

1 **As Amended by House Committee**

2 *Session of 2002*

3
4 **HOUSE BILL No. 3000**

5
6 By Committee on Federal and State Affairs

7
8 2-20

9
10 AN ACT concerning performance of abortions on minors; amending
11 K.S.A. 65-6704 and K.S.A. 2001 Supp. 65-6701 and 65-6705 and re-
12 pealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2001 Supp. 65-6701 is hereby amended to read as
16 follows: 65-6701. As used in this act:

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

22 (b) (1) "Counselor" means a person who is: ~~(1)~~ (A) Licensed to practice
23 medicine and surgery; ~~(2)~~ (B) licensed to practice psychology; ~~(3)~~ (C)
24 licensed to practice professional or practical nursing; ~~(4)~~ (D) registered
25 to practice professional counseling; ~~(5)~~ (E) licensed as a social worker; ~~(6)~~
26 (F) the holder of a master's or doctor's degree from an accredited grad-
27 uate school of social work; ~~(7)~~ (G) registered to practice marriage and
28 family therapy; ~~(8)~~ (H) a licensed physician assistant; or ~~(9)~~ (I) a currently
29 ordained member of the clergy or religious authority of any religious
30 denomination or society.

31 (2) Counselor does not include: (A) The physician who performs or
32 induces the abortion; (B) ~~or~~ a physician or other person who assists in
33 performing or inducing the abortion; or (C) *any person legally or finan-*
34 *cially affiliated with the physician described in (A) or (B).*

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

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

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

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

1 (g) “Physician” means a person licensed to practice medicine and
2 surgery in this state.

3 (h) “Pregnant” or “pregnancy” means that female reproductive con-
4 dition of having a fetus in the mother’s body.

5 (i) “Qualified person” means an agent of the physician who is a psy-
6 chologist, licensed social worker, registered professional counselor, reg-
7 istered nurse or physician.

8 (j) “Unemancipated minor” means any minor who has never been:
9 (1) Married; or (2) freed, by court order or otherwise, from the care,
10 custody and control of the minor’s parents.

11 (k) “Viable” means that stage of gestation when, in the best medical
12 judgment of the attending physician, the fetus is capable of sustained
13 survival outside the uterus without the application of extraordinary med-
14 ical means.

15 Sec. 2. K.S.A. 65-6704 is hereby amended to read as follows: 65-
16 6704. (a) Before the performance of an abortion upon a minor, a coun-
17 selor shall provide pregnancy information and counseling in a manner
18 that can be understood by the minor and allows opportunity for the mi-
19 nor’s questions to be addressed. A parent or guardian, or a person 21 or
20 more years of age who is not associated with the abortion provider and
21 who has a personal interest in the minor’s well-being, shall accompany
22 the minor and be involved in the minor’s decision-making process re-
23 garding whether to have an abortion. Such information and counseling
24 shall include:

25 ~~(1) The alternatives available to the minor, including abortion, adop-~~
26 ~~tion and other alternatives to abortion;~~

27 ~~—(2) an explanation that the minor may change a decision to have an~~
28 ~~abortion at any time before the abortion is performed or may decide to~~
29 ~~have an abortion at any time while an abortion may be legally performed~~
30 *All information required to be provided pursuant to the woman’s-right-*
31 *to-know act;*

32 ~~(3)~~ (2) make available to the minor information on agencies available
33 to assist the minor and agencies from which birth control information is
34 available;

35 ~~(4)~~ (3) discussion of the possibility of involving the minor’s parent or
36 parents, other adult family members or guardian in the minor’s decision-
37 making; and

38 ~~(5)~~ (4) information regarding the provisions of K.S.A. 65-6705, *and*
39 *amendments thereto*, and the minor’s rights under such provisions.

40 (b) After the performance of an abortion on a minor, a counselor shall
41 provide counseling to assist the minor in adjusting to any post-abortion
42 problems that the minor may have.

43 (c) After the counselor provides information and counseling to a mi-

1 nor as required by this section, the counselor shall have the minor sign
2 and date a statement setting forth the requirements of subsections (a)
3 and (b) and declaring that the minor has received information and coun-
4 seling in accordance with those requirements.

