

House Substitute for SENATE BILL No. 45

By Committee on Federal and State Affairs

3-28

1 AN ACT concerning abortion; amending K.S.A. 65-445, 65-6701, 65-
2 6703, 65-6705 and 65-6721 and K.S.A. 2010 Supp. 65-6709 and 65-
3 6710 and repealing the existing sections; also repealing K.S.A. 65-
4 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 K.S.A.*
21 *65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-*
22 *6721, and amendments thereto, and section 11, and amendments thereto, if*
23 *applicable to the pregnancy terminated, and such other information as may*
24 *be required by the secretary of health and environment, but the report shall*
25 *not include the names of the persons whose pregnancies were so*
26 *terminated. Each report required by subsections (b) and (c) of K.S.A. 65-*
27 *6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-*
28 *6721, and amendments thereto, shall specify the medical diagnosis and*
29 *condition constituting a substantial and irreversible impairment of a*
30 *major bodily function or the medical diagnosis and condition which*
31 *necessitated performance of an abortion to preserve the life of the*
32 *pregnant woman. Each report required by K.S.A. 65-6703, and*
33 *amendments thereto, shall include a sworn statement by the physician*
34 *performing the abortion and the referring physician that such physicians*
35 *are not legally or financially affiliated.*

36 (c) Information obtained by the secretary of health and environment

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

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

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

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

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

1 *submitted to the department. The name of the victim and any other*
2 *identifying information shall be kept confidential by the department and*
3 *shall not be released as part of the public report.*

4 Sec. 2. K.S.A. 65-6701 is hereby amended to read as follows: 65-
5 6701. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-
8 6703. (a) No person shall perform or induce an abortion when the ~~fetus~~
9 *unborn child* is viable 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~~ *provide a written determination, based upon a*
13 *medical judgment arrived at using and exercising that degree of care, skill*
14 *and proficiency commonly exercised by the ordinary skillful, careful and*
15 *prudent physician in the same or similar circumstances and that would be*
16 *made by a reasonably prudent physician, knowledgeable in the field, and*
17 *knowledgeable about the case and the treatment possibilities with respect*
18 *to the conditions involved, that: (1) The abortion is necessary to preserve*
19 *the life of the pregnant woman; or (2) a continuation of the pregnancy will*
20 *cause a substantial and irreversible impairment of a major bodily function*
21 *of the pregnant woman.*

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

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

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

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

43 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to

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

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

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

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

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

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

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

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

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

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

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

42 ~~(d)~~ (f) Nothing in this section shall be construed to create a right to an
43 abortion. Notwithstanding any provision of this section, a person shall not

1 perform an abortion that is prohibited by law.

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

9 (2) *Such relief shall include:*

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

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

14 (C) *reasonable attorney fees.*

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

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

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

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

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

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

1 ~~who counseled the minor as required by K.S.A. 65-6704 shall notify the~~
2 ~~court and the court shall ensure that the minor or the adult petitioning on~~
3 ~~the minor's behalf is given assistance in preparing and filing the~~
4 ~~application.~~ *Except in the case of a medical emergency or as otherwise*
5 *provided in this section, no person shall perform an abortion upon an*
6 *unemancipated minor, unless the person first obtains the notarized written*
7 *consent of the minor and both parents or the legal guardian of the minor.*

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

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

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

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

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

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

43 (e) *A court that conducts proceedings under this section shall issue*

1 written and specific factual findings and legal conclusions supporting its
2 decision as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 *(2) Such relief shall include:*

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

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

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

38 *(D) reasonable attorney fees.*

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

1 *suspected child abuse or neglect to the appropriate state authorities,*
2 *nothing in this section shall abridge or otherwise modify the anonymity or*
3 *confidentiality provisions of the judicial waiver proceeding as specified in*
4 *this section.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (j) The physician's certification required by subsections (h) and (i)
42 together with the pregnant woman's signed acceptance or rejection of such
43 offer shall be placed in the woman's medical file in the physician's office

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

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

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

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

22 (l) For purposes of this section; :

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

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

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

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

1 described in this section are comprehensive and do not directly or
2 indirectly promote, exclude or discourage the use of any agency or service
3 described in this section. The materials shall also contain a toll-free ~~24-~~
4 ~~hour-a-day~~ *24-hour-a-day* telephone number which may be called to
5 obtain, orally, such a list and description of agencies in the locality of the
6 caller and of the services they offer. The materials shall state that it is
7 unlawful for any individual to coerce a woman to undergo an abortion, that
8 any physician who performs an abortion upon a woman without her
9 informed consent may be liable to her for damages. Kansas law permits
10 adoptive parents to pay costs of prenatal care, childbirth and neonatal care.
11 The materials shall include the following statement:

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

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

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

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

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

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

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

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

27 (b) As used in this section: ,

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

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

1 *child.*

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

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

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

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

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

33 (2) *Such relief shall include:*

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

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

38 (C) *reasonable attorney fees.*

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

42 ~~(e)~~ (f) *Nothing in this section shall be construed to create a right to an*
43 *abortion. Notwithstanding any provision of this section, a person shall not*

1 perform an abortion that is prohibited by law.

