

SENATE BILL No. 95

AN ACT concerning abortion; creating the Kansas unborn child protection from dismemberment abortion act.

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

Section 1. The provisions of sections 1 through 9, and amendments thereto, shall be known and may be cited as the Kansas unborn child protection from dismemberment abortion act.

Sec. 2. As used in sections 1 through 9, and amendments thereto:

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

(b) (1) "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.

(2) The term "dismemberment abortion" does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion, as defined in subsection (b)(1), is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(c) "Knowingly" shall have the same meaning attributed to such term in K.S.A. 2014 Supp. 21-5202, and amendments thereto.

(d) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Sec. 3. (a) No person shall perform, or attempt to perform, a dismemberment abortion on an unborn child unless: (1) The dismemberment abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(b) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician, but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be liable for performing or attempting to perform a dismemberment abortion.

Sec. 4. The attorney general or any district or county attorney with appropriate jurisdiction may bring a cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of section 3, and amendments thereto. Any injunctive relief ordered pursuant to an action filed under this section shall prohibit the defendant from performing or attempting to perform any dismemberment abortions in violation of section 3, and amendments thereto.

Sec. 5. (a) A cause of action for civil damages against a person who has performed a dismemberment abortion in violation of section 3, and

amendments thereto, may be maintained by the following persons, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct:

(1) A woman upon whom a dismemberment abortion has been performed in violation of section 3, and amendments thereto;

(2) the father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(3) the parents or custodial guardians of the woman, if the woman has not attained the age of 18 years at the time of the abortion or has died as a result of the abortion.

(b) Damages awarded in such an action shall include:

(1) Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion;

(2) statutory damages equal to three times the cost of the dismemberment abortion;

(3) injunctive relief; and

(4) reasonable attorney fees awarded in accordance with subsection (d).

(d) (1) If judgment is rendered in favor of the plaintiff in an action brought under section 4, and amendments thereto, or this section, the court shall award reasonable attorney fees to the plaintiff in addition to any other relief that is awarded.

(2) If judgment is rendered in favor of the defendant in an action brought under section 4, and amendments thereto, or this section, and the court finds that the plaintiff's action was frivolous and brought in bad faith, the court shall award reasonable attorney fees to the defendant in addition to any other relief that is awarded.

(3) No attorney fees shall be assessed against the woman upon whom a dismemberment abortion was performed or attempted to be performed except in accordance with paragraph (2).

Sec. 6. Upon a first conviction of a violation of section 3, and amendments thereto, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of section 3, and amendments thereto, a person shall be guilty of a severity level 10, person felony.

Sec. 7. In every civil, criminal or administrative proceeding or action arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp. 65-6724 or section 3, and amendments thereto, the court shall rule whether the anonymity of any woman upon whom an unlawful abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that such woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an unlawful abortion has been performed or attempted to be performed, anyone other than a public official who brings an action arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp. 65-6724 or section 3, and amendments thereto, shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Sec. 8. Nothing in sections 1 through 9, and amendments thereto, shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

Sec. 9. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.