the specific*
34 *medical condition the physician believes would cause the death of the*
35 *pregnant woman; or*

36 *(3) if a continuation of the pregnancy will cause a substantial and*
37 *irreversible impairment of a major bodily function of the pregnant woman*
38 *and the medical basis of such determination, including the specific*
39 *medical condition the physician believes would constitute a substantial*
40 *and irreversible impairment of a major bodily function of the pregnant*
41 *woman.*

42 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to
43 performing an abortion upon a woman, the physician shall determine the

1 gestational age of the ~~fetus~~ *unborn child* according to accepted obstetrical
2 and neonatal practice and standards applied by physicians in the same or
3 similar circumstances. If the physician determines the gestational age is
4 less than 22 weeks, the physician shall document as part of the medical
5 records of the woman the basis for the determination. *The medical basis*
6 *for the determination of the gestational age of the unborn child shall also*
7 *be reported by the physician as part of the written report made by the*
8 *physician to the secretary of health and environment under K.S.A. 65-445,*
9 *and amendments thereto.*

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

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

33 (4) If the physician who is to perform the abortion determines the
34 gestational age of ~~a fetus~~ *an unborn child* is 22 or more weeks, and
35 determines that the ~~fetus~~ *unborn child* is viable, both physicians under
36 subsection (a) determine in accordance with the provisions of subsection
37 (a) that an abortion is necessary to preserve the life of the pregnant woman
38 or that a continuation of the pregnancy will cause a substantial and
39 irreversible impairment of a major bodily function of the pregnant woman
40 and the physician performs an abortion on the woman, the physician who
41 performs the abortion shall report such determinations, *the medical basis*
42 *and the reasons for such determinations and the basis, including the*
43 *specific medical diagnosis* for the determination that an abortion is

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

19 (5) The physician shall retain the medical records required to be kept
20 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than ~~five~~
21 10 years and shall retain a copy of the written reports required under
22 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10
23 years.

24 (d) *The secretary of health and environment shall adopt rules and*
25 *regulations to administer this section. Such rules and regulations shall*
26 *include:*

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

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

31 (3) *detailed specifications regarding information that must be*
32 *provided by a physician in order to comply with the obligation to disclose*
33 *the medical basis and specific medical diagnosis relied upon in*
34 *determining that an abortion is necessary to preserve the life of the*
35 *pregnant woman or that a continuation of the pregnancy will cause a*
36 *substantial and irreversible impairment of a major bodily function of the*
37 *pregnant woman.*

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

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

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

8 (2) *Such relief shall include:*

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

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

13 (C) *reasonable attorney fees.*

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

17 (i) *Nothing in this section shall be construed to restrict the authority*
18 *of the board of healing arts to engage in a disciplinary action.*

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

25 ~~(f)~~(j) *If any provision of this section is held to be invalid or*
26 *unconstitutional, it shall be conclusively presumed that the legislature*
27 *would have enacted the remainder of this section without such invalid or*
28 *unconstitutional provision.*

29 ~~(g)~~(k) *Upon a first conviction of a violation of this section, a person*
30 *shall be guilty of a class A nonperson misdemeanor. Upon a second or*
31 *subsequent conviction of a violation of this section, a person shall be*
32 *guilty of a severity level 10, nonperson felony.*

33 Sec. 4. K.S.A. 65-6705 is hereby amended to read as follows: 65-
34 6705. (a) ~~Before a person performs an abortion upon an unemancipated~~
35 ~~minor, the person or the person's agent must give actual notice of the intent~~
36 ~~to perform such abortion to one of the minor's parents or the minor's legal~~
37 ~~guardian or must have written documentation that such notice has been~~
38 ~~given unless, after receiving counseling as provided by subsection (a) of~~
39 ~~K.S.A. 65-6704, the minor objects to such notice being given. If the minor~~
40 ~~so objects, the minor may petition, on her own behalf or by an adult of her~~
41 ~~choice, the district court of any county of this state for a waiver of the~~
42 ~~notice requirement of this subsection. If the minor so desires, the counselor~~
43 ~~who counseled the minor as required by K.S.A. 65-6704 shall notify the~~

1 court and the court shall ensure that the minor or the adult petitioning on
2 the minor's behalf is given assistance in preparing and filing the
3 application. Except in the case of a medical emergency or as otherwise
4 provided in this section, no person shall perform an abortion upon an
5 unemancipated minor, unless the person first obtains the notarized written
6 consent of the minor and both parents or the legal guardian of the minor.