2 ~~(f)~~ (g) Upon conviction of a violation of this section, a person shall be
3 guilty of a severity level ~~4~~ 8, person felony.

4 *New Sec. 8.* The legislature hereby finds and declares that:

5 (a) Pain receptors (nociceptors) are present throughout the unborn
6 child's entire body by no later than 16 weeks after fertilization and nerves
7 link these receptors to the brain's thalamus and subcortical plate by no
8 later than 20 weeks;

9 (b) by eight weeks after fertilization, *the unborn child reacts to touch,*
10 *by 20 weeks after fertization,* the unborn child reacts to stimuli that would
11 be recognized as painful if applied to an adult human, for example, by
12 recoiling;

13 (c) in the unborn child, application of such painful stimuli is
14 associated with significant increases in stress hormones known as the
15 stress response;

16 (d) subjection to such painful stimuli is associated with long-term
17 harmful neurodevelopmental effects, such as altered pain sensitivity and,
18 possibly, emotional, behavioral and learning disabilities later in life;

19 (e) for the purposes of surgery on unborn children, fetal anesthesia is
20 routinely administered and is associated with a decrease in stress
21 hormones compared to their level when painful stimuli is applied without
22 such anesthesia;

23 (f) the position, asserted by some medical experts, that the unborn
24 child is incapable of experiencing pain until a point later in pregnancy than
25 20 weeks after fertilization predominately rests on the assumption that the
26 ability to experience pain depends on the cerebral cortex and requires
27 nerve connections between the thalamus and the cortex. However, recent
28 medical research and analysis, especially since 2007, provides strong
29 evidence for the conclusion that a functioning cortex is not necessary to
30 experience pain;

31 (g) substantial evidence indicates that children born missing the bulk
32 of the cerebral cortex, those with hydranencephaly, nevertheless
33 experience pain;

34 (h) in adults, stimulation or ablation of the cerebral cortex does not
35 alter pain perception, while stimulation or ablation of the thalamus does;

36 (i) substantial evidence indicates that structures used for pain
37 processing in early development differ from those of adults, using different
38 neural elements available at specific times during development, such as the
39 subcortical plate, to fulfill the role of pain processing;

40 (j) consequently, there is substantial medical evidence that an unborn
41 child is capable of experiencing pain by 20 weeks after fertilization; and

42 (k) it is the purpose of the state to assert a compelling state interest in
43 protecting the lives of unborn children from the stage at which substantial

1 medical evidence indicates that they are capable of feeling pain.

2 New Sec. 9. As used in sections 8 through 10, and amendments
3 thereto:

4 (a) "Abortion" means the use or prescription of any instrument,
5 medicine, drug or any other substance or device to terminate the
6 pregnancy of a woman known to be pregnant with an intention other than
7 to increase the probability of a live birth, to preserve the life or health of
8 the child after live birth, or to remove a dead unborn child who died as the
9 result of natural causes in utero, accidental trauma or a criminal assault on
10 the pregnant woman or her unborn child, and which causes the premature
11 termination of the pregnancy.

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

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

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

17 (e) "Medical emergency" means a condition that, in reasonable
18 medical judgment, so complicates the medical condition of the pregnant
19 woman as to necessitate the immediate abortion of her pregnancy without
20 first determining gestational age to avert her death or for which a delay
21 necessary to determine gestational age will create serious risk of
22 substantial and irreversible physical impairment of a major bodily
23 function. No condition shall be deemed a medical emergency if based on a
24 claim or diagnosis that the woman will engage in conduct which she
25 intends to result in her death or in substantial and irreversible physical
26 impairment of a major bodily function.

27 (f) "Pain-capable unborn child" means an unborn child having
28 reached the gestational age of 22 weeks or more.

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

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

33 New Sec. 10. (a) No person shall perform or induce, or attempt to
34 perform or induce an abortion upon a pain-capable unborn child unless
35 such person is a physician and has a documented referral from another
36 physician not legally or financially affiliated with the physician
37 performing or inducing, or attempting to perform or induce the abortion
38 and both physicians provide a written determination, based upon a medical
39 judgment arrived at using and exercising that degree of care, skill and
40 proficiency commonly exercised by the ordinary skillful, careful and
41 prudent physician in the same or similar circumstances and that would be
42 made by a reasonably prudent physician, knowledgeable in the field, and
43 knowledgeable about the case and the treatment possibilities with respect

1 to the conditions involved, that: (1) The abortion is necessary to preserve
2 the life of the pregnant woman; or (2) a continuation of the pregnancy will
3 cause a substantial and irreversible physical impairment of a major bodily
4 function of the pregnant woman. No such condition shall be deemed to
5 exist if it is based on a claim or diagnosis that the woman will engage in
6 conduct which she intends to result in her death or in substantial and
7 irreversible physical impairment of a major bodily function.

