

SENATE BILL No. 155

By Senator Journey

2-1

9 AN ACT concerning abortion; amending K.S.A. 65-6703 and repealing
10 the existing section.

11

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

13 Section 1. K.S.A. 65-6703 is hereby amended to read as follows: 65-
14 6703. (a) *An abortion may be performed only by a physician. An abortion*
15 *of a fetus aged 16 weeks or more may be performed only at an ambulatory*
16 *surgical center or a hospital.*

17 (b) No person shall perform or induce an abortion when the fetus is
18 viable unless such person is a physician and has a documented referral
19 from another physician not legally or financially affiliated with the phy-
20 sician performing or inducing the abortion and both physicians determine
21 that: (1) The abortion is necessary to preserve the life of the pregnant
22 woman; or (2) a continuation of the pregnancy will cause a substantial
23 and irreversible impairment of a major bodily function of the pregnant
24 woman.

25 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to per-
26 forming an abortion upon a woman, the physician shall determine the
27 gestational age of the fetus according to accepted obstetrical and neonatal
28 practice and standards applied by physicians in the same or similar cir-
29 cumstances. If the physician determines the gestational age is less than
30 22 weeks, the physician shall document as part of the medical records of
31 the woman the basis for the determination.

32 (2) If the physician determines the gestational age of the fetus is 22
33 or more weeks, prior to performing an abortion upon the woman the
34 physician shall determine if the fetus is viable by using and exercising
35 that degree of care, skill and proficiency commonly exercised by the or-
36 dinary skillful, careful and prudent physician in the same or similar cir-
37 cumstances. In making this determination of viability, the physician shall
38 perform or cause to be performed such medical examinations and tests
39 as are necessary to make a finding of the gestational age of the fetus and
40 shall enter such findings and determinations of viability in the medical
41 record of the woman.

42 (3) If the physician determines the gestational age of a fetus is 22 or
43 more weeks, and determines that the fetus is not viable and performs an

1 abortion on the woman, the physician shall report such determinations
2 and the reasons for such determinations in writing to the medical care
3 facility in which the abortion is performed for inclusion in the report of
4 the medical care facility to the secretary of health and environment under
5 K.S.A. 65-445 and amendments thereto or if the abortion is not per-
6 formed in a medical care facility, the physician shall report such deter-
7 minations and the reasons for such determinations in writing to the sec-
8 retary of health and environment as part of the written report made by
9 the physician to the secretary of health and environment under K.S.A.
10 65-445 and amendments thereto.

11 (4) If the physician who is to perform the abortion determines the
12 gestational age of a fetus is 22 or more weeks, and determines that the
13 fetus is viable, both physicians under subsection ~~(a)~~ (b) determine in ac-
14 cordance with the provisions of subsection ~~(a)~~ (b) that an abortion is
15 necessary to preserve the life of the pregnant woman or that a continu-
16 ation of the pregnancy will cause a substantial and irreversible impairment
17 of a major bodily function of the pregnant woman and the physician per-
18 forms an abortion on the woman, the physician who performs the abortion
19 shall report such determinations, the reasons for such determinations and
20 the basis for the determination that an abortion is necessary to preserve
21 the life of the pregnant woman or that a continuation of the pregnancy
22 will cause a substantial and irreversible impairment of a major bodily
23 function of the pregnant woman in writing to the medical care facility in
24 which the abortion is performed for inclusion in the report of the medical
25 care facility to the secretary of health and environment under K.S.A. 65-
26 445 and amendments thereto or if the abortion is not performed in a
27 medical care facility, the physician who performs the abortion shall report
28 such determinations, the reasons for such determinations and the basis
29 for the determination that an abortion is necessary to preserve the life of
30 the pregnant woman or that a continuation of the pregnancy will cause a
31 substantial and irreversible impairment of a major bodily function of the
32 pregnant woman in writing to the secretary of health and environment as
33 part of the written report made by the physician to the secretary of health
34 and environment under K.S.A. 65-445 and amendments thereto.

35 (5) The physician shall retain the medical records required to be kept
36 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than
37 five years and shall retain a copy of the written reports required under
38 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than five
39 years.

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

43 ~~(d)~~ (e) Nothing in this section shall be construed to create a right to

1 an abortion. Notwithstanding any provision of this section, a person shall
2 not perform an abortion that is prohibited by law.

3 ~~(e)~~ (f) As used in this section, “viable” means that stage of fetal de-
4 velopment when it is the physician’s judgment according to accepted ob-
5 stetrical or neonatal standards of care and practice applied by physicians
6 in the same or similar circumstances that there is a reasonable probability
7 that the life of the child can be continued indefinitely outside the mother’s
8 womb with natural or artificial life-supportive measures.

9 ~~(f)~~ (g) If any provision of this section is held to be invalid or uncon-
10 stitutional, it shall be conclusively presumed that the legislature would
11 have enacted the remainder of this section without such invalid or un-
12 constitutional provision.

13 ~~(g)~~ (h) Upon a first conviction of a violation of this section, a person
14 shall be guilty of a class A nonperson misdemeanor. Upon a second or
15 subsequent conviction of a violation of this section, a person shall be guilty
16 of a severity level 10, nonperson felony.

17 Sec. 2. K.S.A. 65-6703 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after its
19 publication in the statute book.