5 (d) The counselor shall also sign and date the statement and shall
6 include the counselor's business address and business telephone number.
7 The counselor shall keep a copy for the minor's medical record and shall
8 give the form to the minor or, if the minor requests ~~and if the counselor~~
9 ~~is not the attending physician~~, transmit the statement to the minor's at-
10 tending physician. Such medical record shall be maintained as otherwise
11 provided by law.

12 (e) ~~The provision by a counselor of written materials which contain~~
13 ~~information and counseling meeting the requirements of subsections (a)~~
14 ~~and (b) and which is signed by the minor shall be presumed to be evidence~~
15 ~~of compliance with the requirements of this section.~~

16 ~~—(f)—~~The requirements of subsection (a) shall not apply when *the at-*
17 *tending physician certifies that*, in the best medical judgment of the at-
18 tending physician based on the facts of the case, ~~an emergency exists that~~
19 ~~threatens the health, safety or well-being of the minor as to require an~~
20 ~~abortion~~ *the abortion is necessary to prevent the minor's death and there*
21 *is insufficient time to provide the required counseling*. A physician who
22 does not comply with the requirements of this section by reason of this
23 exception shall state in the medical record of the abortion the medical
24 indications on which the physician's judgment was based.

25 (f) *It is a class A person misdemeanor for any person to intentionally*
26 *perform an abortion with knowledge that, or with reckless disregard as*
27 *to whether, the person upon whom the abortion is to be performed is an*
28 *unemancipated minor unless requirements of subsection (d) have first*
29 *been met.*

30 Sec. 3. K.S.A. 2001 Supp. 65-6705 is hereby amended to read as
31 follows: 65-6705. (a) Before a person performs an abortion upon an une-
32 emancipated minor, the person or the person's agent must give actual
33 notice of the intent to perform such abortion to one of the minor's parents
34 or the minor's legal guardian ~~or must have written documentation that~~
35 ~~such notice has been given~~, *in person or by certified mail, return receipt*
36 *requested, and must have written proof of such notice* unless, after re-
37 ceiving counseling as provided by subsection (a) of K.S.A. 65-6704, *and*
38 *amendments thereto*, the minor objects to such notice being given. If the
39 minor so objects, the minor may petition, on her own behalf or by an
40 adult of her choice, the district court of any county of this state for a
41 waiver of the notice requirement of this subsection. If the minor so de-
42 sires, the counselor who counseled the minor as required by K.S.A. 65-
43 6704, *and amendments thereto*, shall notify the court and the court shall

1 ensure that the minor or the adult petitioning on the minor's behalf is
2 given assistance in preparing and filing the application.

3 (b) The minor may participate in proceedings in the court on the
4 minor's own behalf or through the adult petitioning on the minor's behalf.
5 The court shall provide a court-appointed counsel to represent the minor
6 at no cost to the minor.

7 (c) Court proceedings under this section shall be anonymous and the
8 court shall ensure that the minor's identity is kept confidential. The court
9 shall order that ~~a confidential the record of the evidence in the a confi-~~
10 **dential record of the evidence in the** proceeding be maintained ~~in a~~
11 ~~manner that prevents identification of the minor.~~ All persons shall be
12 excluded from hearings under this section except the minor, her attorney
13 and such other persons whose presence is specifically requested by the
14 applicant or her attorney.

15 (d) Notice shall be waived if the court finds by a preponderance of
16 the evidence that either: (1) The minor is mature and well-informed
17 enough to make the abortion decision on her own; or (2) notification of
18 a person specified in subsection (a) would not be in the best interest of
19 the minor.

20 (e) A court that conducts proceedings under this section shall issue
21 written and specific factual findings and legal conclusions supporting its
22 decision as follows:

23 (1) Granting the minor's application for waiver of notice pursuant to
24 this section, if the court finds that the minor is mature and well-enough
25 informed to make the abortion decision without notice to a person spec-
26 ified in subsection (a);

27 (2) granting the minor's application for waiver if the court finds that
28 the minor is immature but that notification of a person specified in sub-
29 section (a) would not be in the minor's best interest; or

30 (3) denying the application if the court finds that the minor is im-
31 mature and that waiver of notification of a person specified in subsection
32 (a) would not be in the minor's best interest.