8 (b) Except in the case of a medical emergency, a copy of the written
9 documented referral and of the abortion-performing physician's written
10 determination shall be provided to the pregnant woman no less than 30
11 minutes prior to the initiation of the abortion. The written determination
12 shall be time-stamped at the time it is delivered to the pregnant woman.
13 The medical basis for the determination shall also be reported by the
14 physician as part of the written report made by the physician to the
15 secretary of health and environment under K.S.A. 65-445, and
16 amendments thereto. Such determination shall specify:

17 (1) If the abortion is necessary to preserve the life of the pregnant
18 woman and the medical basis of such determination, including the specific
19 medical condition the physician believes would cause the death of the
20 pregnant woman; or

21 (2) if a continuation of the pregnancy will cause a substantial and
22 irreversible physical impairment of a major bodily function of the pregnant
23 woman and the medical basis of such determination, including the specific
24 medical condition the physician believes would constitute a substantial and
25 irreversible impairment of a major bodily function of the pregnant woman.

26 (c) (1) Except in the case of a medical emergency, prior to performing
27 or inducing, or attempting to perform or induce an abortion upon a
28 woman, the physician shall determine the gestational age of the unborn
29 child according to accepted obstetrical and neonatal practice and standards
30 applied by physicians in the same or similar circumstances. In making
31 such a determination, the physician shall make such inquiries of the
32 woman and perform or cause to be performed such medical examinations
33 and tests as a reasonably prudent physician, knowledgeable about the case
34 and medical conditions involved, would consider necessary to perform in
35 making an accurate diagnosis with respect to gestational age. The
36 physician shall document as part of the medical records of the woman the
37 basis for the determination of gestational age. The physician shall report
38 such determinations, the medical basis and the reasons for such
39 determinations in writing to the medical care facility in which the abortion
40 is performed *or induced* for inclusion in the report of the medical care
41 facility to the secretary of health and environment under K.S.A. 65-445,
42 and amendments thereto, or if the abortion is not performed *or induced* in
43 a medical care facility, the physician who performs *or induces* the abortion

1 shall report such determinations, the medical basis and the reasons for
2 such determinations in writing to the secretary of health and environment
3 as part of the written report made by the physician to the secretary of
4 health and environment under K.S.A. 65-445, and amendments thereto.

5 (2) If the physician determines the gestational age of the unborn child
6 is 22 or more weeks, then no abortion of the pain-capable unborn child
7 shall be performed or induced, or attempted to be performed or induced
8 except as provided for in subsection (a). In such event, the physician who
9 performs *or induces* the abortion shall report such determinations, the
10 medical basis and the reasons for such determinations, including the
11 specific medical diagnosis for the determination that an abortion is
12 necessary to preserve the life of the pregnant woman or that a continuation
13 of the pregnancy will cause a substantial and irreversible physical
14 impairment of a major bodily function of the pregnant woman and the
15 name of the referring physician required by subsection (a) in writing to the
16 medical care facility in which the abortion is performed *or induced* for
17 inclusion in the report of the medical care facility to the secretary of health
18 and environment under K.S.A. 65-445, and amendments thereto, or if the
19 abortion is not performed *or induced* in a medical care facility, the
20 physician who performs *or induces* the abortion shall report such
21 determinations, the medical basis and the reasons for such determinations,
22 including the specific medical diagnosis for the determination that an
23 abortion is necessary to preserve the life of the pregnant woman or that a
24 continuation of the pregnancy will cause a substantial and irreversible
25 physical impairment of a major bodily function of the pregnant woman
26 and the name of the referring physician required by subsection (a) in
27 writing to the secretary of health and environment as part of the written
28 report made by the physician to the secretary of health and environment
29 under K.S.A. 65-445, and amendments thereto.

30 (3) The physician shall retain the medical records required to be kept
31 under this subsection for not less than 10 years.

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

35 (1) A detailed list of the information that must be kept by a physician
36 under this section;

37 (2) the contents of the written reports required under this section; 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 gestational age and in determining that an abortion is
42 necessary to preserve the life of the pregnant woman, or that a
43 continuation of the pregnancy will cause a substantial and irreversible

1 physical impairment of a major bodily function of the pregnant woman.

2 (e) A woman upon whom an abortion is performed or induced, or
3 attempted to be performed or induced shall not be prosecuted under this
4 section for a conspiracy to violate this section pursuant to section 34 of
5 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

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

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

16 (2) Such relief shall include:

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

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

21 (C) reasonable attorney fees.

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

25 (i) 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 (j) Upon a first conviction of a violation of this section, a person shall
30 be guilty of a class A person misdemeanor. Upon a second or subsequent
31 conviction of a violation of this section, a person shall be guilty of a
32 severity level 10, person felony.

