

## HOUSE BILL No. 2736

By Representatives Kinzer, Beamer, Brown, Brunk, Burgess, Colyer, Crum, Dahl, Faber, George, Goico, Grange, Henry, Hodge, M. Holmes, Huebert, Kelley, Kelsey, Kiegerl, Knox, Landwehr, Mast, Masterson, McLeland, Merrick, Jim Morrison, Judy Morrison, Myers, O'Neal, Olson, Otto, Pauls, Peck, Powers, Rhoades, Ruff, Schroeder, Vickrey, Watkins, Williams and B. Wolf

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14 AN ACT concerning abortion; providing civil remedies, including in-  
15 junctive relief; amending K.S.A. 65-445, 65-2836, 65-6703, 65-6704,  
16 65-6705, 65-6709 and 65-6710 and repealing the existing sections; also  
17 repealing K.S.A. 65-6713.  
18

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

20 Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-  
21 445. (a) Every medical care facility shall keep written records of all preg-  
22 nancies which are lawfully terminated within such medical care facility  
23 and shall annually submit a written report thereon to the secretary of  
24 health and environment in the manner and form prescribed by the sec-  
25 retary. Every person licensed to practice medicine and surgery shall keep  
26 a record of all pregnancies which are lawfully terminated by such person  
27 in a location other than a medical care facility and shall annually submit  
28 a written report thereon to the secretary of health and environment in  
29 the manner and form prescribed by the secretary.

30 (b) Each report required by this section shall include the number of  
31 pregnancies terminated during the period of time covered by the report,  
32 the type of medical facility in which the pregnancy was terminated, in-  
33 formation required to be reported under K.S.A. 65-6703, and amend-  
34 ments thereto, if applicable to the pregnancy terminated, and such other  
35 information as may be required by the secretary of health and environ-  
36 ment, but the report shall not include the names of the persons whose  
37 pregnancies were so terminated.

38 (c) Information obtained by the secretary of health and environment  
39 under this section shall be confidential and shall not be disclosed in a  
40 manner that would reveal the identity of any person licensed to practice  
41 medicine and surgery who submits a report to the secretary under this  
42 section or the identity of any medical care facility which submits a report  
43 to the secretary under this section, except that such information, including

1 information identifying such persons and facilities may be disclosed to  
2 the state board of healing arts upon request of the board for disciplinary  
3 action conducted by the board and may be disclosed to the attorney gen-  
4 eral *or any district or county attorney in this state* upon a showing that  
5 a reasonable cause exists to believe that a violation of this act has occurred.  
6 Any information disclosed to the state board of healing arts ~~or~~ the attor-  
7 ney general *or any district or county attorney* pursuant to this subsection  
8 shall be used solely for the purposes of a disciplinary action or criminal  
9 proceeding. Except as otherwise provided in this subsection, information  
10 obtained by the secretary under this section may be used only for statisti-  
11 cal purposes and such information shall not be released in a manner  
12 which would identify any county or other area of this state in which the  
13 termination of the pregnancy occurred. A violation of this subsection (c)  
14 is a class A nonperson misdemeanor.

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

21 (e) For the purpose of maintaining confidentiality as provided by sub-  
22 sections (c) and (d), reports of terminations of pregnancies required by  
23 this section shall identify the person or facility submitting such reports  
24 only by confidential code number assigned by the secretary of health and  
25 environment to such person or facility and the department of health and  
26 environment shall maintain such reports only by such number.

27 (f) *The annual public report on abortions performed in Kansas issued*  
28 *by the secretary of health and environment shall contain the information*  
29 *required to be reported by this section to the extent such information is*  
30 *not deemed confidential by this section. If the secretary of health and*  
31 *environment fails to issue the public report containing the information*  
32 *required by this section, any group of 10 or more citizens of this state*  
33 *may seek an injunction in a court of competent jurisdiction against the*  
34 *secretary of health and environment requiring that a complete report*  
35 *compliant with applicable law be issued within a period of time set by*  
36 *court order. Failure to abide by such an injunction shall subject the sec-*  
37 *retary to sanctions for civil contempt.*

38 (g) *The department of social and rehabilitation services shall prepare*  
39 *and publish an annual report on the number of reports of child sexual*  
40 *abuse received by the department from abortion providers. Such report*  
41 *shall be categorized by the age of the victim and the month the report*  
42 *was submitted to the department. The name of the victim and any other*  
43 *identifying information shall be kept confidential by the department and*

1 *shall not be released as part of the public report.*

2 Sec. 2. K.S.A. 65-2836 is hereby amended to read as follows: 65-  
3 2836. A licensee's license may be revoked, suspended or limited, or the  
4 licensee may be publicly or privately censured, or an application for a  
5 license or for reinstatement of a license may be denied upon a finding of  
6 the existence of any of the following grounds:

7 (a) The licensee has committed fraud or misrepresentation in apply-  
8 ing for or securing an original, renewal or reinstated license.