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

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

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

18 (b) After receiving counseling as provided by subsection (a) of K.S.A.
19 65-6704, and amendments thereto, the minor may object to the written
20 consent requirement set forth in subsection (a). If the minor so objects, the
21 minor may petition, on her own behalf or by an adult of her choice, the
22 district court of any county of this state for a waiver of the written consent
23 requirement. If the minor so desires, the counselor who counseled the
24 minor as required by K.S.A. 65-6704, and amendments thereto, shall notify
25 the court and the court shall ensure that the minor or the adult petitioning
26 on the minor's behalf is given assistance in preparing and filing the
27 petition. The minor may participate in proceedings in the court on the
28 minor's own behalf or through the adult petitioning on the minor's behalf.
29 The court shall provide a court-appointed counsel to represent the minor at
30 no cost to the minor.

31 (c) Court proceedings under this section shall be anonymous and the
32 court shall ensure that the minor's identity is kept confidential. The court
33 shall order that a confidential record of the evidence in the proceeding be
34 maintained. All persons shall be excluded from hearings under this section
35 except the minor, her attorney and such other persons whose presence is
36 specifically requested by the applicant or her attorney.

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

42 (e) A court that conducts proceedings under this section shall issue
43 written and specific factual findings and legal conclusions supporting its

1 decision as follows:

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

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

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

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

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

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

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

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

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

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

35 (C) ~~the person or persons who are entitled to notice have signed a~~
36 ~~written, notarized waiver of notice which is placed in the minor's medical~~
37 ~~record.~~

38 (2) ~~A physician who does not comply with the provisions of this~~
39 ~~section by reason of the exception of subsection (j)(1)(A) must inform the~~
40 ~~minor that the physician is required by law to report the sexual abuse to~~
41 ~~the department of social and rehabilitation services. A physician who does~~
42 ~~not comply with the requirements of this section by reason of the~~
43 ~~exception of subsection (j)(1)(B) A physician acting pursuant to this~~

1 *subsection shall state in the medical record of the abortion the medical*
2 *indications on which the physician's judgment was based. The medical*
3 *basis for the determination shall also be reported by the physician as part*
4 *of the written report made by the physician to the secretary of health and*
5 *environment under K.S.A. 65-445, and amendments thereto.*

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

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

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

35 (n) *In determining if a minor is mature and well-enough informed to*
36 *make the abortion decision without parental consent, the court shall take*
37 *into account the minor's experience level, perspective and judgment. In*
38 *assessing the minor's experience level, the court shall consider, along with*
39 *any other relevant factors, the minor's age, experience working outside the*
40 *home, living away from home, traveling on her own, handling personal*
41 *finances and making other significant decisions. In assessing the minor's*
42 *perspective, the court shall consider, along with any other relevant factors,*
43 *what steps the minor has taken to explore her options and the extent to*

1 *which she considered and weighed the potential consequences of each*
2 *option. In assessing the minor's judgment, the court shall consider, along*
3 *with any other relevant factors, her conduct since learning of her*
4 *pregnancy and her intellectual ability to understand her options and to*
5 *make informed decisions.*

6 *(o) The judicial record of any court proceedings initiated pursuant to*
7 *this section shall upon final determination by the court be compiled by the*
8 *court. One copy of the judicial record shall be given to the minor or an*
9 *adult chosen by the minor to bring the initial petition under this section. A*
10 *second copy of the judicial record shall be sent by the court to the*
11 *abortion provider who performed or will perform the abortion for*
12 *inclusion in the minor's medical records and shall be maintained by the*
13 *abortion provider for at least 10 years.*

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

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

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

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

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

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

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

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

29 *(2) Such relief shall include:*

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

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

35 *(C) statutory damages equal to three times the cost of the abortion;*
36 *and*

37 *(D) reasonable attorney fees.*

38 *(q) In the course of a judicial hearing to waive parental consent, if*
39 *the court has reason to suspect that a minor has been injured as a result of*
40 *physical, mental or emotional abuse or neglect or sexual abuse, the court*
41 *shall report the matter promptly as provided in subsection (c) of K.S.A.*
42 *2010 Supp. 38-2223, and amendments thereto. In the course of reporting*
43 *suspected child abuse or neglect to the appropriate state authorities,*

1 *nothing in this section shall abridge or otherwise modify the anonymity or*
2 *confidentiality provisions of the judicial waiver proceeding as specified in*
3 *this section.*

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

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

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

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

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

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

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

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

35 (6) the contact information for free counseling assistance for
36 medically challenging pregnancies and the contact information for free
37 perinatal hospice services;

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

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

43 (b) At least 24 hours before the abortion, the physician who is to

1 perform the abortion, the referring physician or a qualified person has
2 informed the woman in writing that:

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

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

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

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

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

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

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

32 (e) The woman certifies in writing on a form provided by the
33 department, prior to the abortion, that the information required to be
34 provided under subsections (a), (b) and (d) has been provided and that she
35 has met with the physician who is to perform the abortion on an individual
36 basis as provided under subsection (c). All physicians who perform
37 abortions shall report the total number of certifications received monthly
38 to the department. The department shall make the number of certifications
39 received available on an annual basis.