33 *New Sec. 11. Nothing in sections 8 through 10 shall be construed to*
34 *repeal any statute dealing with abortion, but shall be considered*
35 *supplemental to such other statutes.*

36 *New Sec. 12. As used in sections 12 through 22, and amendments*
37 *thereto:*

38 (a) "Abortion" has the same meaning ascribed thereto in K.S.A. 65-
39 6701, and amendments thereto.

40 (b) "Ambulatory surgical center" means an ambulatory surgical
41 center as defined in K.S.A. 65-425, and amendments thereto.

42 (c) "Clinic" means any facility, other than a hospital or ambulatory
43 surgical center, in which any second or third trimester, or five or more first

1 trimester abortions are performed in a month.

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

3 (e) "Facility" means any clinic, hospital or ambulatory surgical
4 center, in which any second or third trimester, or five or more first
5 trimester abortions are performed in a month.

6 (f) "Gestational age" has the same meaning ascribed thereto in K.S.A.
7 65-6701, and amendments thereto, and shall be determined pursuant to
8 K.S.A. 65-6703, and amendments thereto.

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

11 (h) "Physician" has the same meaning ascribed thereto in K.S.A. 65-
12 6701, and amendments thereto.

13 (i) "Secretary" means the secretary of the department of health and
14 environment.

15 New Sec. 13. (a) A facility shall be licensed in accordance with
16 sections 12 through 22, and amendments thereto.

17 (b) Any facility seeking licensure for the performance of abortions
18 shall submit an application for such license to the department on forms and
19 in the manner required by the secretary. Such application shall contain
20 such information as the secretary may reasonably require, including
21 affirmative evidence of the ability of the applicant to comply with such
22 reasonable standards and rules and regulations adopted pursuant to section
23 20, and amendments thereto.

24 (c) Upon receipt of such application and verification by the
25 department that the applicant is in compliance with all applicable laws and
26 rules and regulations, the secretary shall issue a license to the applicant.

27 (d) A license issued under this section shall be posted in a
28 conspicuous place in a public area within the facility. The issuance of a
29 license does not guarantee adequacy of individual care, treatment, personal
30 safety, fire safety or the well-being of any occupant of such facility. A
31 license is not assignable or transferable.

32 (e) A license shall be effective for one year following the date of
33 issuance. A license issued under this section shall apply only to the
34 premises described in the application and in the license issued thereon, and
35 only one location shall be described in each license.

36 (f) At the time application for a license is made the applicant shall
37 pay a license fee in the amount of \$500. Fees paid pursuant to this section
38 shall not be refunded by the secretary.

39 (g) The secretary may make exceptions to the standards set forth in
40 law or in rules and regulations when it is determined that the health and
41 welfare of the community require the services of the hospital or
42 ambulatory surgical center and that the exceptions, as granted, will have
43 no significant adverse impact on the health, safety or welfare of the

1 patients of such hospital or ambulatory surgical center.

2 New Sec. 14. Applicants for an annual license renewal shall file an
3 application with the department and pay the license fee in accordance with
4 section 13, and amendments thereto. Applicants for an annual license
5 renewal shall also be subject to a licensing inspection in accordance with
6 section 16, and amendments thereto.

7 New Sec. 15. (a) No proposed facility shall be named, nor may any
8 existing facility have its name changed to, the same or similar name as any
9 other facility licensed pursuant to sections 12 through 22, and amendments
10 thereto. If the facility is affiliated with one or more other facilities with the
11 same or similar name, then the facility shall have the geographic area in
12 which it is located as part of its name.

13 (b) Within 30 days after the occurrence of any of the following, a
14 facility shall apply for an amended license by submitting such application
15 to the department:

16 (1) A change of ownership either by purchase or lease; or

17 (2) a change in the facility's name or address.

18 New Sec. 16. (a) The secretary shall make or cause to be made such
19 inspections and investigations of each facility at least twice each calendar
20 year and at such other times as the secretary determines necessary to
21 protect the public health and safety and to implement and enforce the
22 provisions of sections 12 through 22, and amendments thereto, and rules
23 and regulations adopted pursuant to section 20, and amendments thereto.
24 At least one inspection shall be made each calendar year without providing
25 prior notice to the facility. For that purpose, authorized agents of the
26 secretary shall have access to a facility during regular business hours.

27 (b) Information received by the secretary through filed reports,
28 inspections or as otherwise authorized under sections 12 through 22, and
29 amendments thereto, shall not be disclosed publicly in such manner as to
30 identify individuals. Under no circumstances shall patient medical or other
31 identifying information be made available to the public, and such
32 information shall always be treated by the department as confidential.

33 New Sec. 17. (a) When the secretary determines that a facility is in
34 violation of any applicable law or rule and regulation relating to the
35 operation or maintenance of such facility, the secretary, upon proper
36 notice, may deny, suspend or revoke the license of such facility, or assess a
37 monetary penalty after notice and an opportunity for hearing has been
38 given to the licensee in accordance with the provisions of the Kansas
39 administrative procedure act.