33 (f) The court shall give proceedings under this section such prece-
34 dence over other pending matters as necessary to ensure that the court
35 may reach a decision promptly. ~~For the purposes of making an application~~
36 ~~for waiver pursuant to this section, a minor shall be afforded access to~~
37 ~~the court at all times, 24 hours a day, seven days a week.~~ The court shall
38 issue a written order which shall be issued immediately to the minor, or
39 her attorney or other individual designated by the minor to receive the
40 order. ~~If the court fails to rule within 48 hours, excluding Saturdays and~~
41 ~~Sundays, of the time of the filing of the minor's application, the appli-~~
42 ~~cation shall be deemed granted. **The court shall be required to rule**~~
43 **within 48 hours, excluding Saturdays, Sundays and legal holidays,**

1 **after the time of the filing of the minor's application.**

2 (g) An expedited anonymous appeal shall be available to any minor.
3 The record on appeal shall be completed and the appeal shall be per-
4 fected within five days from the filing of the notice to appeal.

5 (h) The supreme court shall promulgate any rules it finds are nec-
6 essary to ensure that proceedings under this act are handled in an expe-
7 ditious and anonymous manner.

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

10 (j) (1) No notice shall be required under this section if:

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

13 (B) *the attending physician certifies that, in the best medical judg-*
14 *ment of the attending physician based on the facts of the case, an emer-*
15 *gency exists that threatens the health, safety or well-being of the minor*
16 *as to require an abortion the abortion is necessary to prevent the minor's*
17 *death and there is insufficient time to provide the required notice; or*

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

21 (2) A physician who does not comply with the provisions of this sec-
22 tion by reason of the exception of subsection (j)(1)(A) must inform the
23 minor that the physician is required by law to report the sexual abuse to
24 the department of social and rehabilitation services. A physician who does
25 not comply with the requirements of this section by reason of the excep-
26 tion of subsection (j)(1)(B) shall state in the medical record of the abortion
27 the medical indications on which the physician's judgment was based.

28 (k) Any person who intentionally performs an abortion with knowl-
29 edge that, or with reckless disregard as to whether, the person upon
30 whom the abortion is to be performed is an unemancipated minor, and
31 who intentionally and knowingly fails to conform to any requirement of
32 this section, is guilty of a class A person misdemeanor.

33 (l) *A parent or legal guardian of an unemancipated minor may main-*
34 *tain an action for compensatory and exemplary civil damages against any*
35 *person who intentionally performs an abortion on such minor with knowl-*
36 *edge that, or with reckless disregard as to whether, the person upon whom*
37 *the abortion is to be performed is an unemancipated minor, and who*
38 *intentionally and knowingly fails to conform to any requirement of this*
39 *section.*

40 (m) Except as necessary for the conduct of a proceeding pursuant to
41 this section, it is a class B person misdemeanor for any individual or entity
42 to willfully or knowingly: (1) *Disclose or permit or encourage disclosure*
43 *of the identity of a minor petitioning the court pursuant to this section or*

1 ~~to disclose any court record relating to such proceeding or disclose any~~
2 **court record relating to such proceeding**; or (2) permit or encourage
3 disclosure of such minor's identity ~~or such record or such record.~~

4 (n) *On or before the 15th day following the end of each fiscal year,*
5 ~~the clerk of the district court~~ **office of judicial administration** shall file
6 with the secretary of health and environment a written report of: (1) The
7 number of proceedings filed in ~~such court~~ **district courts** pursuant to
8 this section during such fiscal year; and (2) the number of such proceed-
9 ings in which the court granted the application for waiver of notice and
10 the number of such proceedings in which the court denied the application
11 for waiver of notice. The department shall publish as part of the depart-
12 ment's annual preliminary report on abortions in Kansas and in the Kan-
13 sas annual summary of vital statistics an analysis of reports filed pursuant
14 to this subsection during the calendar year.

15 Sec. 4. K.S.A. 65-6704 and K.S.A. 2001 Supp. 65-6701 and 65-6705
16 are hereby repealed.

17 Sec. 5. This act shall take effect and be in force from and after its
18 publication in the statute book.

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