9 (b) The licensee has committed an act of unprofessional or dishon-  
10 orable conduct or professional incompetency.

11 (c) The licensee has been convicted of a felony or class A misde-  
12 meanor, whether or not related to the practice of the healing arts. The  
13 board shall revoke a licensee's license following conviction of a felony  
14 occurring after July 1, 2000, *or a misdemeanor under K.S.A. 65-6703, and*  
15 *amendments thereto, after July 1, 2008*, unless a  $\frac{2}{3}$  majority of the board  
16 members present and voting determine by clear and convincing evidence  
17 that such licensee will not pose a threat to the public in such person's  
18 capacity as a licensee and that such person has been sufficiently rehabil-  
19 itated to warrant the public trust. In the case of a person who has been  
20 convicted of a felony and who applies for an original license or to reinstate  
21 a canceled license, the application for a license shall be denied unless a  
22  $\frac{2}{3}$  majority of the board members present and voting on such application  
23 determine by clear and convincing evidence that such person will not  
24 pose a threat to the public in such person's capacity as a licensee and that  
25 such person has been sufficiently rehabilitated to warrant the public trust.

26 (d) The licensee has used fraudulent or false advertisements.

27 (e) The licensee is addicted to or has distributed intoxicating liquors  
28 or drugs for any other than lawful purposes.

29 (f) The licensee has willfully or repeatedly violated this act, the phar-  
30 macy act of the state of Kansas or the uniform controlled substances act,  
31 or any rules and regulations adopted pursuant thereto, or any rules and  
32 regulations of the secretary of health and environment which are relevant  
33 to the practice of the healing arts.

34 (g) The licensee has unlawfully invaded the field of practice of any  
35 branch of the healing arts in which the licensee is not licensed to practice.

36 (h) The licensee has engaged in the practice of the healing arts under  
37 a false or assumed name, or the impersonation of another practitioner.  
38 The provisions of this subsection relating to an assumed name shall not  
39 apply to licensees practicing under a professional corporation or other  
40 legal entity duly authorized to provide such professional services in the  
41 state of Kansas.

42 (i) The licensee has the inability to practice the healing arts with rea-  
43 sonable skill and safety to patients by reason of physical or mental illness,

1 or condition or use of alcohol, drugs or controlled substances. In deter-  
2 mining whether or not such inability exists, the board, upon reasonable  
3 suspicion of such inability, shall have authority to compel a licensee to  
4 submit to mental or physical examination or drug screen, or any combi-  
5 nation thereof, by such persons as the board may designate either in the  
6 course of an investigation or a disciplinary proceeding. To determine  
7 whether reasonable suspicion of such inability exists, the investigative  
8 information shall be presented to the board as a whole, to a review com-  
9 mittee of professional peers of the licensee established pursuant to K.S.A.  
10 65-2840c, and amendments thereto, or to a committee consisting of the  
11 officers of the board elected pursuant to K.S.A. 65-2818, and amend-  
12 ments thereto, and the executive director appointed pursuant to K.S.A.  
13 65-2878, and amendments thereto, or to a presiding officer authorized  
14 pursuant to K.S.A. 77-514, and amendments thereto. The determination  
15 shall be made by a majority vote of the entity which reviewed the inves-  
16 tigative information. Information submitted to the board as a whole or a  
17 review committee of peers or a committee of the officers and executive  
18 director of the board and all reports, findings and other records shall be  
19 confidential and not subject to discovery by or release to any person or  
20 entity. The licensee shall submit to the board a release of information  
21 authorizing the board to obtain a report of such examination or drug  
22 screen, or both. A person affected by this subsection shall be offered, at  
23 reasonable intervals, an opportunity to demonstrate that such person can  
24 resume the competent practice of the healing arts with reasonable skill  
25 and safety to patients. For the purpose of this subsection, every person  
26 licensed to practice the healing arts and who shall accept the privilege to  
27 practice the healing arts in this state by so practicing or by the making  
28 and filing of a renewal to practice the healing arts in this state shall be  
29 deemed to have consented to submit to a mental or physical examination  
30 or a drug screen, or any combination thereof, when directed in writing  
31 by the board and further to have waived all objections to the admissibility  
32 of the testimony, drug screen or examination report of the person con-  
33 ducting such examination or drug screen, or both, at any proceeding or  
34 hearing before the board on the ground that such testimony or exami-  
35 nation or drug screen report constitutes a privileged communication. In  
36 any proceeding by the board pursuant to the provisions of this subsection,  
37 the record of such board proceedings involving the mental and physical  
38 examination or drug screen, or any combination thereof, shall not be used  
39 in any other administrative or judicial proceeding.