40 (b) *Either before or after formal charges have been filed, the*
41 *secretary and the facility may enter into a stipulation which shall be*
42 *binding upon the secretary and the facility entering into such stipulation*
43 *and the secretary may enter its findings of fact and enforcement order*

1 *based upon such stipulation without the necessity of filing any formal*
2 *charges or holding hearings in the case. An enforcement order based upon*
3 *a stipulation may order any disciplinary action authorized by this section,*
4 *against the facility entering into such stipulation.*

5 *(c) The secretary may temporarily suspend or temporarily limit the*
6 *license of any facility in accordance with the emergency adjudicative*
7 *proceedings under the Kansas administrative procedure act if the*
8 *secretary determines that there is cause to believe that grounds exist under*
9 *this section for immediate action authorized by this section against the*
10 *facility and that the facility's continuation in operation would constitute an*
11 *imminent danger to the public health and safety.*

12 *(d) Violations of sections 12 through 22, and amendments thereto, or*
13 *of any rules and regulations adopted thereunder shall be deemed one of the*
14 *following:*

15 (1) Class I violations are those that the secretary determines to
16 present an imminent danger to the health, safety or welfare of the patients
17 of the facility or a substantial probability that death or serious physical
18 harm could result therefrom. A physical condition or one or more
19 practices, means, methods or operations in use in a facility may constitute
20 such a violation. The condition or practice constituting a class I violation
21 shall be abated or eliminated immediately unless a fixed period of time, as
22 stipulated by the secretary, is required for correction. Each day such
23 violation shall exist after expiration of such time shall be considered a
24 subsequent violation.

25 (2) Class II violations are those, other than class I violations, that the
26 secretary determines to have a direct or immediate relationship to the
27 health, safety or welfare of the facility's patients. The citation of a class II
28 violation shall specify the time within which the violation is required to be
29 corrected. Each day such violation shall exist after expiration of such time
30 shall be considered a subsequent violation.

31 (3) Class III violations are those that are not classified as class I or II,
32 or those that are against the best practices as interpreted by the secretary.
33 The citation of a class III violation shall specify the time within which the
34 violation is required to be corrected. Each day such violation shall exist
35 after expiration of such time shall be considered a subsequent violation.

36 *(e) The secretary shall consider the following factors when*
37 *determining the severity of a violation:*

38 (1) Specific conditions and their impact or potential impact on the
39 health, safety or welfare of the facility's patients;

40 (2) efforts by the facility to correct the violation;

41 (3) overall conditions of the facility;

42 (4) the facility's history of compliance; and

43 (5) any other pertinent conditions that may be applicable.

1 (f) Any monetary penalty assessed by the secretary shall be assessed
2 in accordance with the following fine schedule:

3 (1) For class I violations the following number of violations within a
4 24-month period shall result in the corresponding fine amount:

5 (A) One violation, a fine of not less than \$200 and not more than
6 \$1,000;

7 (B) two violations, a fine of not less than \$500 and not more than
8 \$2,000;

9 (C) three violations, a fine of not less than \$1,000 and not more than
10 \$5,000; and

11 (D) four or more violations, a fine of \$5,000;

12 (2) for class II violations the following number of violations within a
13 24-month period shall result in the corresponding fine amount:

14 (A) One violation, a fine of not less than \$100 and not more than
15 \$200;

16 (B) two violations, a fine of not less than \$200 and not more than
17 \$1,000;

18 (C) three violations, a fine of not less than \$500 and not more than
19 \$2,000;

20 (D) four violations, a fine of not less than \$1,000 and not more than
21 \$5,000; and

22 (E) five or more violations, a fine of \$5,000;

23 (3) for class III violations the following number of violations within a
24 24-month period shall result in the corresponding fine amount:

25 (A) One violation, there shall be no fine;

26 (B) two violations, a fine of not less than \$100 and not more than
27 \$500;

28 (C) three violations, a fine of not less than \$200 and not more than
29 \$1,000;

30 (D) four violations, a fine of not less than \$500 and not more than
31 \$2,000;

32 (E) five violations, a fine of not less than \$1,000 and not more than
33 \$5,000; and

34 (F) six or more violations, a fine of \$5,000.

35 New Sec. 18. Except in the case of a medical emergency, as defined
36 in K.S.A. 65-6701, and amendments thereto, an abortion performed when
37 the gestational age of the unborn child is 22 weeks or more shall be
38 performed in a licensed hospital or ambulatory surgical center. All other
39 abortions shall be performed in a licensed hospital, ambulatory surgical
40 center or facility.

41 New Sec. 19. (a) It shall be unlawful to operate a facility within
42 Kansas without possessing a valid license issued annually by the secretary
43 pursuant to section 13, and amendments thereto, with no requirement of

1 culpable mental state.