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

43 (g) The woman is not required to pay any amount for the abortion

1 procedure until the 24-hour waiting period has expired.

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

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

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

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

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

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

17 If the woman accepts the offer and requests to view the ultrasound
18 image, receive a physical picture of the ultrasound image or both, her
19 request shall be granted by the physician at no additional expense to the
20 woman. The physician's certification shall be time-stamped at the time the
21 opportunity to view the ultrasound image and receive a physical picture of
22 the ultrasound image was offered.

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

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

28 (2) offers the woman the opportunity to listen to the heartbeat of her
29 unborn child;

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

33 (4) obtains the woman's signed acceptance or rejection of the
34 opportunity to listen to the heartbeat of her unborn child.

35 If the woman accepts the offer and requests to listen to the heartbeat of
36 her unborn child, her request shall be granted by the physician at no
37 additional expense to the woman. The physician's certification shall be
38 time-stamped at the time the opportunity to listen to the heartbeat of her
39 unborn child was offered.

40 (j) The physician's certification required by subsections (h) and (i)
41 together with the pregnant woman's signed acceptance or rejection of such
42 offer shall be placed in the woman's medical file in the physician's office
43 and kept for 10 years. However, in the case of a minor, the physician shall

1 keep a copy of the certification and the signed acceptance or rejection in
2 the minor's medical file for five years past the minor's majority, but in no
3 event less than 10 years.

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

9 Notice: It is against the law for anyone, regardless of their relationship
10 to you, to force you to have an abortion. By law, we cannot perform an
11 abortion on you unless we have your freely given and voluntary consent. It
12 is against the law to perform an abortion on you against your will. You
13 have the right to contact any local or state law enforcement agency to
14 receive protection from any actual or threatened physical abuse or
15 violence. You have the right to change your mind at any time prior to the
16 actual abortion and request that the abortion procedure cease.

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

21 (l) For purposes of this section; :

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

25 (2) The term "medically challenging pregnancy" means a pregnancy
26 where the fetus unborn child is diagnosed as having: (H) (A) A severe
27 anomaly; or (Z) (B) an illness, disease or defect which is invariably fatal.

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

33 (1) Geographically indexed printed materials designed to inform the
34 woman of public and private agencies and services available to assist a
35 woman through pregnancy, upon childbirth and while her child is
36 dependent, including but not limited to, a list of providers of free
37 ultrasound services and adoption agencies. The materials shall include a
38 comprehensive list of the agencies, a description of the services they offer
39 and the telephone numbers and addresses of the agencies; and inform the
40 woman about available medical assistance benefits for prenatal care,
41 childbirth and neonatal care and about the support obligations of the father
42 of a child who is born alive. The department shall ensure that the materials
43 described in this section are comprehensive and do not directly or

1 indirectly promote, exclude or discourage the use of any agency or service
2 described in this section. The materials shall also contain a toll-free ~~24-~~
3 ~~hour-a-day~~ *24-hour-a-day* telephone number which may be called to
4 obtain, orally, such a list and description of agencies in the locality of the
5 caller and of the services they offer. The materials shall state that it is
6 unlawful for any individual to coerce a woman to undergo an abortion, that
7 any physician who performs an abortion upon a woman without her
8 informed consent may be liable to her for damages. Kansas law permits
9 adoptive parents to pay costs of prenatal care, childbirth and neonatal care.
10 The materials shall include the following statement:

11 "Many public and private agencies exist to provide counseling and
12 information on available services. You are strongly urged to seek their
13 assistance to obtain guidance during your pregnancy. In addition, you are
14 encouraged to seek information on abortion services, alternatives to
15 abortion, including adoption, and resources available to post-partum
16 mothers. The law requires that your physician or the physician's agent
17 provide the enclosed information."

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

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

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

41 (b) The print materials required under this section shall be printed in a
42 typeface large enough to be clearly legible. The informational video shall
43 be published in digital video disc format. All materials required to be

1 published under this section shall also be published online on the
2 department's website. All materials shall be made available in both English
3 and Spanish language versions.