40 (j) The licensee has had a license to practice the healing arts revoked,  
41 suspended or limited, has been censured or has had other disciplinary  
42 action taken, or an application for a license denied, by the proper licensing  
43 authority of another state, territory, District of Columbia, or other coun-

1 try, a certified copy of the record of the action of the other jurisdiction  
2 being conclusive evidence thereof.

3 (k) The licensee has violated any lawful rule and regulation promul-  
4 gated by the board or violated any lawful order or directive of the board  
5 previously entered by the board.

6 (l) The licensee has failed to report or reveal the knowledge required  
7 to be reported or revealed under K.S.A. 65-28,122, and amendments  
8 thereto.

9 (m) The licensee, if licensed to practice medicine and surgery, has  
10 failed to inform in writing a patient suffering from any form of abnor-  
11 mality of the breast tissue for which surgery is a recommended form of  
12 treatment, of alternative methods of treatment recognized by licensees  
13 of the same profession in the same or similar communities as being ac-  
14 ceptable under like conditions and circumstances.

15 (n) The licensee has cheated on or attempted to subvert the validity  
16 of the examination for a license.

17 (o) The licensee has been found to be mentally ill, disabled, not guilty  
18 by reason of insanity, not guilty because the licensee suffers from a mental  
19 disease or defect or incompetent to stand trial by a court of competent  
20 jurisdiction.

21 (p) The licensee has prescribed, sold, administered, distributed or  
22 given a controlled substance to any person for other than medically ac-  
23 cepted or lawful purposes.

24 (q) The licensee has violated a federal law or regulation relating to  
25 controlled substances.

26 (r) The licensee has failed to furnish the board, or its investigators or  
27 representatives, any information legally requested by the board.

28 (s) Sanctions or disciplinary actions have been taken against the li-  
29 censee by a peer review committee, health care facility, a governmental  
30 agency or department or a professional association or society for acts or  
31 conduct similar to acts or conduct which would constitute grounds for  
32 disciplinary action under this section.

33 (t) The licensee has failed to report to the board any adverse action  
34 taken against the licensee by another state or licensing jurisdiction, a peer  
35 review body, a health care facility, a professional association or society, a  
36 governmental agency, by a law enforcement agency or a court for acts or  
37 conduct similar to acts or conduct which would constitute grounds for  
38 disciplinary action under this section.

39 (u) The licensee has surrendered a license or authorization to practice  
40 the healing arts in another state or jurisdiction, has surrendered the au-  
41 thority to utilize controlled substances issued by any state or federal  
42 agency, has agreed to a limitation to or restriction of privileges at any  
43 medical care facility or has surrendered the licensee's membership on any