2 (b) It shall be unlawful for a person to perform or induce an abortion
3 in a facility unless such person is a physician, with clinical privileges at a
4 hospital located within 30 miles of the facility, with no requirement of
5 culpable mental state.

6 (c) Violation of subsection (a) or (b) is a class A nonperson
7 misdemeanor and shall constitute unprofessional conduct under K.S.A. 65-
8 2837, and amendments thereto.

9 New Sec. 20. (a) The secretary shall adopt rules and regulations for
10 the licensure of facilities for the performance of abortions.

11 (b) The secretary shall adopt rules and regulations concerning
12 sanitation, housekeeping, maintenance, staff qualifications, emergency
13 equipment and procedures to provide emergency care, medical records and
14 reporting, laboratory, procedure and recovery rooms, physical plant,
15 quality assurance, infection control, information on and access to patient
16 follow-up care and any other areas of medical practice necessary to carry
17 out the purposes of sections 12 through 22, and amendments thereto, for
18 facilities for the performance of abortions. At a minimum these rules and
19 regulations shall prescribe standards for:

20 (1) Adequate private space that is specifically designated for
21 interviewing, counseling and medical evaluations;

22 (2) dressing rooms for staff and patients;

23 (3) appropriate lavatory areas;

24 (4) areas for preprocedure hand washing;

25 (5) private procedure rooms;

26 (6) adequate lighting and ventilation for abortion procedures;

27 (7) surgical or gynecologic examination tables and other fixed
28 equipment;

29 (8) postprocedure recovery rooms that are supervised, staffed and
30 equipped to meet the patients' needs;

31 (9) emergency exits to accommodate a stretcher or gurney;

32 (10) areas for cleaning and sterilizing instruments; and

33 (11) adequate areas for the secure storage of medical records and
34 necessary equipment and supplies.

35 (c) The secretary shall adopt rules and regulations to prescribe facility
36 supplies and equipment standards, including supplies and equipment, that
37 are required to be immediately available for use or in an emergency. At a
38 minimum these rules and regulations shall:

39 (1) Prescribe required equipment and supplies, including medications,
40 required for the conduct, in an appropriate fashion, of any abortion
41 procedure that the medical staff of the facility anticipates performing and
42 for monitoring the progress of each patient throughout the procedure and
43 recovery period;

1 (2) require that the number or amount of equipment and supplies at
2 the facility is adequate at all times to assure sufficient quantities of clean
3 and sterilized durable equipment and supplies to meet the needs of each
4 patient;

5 (3) prescribe required equipment, supplies and medications that shall
6 be available and ready for immediate use in an emergency and
7 requirements for written protocols and procedures to be followed by staff
8 in an emergency, such as the loss of electrical power;

9 (4) prescribe required equipment and supplies for required laboratory
10 tests and requirements for protocols to calibrate and maintain laboratory
11 equipment at the facility or operated by facility staff;

12 (5) require ultrasound equipment in facilities; and

13 (6) require that all equipment is safe for the patient and the staff,
14 meets applicable federal standards and is checked annually to ensure
15 safety and appropriate calibration.

16 (d) The secretary shall adopt rules and regulations relating to facility
17 personnel. At a minimum these rules and regulations shall require that:

18 (1) The facility designate a medical director of the facility who is
19 licensed to practice medicine and surgery in Kansas;

20 (2) physicians performing surgery in a facility are licensed to practice
21 medicine and surgery in Kansas, demonstrate competence in the procedure
22 involved and are acceptable to the medical director of the facility;

23 (3) a physician with admitting privileges at an accredited hospital
24 located within 30 miles of the facility is available;

25 (4) another individual is present in the room during a pelvic
26 examination or during the abortion procedure and if the physician is male
27 then the other individual shall be female;

28 (5) a registered nurse, nurse practitioner, licensed practical nurse or
29 physician assistant is present and remains at the facility when abortions are
30 performed to provide postoperative monitoring and care until each patient
31 who had an abortion that day is discharged;

32 (6) surgical assistants receive training in the specific responsibilities
33 of the services the surgical assistants provide; and

34 (7) volunteers receive training in the specific responsibilities of the
35 services the volunteers provide, including counseling and patient advocacy
36 as provided in the rules and regulations adopted by the director for
37 different types of volunteers based on their responsibilities.