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

7 Sec. 7. K.S.A. 65-6721 is hereby amended to read as follows: 65-
8 6721. (a) No person shall perform or induce a partial birth abortion on a
9 ~~viable fetus an unborn child unless such person is a physician and has a~~
10 ~~documented referral from another physician not legally or financially~~
11 ~~affiliated with the physician performing or inducing the abortion and both~~
12 ~~physicians determine: (1) The abortion is necessary to preserve the life of~~
13 ~~the pregnant woman; or (2) a continuation of the pregnancy will cause a~~
14 ~~substantial and irreversible impairment of a major physical or mental~~
15 ~~function of the pregnant woman. such person is a physician and has a~~
16 ~~documented referral from another physician who is licensed to practice in~~
17 ~~this state, and who is not legally or financially affiliated with the physician~~
18 ~~performing or inducing the abortion and both physicians provide a written~~
19 ~~determination, based upon a medical judgment that would be made by a~~
20 ~~reasonably prudent physician, knowledgeable in the field and~~
21 ~~knowledgeable about the case and the treatment possibilities with respect~~
22 ~~to the conditions involved, that the partial birth abortion is necessary to~~
23 ~~save the life of a mother whose life is endangered by a physical disorder,~~
24 ~~physical illness or physical injury, including a life-endangering physical~~
25 ~~condition caused by or arising from the pregnancy itself.~~

26 (b) As used in this section: ,

27 (+) "partial birth abortion" means an abortion procedure ~~which~~
28 ~~includes the deliberate and intentional evacuation of all or a part of the~~
29 ~~intracranial contents of a viable fetus prior to removal of such otherwise~~
30 ~~intact fetus from the body of the pregnant woman.~~

31 (2) "Partial birth abortion" shall not include the: (A) Suction curettage
32 abortion procedure; (B) suction aspiration abortion procedure; or (C)
33 dilation and evacuation abortion procedure involving dismemberment of
34 the fetus prior to removal from the body of the pregnant woman: *in which*
35 *the person performing the abortion deliberately and intentionally*
36 *vaginally delivers a living unborn child until, in the case of a head-first*
37 *presentation, the entire head of the unborn child is outside the body of the*
38 *mother, or, in the case of a breech presentation, any part of the trunk of the*
39 *unborn child past the navel is outside the body of the mother, for the*
40 *purpose of performing an overt act that the person knows will kill the*
41 *partially delivered living unborn child, and performs the overt act, other*
42 *than completion of delivery, that kills the partially delivered living unborn*
43 *child.*

1 (c) (1) If a physician determines in accordance with the provisions
2 of subsection (a) that a partial birth abortion is necessary and performs a
3 partial birth abortion on the woman, the physician shall report such
4 determination, *the medical basis, including the specific medical diagnosis*
5 and the reasons for such determination in writing to the medical care
6 facility in which the abortion is performed for inclusion in the report of the
7 medical care facility to the secretary of health and environment under
8 K.S.A. 65-445, and amendments thereto, or if the abortion is not
9 performed in a medical care facility, the physician shall report ~~the reasons~~
10 ~~for~~ such determination, *the medical basis, including the specific medical*
11 *diagnosis, and the reasons for such determination* in writing to the
12 secretary of health and environment as part of the written report made by
13 the physician to the secretary of health and environment under K.S.A. 65-
14 445, and amendments thereto. The physician shall retain a copy of the
15 written reports required under this subsection for not less than ~~five~~ 10
16 years.

17 (2) *The secretary of health and environment shall adopt rules and*
18 *regulations to administer this section. Such rules and regulations shall*
19 *include:*

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

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

25 (d) (1) *The father, if married to the woman at the time of the*
26 *abortion, and, if the woman has not attained the age of 18 years at the*
27 *time of the abortion, the parents or custodial guardian of the woman, may*
28 *in a civil action obtain appropriate relief, unless, in a case where the*
29 *plaintiff is not the woman upon whom the abortion was performed, the*
30 *pregnancy resulted from the plaintiff's criminal conduct or the plaintiff*
31 *consented to the abortion.*

32 (2) *Such relief shall include:*

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

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

37 (C) *reasonable attorney fees.*

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

41 ~~(e)~~ (f) Nothing in this section shall be construed to create a right to an
42 abortion. Notwithstanding any provision of this section, a person shall not
43 perform an abortion that is prohibited by law.

1 ~~(f)~~ (g) Upon conviction of a violation of this section, a person shall be
2 guilty of a severity level ~~10~~ 8, person felony.

3 Sec. 8. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and 65-
4 6721 and K.S.A. 2010 Supp. 65-6709 and 65-6710 are hereby repealed.

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