- 1 professional staff or in any professional association or society while under  
2 investigation for acts or conduct similar to acts or conduct which would  
3 constitute grounds for disciplinary action under this section.
- 4 (v) The licensee has failed to report to the board surrender of the  
5 licensee's license or authorization to practice the healing arts in another  
6 state or jurisdiction or surrender of the licensee's membership on any  
7 professional staff or in any professional association or society while under  
8 investigation for acts or conduct similar to acts or conduct which would  
9 constitute grounds for disciplinary action under this section.
- 10 (w) The licensee has an adverse judgment, award or settlement  
11 against the licensee resulting from a medical liability claim related to acts  
12 or conduct similar to acts or conduct which would constitute grounds for  
13 disciplinary action under this section.
- 14 (x) The licensee has failed to report to the board any adverse judg-  
15 ment, settlement or award against the licensee resulting from a medical  
16 malpractice liability claim related to acts or conduct similar to acts or  
17 conduct which would constitute grounds for disciplinary action under this  
18 section.
- 19 (y) The licensee has failed to maintain a policy of professional liability  
20 insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments  
21 thereto.
- 22 (z) The licensee has failed to pay the premium surcharges as required  
23 by K.S.A. 40-3404, and amendments thereto.
- 24 (aa) The licensee has knowingly submitted any misleading, deceptive,  
25 untrue or fraudulent representation on a claim form, bill or statement.
- 26 (bb) The licensee as the responsible physician for a physician assistant  
27 has failed to adequately direct and supervise the physician assistant in  
28 accordance with the physician assistant licensure act or rules and regu-  
29 lations adopted under such act.
- 30 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406  
31 as established by any of the following:
- 32 ~~(A)~~ (1) A copy of the record of criminal conviction or plea of guilty  
33 for a felony in violation of K.S.A. 21-3406, and amendments thereto.
- 34 ~~(B)~~ (2) A copy of the record of a judgment of contempt of court for  
35 violating an injunction issued under K.S.A. ~~2002-Supp.~~ 60-4404, and  
36 amendments thereto.
- 37 ~~(C)~~ (3) A copy of the record of a judgment assessing damages under  
38 K.S.A. ~~2002-Supp.~~ 60-4405, and amendments thereto.
- 39 Sec. 3. K.S.A. 65-6703 is hereby amended to read as follows: 65-  
40 6703. (a) No person shall perform or induce an abortion when the fetus  
41 is viable unless such person is a physician and has a documented referral  
42 from another physician not legally or financially affiliated with the phy-  
43 sician performing or inducing the abortion and both physicians determine

1 that: (1) The abortion is necessary to preserve the life of the pregnant  
2 woman; or (2) a continuation of the pregnancy will cause a substantial  
3 and irreversible impairment of a major bodily function of the pregnant  
4 woman.

5 *(b) Except in the case of a medical emergency, a copy of the written*  
6 *documented referral and of the abortion-performing physician's written*  
7 *determination shall be provided to the pregnant woman no less than 30*  
8 *minutes before the abortion is initiated. The written determination shall*  
9 *be time-stamped at the time it is delivered to the pregnant woman.*

10 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to per-  
11 forming an abortion upon a woman, the physician shall determine the  
12 gestational age of the fetus according to accepted obstetrical and neonatal  
13 practice and standards applied by physicians in the same or similar cir-  
14 cumstances. If the physician determines the gestational age is less than  
15 22 weeks, the physician shall document as part of the medical records of  
16 the woman the basis for the determination.

17 (2) If the physician determines the gestational age of the fetus is 22  
18 or more weeks, prior to performing an abortion upon the woman the  
19 physician shall determine if the fetus is viable by using and exercising  
20 that degree of care, skill and proficiency commonly exercised by the or-  
21 dinary skillful, careful and prudent physician in the same or similar cir-  
22 cumstances. In making this determination of viability, the physician shall  
23 perform or cause to be performed such medical examinations and tests  
24 as are necessary to make a finding of the gestational age of the fetus and  
25 shall enter such findings and determinations of viability in the medical  
26 record of the woman.

27 (3) If the physician determines the gestational age of a fetus is 22 or  
28 more weeks, and determines that the fetus is not viable and performs an  
29 abortion on the woman, the physician shall report such determinations  
30 and the reasons for such determinations in writing to the medical care  
31 facility in which the abortion is performed for inclusion in the report of  
32 the medical care facility to the secretary of health and environment under  
33 K.S.A. 65-445, and amendments thereto, or if the abortion is not per-  
34 formed in a medical care facility, the physician shall report such deter-  
35 minations and the reasons for such determinations in writing to the sec-  
36 retary of health and environment as part of the written report made by  
37 the physician to the secretary of health and environment under K.S.A.  
38 65-445, and amendments thereto.