38 (e) The secretary shall adopt rules and regulations relating to the
39 medical screening and evaluation of each facility patient. At a minimum
40 these rules and regulations shall require:

41 (1) A medical history including the following:

42 (A) Reported allergies to medications, antiseptic solutions or latex;

43 (B) obstetric and gynecologic history; and

- 1 (C) past surgeries;
- 2 (2) a physical examination including a bimanual examination
- 3 estimating uterine size and palpation of the adnexa;
- 4 (3) the appropriate laboratory tests including:
- 5 (A) For an abortion in which an ultrasound examination is not
- 6 performed before the abortion procedure, urine or blood tests for
- 7 pregnancy performed before the abortion procedure;
- 8 (B) a test for anemia as indicated;
- 9 (C) rh typing, unless reliable written documentation of blood type is
- 10 available; and
- 11 (D) other tests as indicated from the physical examination;
- 12 (4) an ultrasound evaluation for all patients who elect to have an
- 13 abortion of an unborn child. The rules shall require that if a person who is
- 14 not a physician performs an ultrasound examination, that person shall have
- 15 documented evidence that the person completed a course in the operation
- 16 of ultrasound equipment as prescribed in rules and regulations. The
- 17 physician or other health care professional shall review, at the request of
- 18 the patient, the ultrasound evaluation results with the patient before the
- 19 abortion procedure is performed, including the probable gestational age of
- 20 the unborn child; and
- 21 (5) that the physician is responsible for estimating the gestational age
- 22 of the unborn child based on the ultrasound examination and obstetric
- 23 standards in keeping with established standards of care regarding the
- 24 estimation of fetal age as defined in rules and regulations and shall verify
- 25 the estimate in the patient's medical history. The physician shall keep
- 26 original prints of each ultrasound examination of a patient in the patient's
- 27 medical history file.
- 28 (f) The secretary shall adopt rules and regulations relating to the
- 29 abortion procedure. At a minimum these rules and regulations shall
- 30 require:
- 31 (1) That medical personnel is available to all patients throughout the
- 32 abortion procedure;
- 33 (2) standards for the safe conduct of abortion procedures that
- 34 conform to obstetric standards in keeping with established standards of
- 35 care regarding the estimation of fetal age as defined in rules and
- 36 regulations;
- 37 (3) appropriate use of local anesthesia, analgesia and sedation if
- 38 ordered by the physician;
- 39 (4) the use of appropriate precautions, such as the establishment of
- 40 intravenous access at least for patients undergoing second or third
- 41 trimester abortions; and
- 42 (5) the use of appropriate monitoring of the vital signs and other
- 43 defined signs and markers of the patient's status throughout the abortion

1 procedure and during the recovery period until the patient's condition is
2 deemed to be stable in the recovery room.

3 (g) The secretary shall adopt rules and regulations that prescribe
4 minimum recovery room standards. At a minimum these rules and
5 regulations shall require that:

6 (1) Immediate postprocedure care consists of observation in a
7 supervised recovery room for as long as the patient's condition warrants;

8 (2) the facility arrange hospitalization if any complication beyond the
9 management capability of the staff occurs or is suspected;

10 (3) a licensed health professional who is trained in the management
11 of the recovery area and is capable of providing basic cardiopulmonary
12 resuscitation and related emergency procedures remains on the premises of
13 the facility until all patients are discharged;

14 (4) a physician or a nurse who is advanced cardiovascular life support
15 certified shall remain on the premises of the facility until all patients are
16 discharged and to facilitate the transfer of emergency cases if
17 hospitalization of the patient or viable unborn child is necessary. A
18 physician or nurse shall be readily accessible and available until the last
19 patient is discharged;

20 (5) a physician or trained staff member discusses Rho(d) immune
21 globulin with each patient for whom it is indicated and assures it is offered
22 to the patient in the immediate postoperative period or that it will be
23 available to her within 72 hours after completion of the abortion
24 procedure. If the patient refuses, a refusal form approved by the
25 department shall be signed by the patient and a witness and included in the
26 medical record;

27 (6) written instructions with regard to postabortion coitus, signs of
28 possible problems and general aftercare are given to each patient. Each
29 patient shall have specific instructions regarding access to medical care for
30 complications, including a telephone number to call for medical
31 emergencies;

32 (7) there is a specified minimum length of time that a patient remains
33 in the recovery room by type of abortion procedure and gestational age of
34 the unborn child;

35 (8) the physician assures that a licensed health professional from the
36 facility makes a good faith effort to contact the patient by telephone, with
37 the patient's consent, within 24 hours after surgery to assess the patient's
38 recovery; and

39 (9) equipment and services are located in the recovery room to
40 provide appropriate emergency resuscitative and life support procedures
41 pending the transfer of the patient or viable unborn child to the hospital.

42 (h) The secretary shall adopt rules and regulations that prescribe
43 standards for follow-up visits. At a minimum these rules and regulations

1 shall require that:

2 (1) A postabortion medical visit is offered and scheduled within four
3 weeks after the abortion, if accepted by the patient, including a medical
4 examination and a review of the results of all laboratory tests;

5 (2) a urine pregnancy test is obtained at the time of the follow-up visit
6 to rule out continuing pregnancy. If a continuing pregnancy is suspected,
7 the patient shall be evaluated and a physician who performs or induces
8 abortions shall be consulted; and

9 (3) the physician performing or inducing the abortion, or a person
10 acting on behalf of the physician performing or inducing the abortion,
11 shall make all reasonable efforts to ensure that the patient returns for a
12 subsequent examination so that the physician can assess the patient's
13 medical condition. A brief description of the efforts made to comply with
14 this requirements, including the date, time and identification by name of
15 the person making such efforts, shall be included in the patient's medical
16 record.

