

SENATE BILL No. 142

By Senators Pilcher-Cook, Abrams, Apple, Arpke, Donovan, Fitzgerald, Holmes, Kerschen, Knox, LaTurner, Love, Lynn, Masterson, ODonnell, Olson, Ostmeyer, Powell, Pyle and Smith

2-6

1 AN ACT concerning abortion; relating to civil actions related to the
2 performance of abortions; amending K.S.A. 60-1901 and repealing the
3 existing section.
4

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

6 New Section 1. (a) No civil action may be commenced in any court
7 for a claim of wrongful life or wrongful birth, and no damages may be
8 recovered in any civil action for any physical condition of a minor that
9 existed at the time of such minor's birth if the damages sought arise out of
10 a claim that a person's action or omission contributed to such minor's
11 mother not obtaining an abortion.

12 (b) Nothing in this section shall be deemed to create any new cause of
13 action, nor preclude any otherwise proper cause of action based on a claim
14 that, but for a person's wrongful action or omission, the death or physical
15 injury of the mother would not have occurred, or the handicap, disease or
16 disability of an individual prior to birth would have been prevented, cured
17 or ameliorated in a manner that preserved the health and life of such
18 individual.

19 (c) If any provision or clause of this act or application thereof to any
20 person or circumstances is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect
22 without the invalid provision or application, and to this end the provisions
23 of this act are declared to be severable.

24 (d) As used in this section:

25 (1) "Abortion" has the same meaning as such term is defined in
26 K.S.A. 65-6701, and amendments thereto.

27 (2) "Claim of wrongful birth" means a cause of action brought by a
28 parent, legal guardian or other individual legally required to provide for
29 the support of a minor, which seeks damages, whether economic or
30 noneconomic, as a result of a physical condition of such minor that existed
31 at the time of such minor's birth, and which is based on a claim that a
32 person's action or omission contributed to such minor's mother not
33 obtaining an abortion.

34 (3) "Claim of wrongful life" means a cause of action brought by, or

1 on behalf of, a minor, which seeks damages, whether economic or
2 noneconomic, for such minor as a result of a physical condition of such
3 minor that existed at the time of such minor's birth, and which is based on
4 a claim that a person's action or omission contributed to such minor's
5 mother not obtaining an abortion.

6 Sec. 2. K.S.A. 60-1901 is hereby amended to read as follows: 60-
7 1901. (a) If the death of a person is caused by the wrongful act or omission
8 of another, an action may be maintained for the damages resulting
9 therefrom if the former might have maintained the action had ~~he or she~~
10 *such person* lived, in accordance with the provisions of this article, against
11 the wrongdoer, or ~~his or her~~ *such wrongdoer's* personal representative if he
12 ~~or she~~ *such wrongdoer* is deceased.

13 (b) *As used in article 19 of chapter 60 of the Kansas Statutes*
14 *Annotated, and amendments thereto, the term "person" includes an unborn*
15 *child.*

16 (c) *As used in this section, the term "unborn child" means a living*
17 *individual organism of the species homo sapiens, in utero, at any stage of*
18 *gestation from fertilization to birth.*

19 (d) *The provisions of this section shall not apply to a wrongful death*
20 *action if the death is of an unborn child by means of:*

21 (1) *Any act committed by the mother of the unborn child;*

22 (2) *any lawful medical procedure performed by a physician or other*
23 *licensed medical professional at the request of the pregnant woman or her*
24 *legal guardian;*

25 (3) *the lawful dispensation or administration of lawfully prescribed*
26 *medication; or*

27 (4) *a legal abortion.*

28 (e) *If any provision or clause of this act or application thereof to any*
29 *person or circumstances is held invalid, such invalidity shall not affect*
30 *other provisions or applications of the act which can be given effect*
31 *without the invalid provision or application, and to this end the provisions*
32 *of this act are declared to be severable.*

33 Sec. 3. K.S.A. 60-1901 is hereby repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the statute book.