39 (4) If the physician who is to perform the abortion determines the  
40 gestational age of a fetus is 22 or more weeks, and determines that the  
41 fetus is viable, both physicians under subsection (a) determine in accord-  
42 ance with the provisions of subsection (a) that an abortion is necessary to  
43 preserve the life of the pregnant woman or that a continuation of the

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

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

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

30 ~~(d)~~ (e) Nothing in this section shall be construed to create a right to  
31 an abortion. Notwithstanding any provision of this section, a person shall  
32 not perform an abortion that is prohibited by law.

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

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

43 ~~(g)~~ (h) Upon a first conviction of a violation of this section, a person



1 shall be guilty of a class A nonperson misdemeanor. Upon a second or  
2 subsequent conviction of a violation of this section, a person shall be guilty  
3 of a severity level 10, nonperson felony.

4 (i) *A cause of action for injunctive relief may be maintained against*  
5 *any person who is reasonably believed to be doing or threatens or is about*  
6 *to do, or is procuring or suffering to be done, some act in violation of this*  
7 *section. Such cause of action may be brought by any person who is:*

8 (1) *A woman upon whom an abortion, unlawful under this section,*  
9 *has been performed, is about to be performed or attempted to be per-*  
10 *formed by the defendant;*

11 (2) *a spouse, sibling, parent or grandparent of a woman upon whom*  
12 *an abortion, unlawful under this section, has been performed, is about to*  
13 *be performed or attempted to be performed by the defendant;*

14 (3) *a custodial parent or legal guardian of a minor upon whom an*  
15 *abortion, unlawful under this section, has been performed, is about to be*  
16 *performed or attempted to be performed by the defendant; or*

17 (4) *a public official with appropriate jurisdiction to prosecute or en-*  
18 *force the laws of this state.*

19 (j) (1) *A woman upon whom an abortion is performed in violation of*  
20 *this section, the father, if married to the woman at the time she receives*  
21 *the abortion procedure, and the parents or custodial guardian of the*  
22 *woman, if the woman has not attained the age of 18 years at the time of*  
23 *the abortion, may in a civil action obtain appropriate relief, unless, in a*  
24 *case where the plaintiff is not the woman upon whom the abortion was*  
25 *performed, the pregnancy resulted from the plaintiff's criminal conduct.*

26 (2) *Such relief shall include:*

27 (A) *Money damages for all injuries, psychological and physical, oc-*  
28 *casioned by the violation of this section;*

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

31 (C) *reasonable attorney fees.*

32 (k) *The prosecution of violations of this section may be brought by*  
33 *the attorney general, by the district attorney or county attorney for the*  
34 *county where the violation occurred or the district attorney or county*  
35 *attorney for the county of residence of the woman upon whom the abor-*  
36 *tion was performed.*

37 Sec. 4. K.S.A. 65-6704 is hereby amended to read as follows: 65-  
38 6704. (a) Before the performance of an abortion upon a minor, a coun-  
39 selor shall provide pregnancy information and counseling in a manner  
40 that can be understood by the minor and allows opportunity for the mi-  
41 nor's questions to be addressed. A parent or guardian, or a person 21 or  
42 more years of age who is not associated with the abortion provider and  
43 who has a personal interest in the minor's well-being, shall accompany