17 (i) The secretary shall adopt rules and regulations to prescribe
18 minimum facility incident reporting. At a minimum these rules and
19 regulations shall require that:

20 (1) The facility records each incident resulting in a patient's or viable
21 unborn child's serious injury occurring at a facility and shall report them in
22 writing to the department within 10 days after the incident. For the
23 purposes of this paragraph, "serious injury" means an injury that occurs at
24 a facility and that creates a serious risk of substantial impairment of a
25 major body organ;

26 (2) if a patient's death occurs, other than an unborn child's death
27 properly reported pursuant to law, the facility shall report such death to the
28 department of health and environment not later than the next department
29 business day; and

30 (3) incident reports are filed with the department of health and
31 environment and appropriate professional regulatory boards.

32 (j) (1) The secretary shall adopt rules and regulations requiring each
33 facility to establish and maintain an internal risk management program
34 which, at a minimum, shall consist of:

35 (A) A system for investigation and analysis of the frequency and
36 causes of reportable incidents within the facility;

37 (B) measures to minimize the occurrence of reportable incidents and
38 the resulting injuries within the facility; and

39 (C) a reporting system based upon the duty of all health care
40 providers staffing the facility and all agents and employees of the facility
41 directly involved in the delivery of health care services to report reportable
42 incidents to the chief of the medical staff, chief administrative officer or
43 risk manager of the facility.

1 (2) As used in this subsection, the term “reportable incident” means
2 an act by a health care provider which:

3 (A) Is or may be below the applicable standard of care and has a
4 reasonable probability of causing injury to a patient; or

5 (B) may be grounds for disciplinary action by the appropriate
6 licensing agency.

7 (k) The rules and regulations adopted by the secretary pursuant to this
8 section do not limit the ability of a physician or other health care
9 professional to advise a patient on any health issue. The secretary
10 periodically shall review and update current practice and technology
11 standards under sections 12 through 22, and amendments thereto, and
12 based on current practice or technology adopt by rules and regulations
13 alternative practice or technology standards found by the secretary to be as
14 effective as those enumerated in sections 12 through 22, and amendments
15 thereto.

16 (l) The provisions of sections 12 through 22, and amendments
17 thereto, and the rules and regulations adopted pursuant thereto shall be in
18 addition to any other laws and rules and regulations which are applicable
19 to facilities defined as clinics under section 12, and amendments thereto.

20 (m) In addition to any other penalty provided by law, whenever in the
21 judgment of the secretary of health and environment any person has
22 engaged, or is about to engage, in any acts or practices which constitute, or
23 will constitute, a violation of this section, or any rules and regulations
24 adopted under the provisions of this section, the secretary shall make
25 application to any court of competent jurisdiction for an order enjoining
26 such acts or practices, and upon a showing by the secretary that such
27 person has engaged, or is about to engage, in any such acts or practices, an
28 injunction, restraining order or such other order as may be appropriate
29 shall be granted by such court without bond.

30 New Sec. 21. (a) No abortion shall be performed or induced by any
31 person other than a physician licensed to practice medicine in the state of
32 Kansas. When RU-486 (mifepristone) or any drug is used for the purpose
33 of inducing an abortion, the drug must be administered in the same room
34 and in the physical presence of the physician who prescribed, dispensed or
35 otherwise provided the drug to the patient.

36 (b) The physician inducing the abortion, or a person acting on behalf
37 of the physician inducing the abortion, shall make all reasonable efforts to
38 ensure that the patient returns 12 to 18 days after the administration or use
39 of such drug for a subsequent examination so that the physician can
40 confirm that the pregnancy has been terminated and assess the patient's
41 medical condition. A brief description of the efforts made to comply with
42 this subsection, including the date, time and identification by name of the
43 person making such efforts, shall be included in the patient's medical

1 record.

2 (c) A violation of this section shall constitute unprofessional conduct
3 under K.S.A. 65-2837, and amendments thereto.

4 New Sec. 22. Nothing in sections 12 through 21, and amendments
5 thereto, shall be construed as creating or recognizing a right to abortion.
6 Notwithstanding any provision of this section, a person shall not perform
7 an abortion that is prohibited by law.

8 New Sec. 23. The provisions of sections 12 through 22, and
9 amendments thereto, are declared to be severable, and if any provision, or
10 the application thereof, to any person shall be held invalid, such invalidity
11 shall not affect the validity of the remaining provisions of sections 12
12 through 22, and amendments thereto.

13 Sec. 24. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and 65-
14 6721 and K.S.A. 2010 Supp. 65-6709 and 65-6710 are hereby repealed.

15 Sec. 25. This act shall take effect and be in force from and after its
16 publication in the Kansas register.