1 the minor and be involved in the minor's decision-making process re-  
2 garding whether to have an abortion. *Such person accompanying the mi-*  
3 *nor shall present proof of identification and declare in writing under pen-*  
4 *alty of perjury such person's relationship to the minor and to the known*  
5 *or probable father of the fetus. The minor shall present proof of identifi-*  
6 *cation and verification of the minor's state of residence.* Such information  
7 and counseling shall include:  
8 (1) The alternatives available to the minor, including abortion, adop-  
9 tion and other alternatives to abortion;  
10 (2) an explanation that the minor may change a decision to have an  
11 abortion at any time before the abortion is performed or may decide to  
12 have an abortion at any time while an abortion may be legally performed;  
13 (3) make available to the minor information on agencies available to  
14 assist the minor and agencies from which birth control information is  
15 available;  
16 (4) discussion of the possibility of involving the minor's parent or  
17 parents, other adult family members or guardian in the minor's decision-  
18 making; and  
19 (5) information regarding the provisions of K.S.A. 65-6705, *and*  
20 *amendments thereto*, and the minor's rights under such provisions.  
21 (b) After the performance of an abortion on a minor, a counselor shall  
22 provide counseling to assist the minor in adjusting to any post-abortion  
23 problems that the minor may have.  
24 (c) After the counselor provides information and counseling to a mi-  
25 nor as required by this section, the counselor shall have the minor sign  
26 and date a statement setting forth the requirements of subsections (a)  
27 and (b) and declaring that the minor has received information and coun-  
28 seling in accordance with those requirements.  
29 (d) The counselor shall also sign and date the statement and shall  
30 include the counselor's business address and business telephone number.  
31 The counselor shall keep a copy for the minor's medical record and shall  
32 give the form to the minor or, if the minor requests and if the counselor  
33 is not the attending physician, transmit the statement to the minor's at-  
34 tending physician. Such medical record shall be maintained ~~as otherwise~~  
35 ~~provided by law~~ *for not less than 10 years.*  
36 (e) The provision by a counselor of written materials which contain  
37 information and counseling meeting the requirements of subsections (a)  
38 and (b) and which is signed by the minor shall be presumed to be evidence  
39 of compliance with the requirements of this section.  
40 (f) The requirements of subsection (a) shall not apply when, in the  
41 best medical judgment of the attending physician based on the facts of  
42 the case, an emergency exists that threatens the health, safety or well-  
43 being of the minor as to require an abortion. A physician who does not

1 comply with the requirements of this section by reason of this exception  
2 shall state in the medical record of the abortion the medical indications  
3 on which the physician's judgment was based.

4 (g) *As used in this section proof of identification means a government-*  
5 *issued photo identification card, including, but not limited to, a driver's*  
6 *license or similar state-issued or federal government-issued identification*  
7 *card. In the case of a minor, proof of identification includes, but is not*  
8 *limited to, an official school-issued picture identification card.*

9 (h) *The declaration of relationship to the minor and to the known or*  
10 *probable father required by subsection (a) may be made in a form and*  
11 *manner proscribed by the department of health and environment. The*  
12 *secretary of the department may adopt rules and regulations necessary to*  
13 *carry out the provisions of this section.*

14 Sec. 5. K.S.A. 65-6705 is hereby amended to read as follows: 65-  
15 6705. (a) Before a person performs an abortion upon an unemancipated  
16 minor, the person or the person's agent must give actual notice of the  
17 intent to perform such abortion to one of the minor's *custodial* parents  
18 or the minor's legal guardian or must have written documentation that  
19 such notice has been given unless, after receiving counseling as provided  
20 by subsection (a) of K.S.A. 65-6704, *and amendments thereto*, the minor  
21 objects to such notice being given. If the minor so objects, the minor ~~may~~  
22 *shall, prior to performance of an abortion*, petition, on her own behalf or  
23 by an adult of her choice, the district court of any county of this state for  
24 a waiver of the notice requirement of this subsection. If the minor so  
25 desires, the counselor who counseled the minor as required by K.S.A. 65-  
26 6704, *and amendments thereto*, shall notify the court and the court shall  
27 ensure that the minor or the adult petitioning on the minor's behalf is  
28 given assistance in preparing and filing the application. *Neither the coun-*  
29 *selor nor any person employed by an abortion clinic shall accompany or*  
30 *assist the minor in the court proceedings.*

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

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

41 (d) Notice shall be waived if the court finds by a preponderance of  
42 the evidence that either: (1) The minor is mature and well-informed  
43 enough to make the abortion decision on her own; or (2) notification of

1 a person specified in subsection (a) would not be in the best interest of  
2 the minor.

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

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

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

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

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

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

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

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

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

32 (A) The pregnant minor declares that the father of the fetus is one  
33 of the persons to whom notice may be given under this section. *Notice of*  
34 *that declaration shall be reported to the proper authorities as provided*  
35 *in K.S.A. 38-2223, and amendments thereto;*

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

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

42 (2) A physician who does not comply with the provisions of this sec-  
43 tion by reason of the exception of subsection (j)(1)(A) must inform the

1 minor that the physician is required by law to report the sexual abuse to  
2 the department of social and rehabilitation services. A physician who does  
3 not comply with the requirements of this section by reason of the excep-  
4 tion of subsection (j)(1)(B) shall state in the medical record of the abortion  
5 the medical indications on which the physician's judgment was based.

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

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

17 (m) *The judicial record of any court proceedings initiated pursuant*  
18 *to this section shall upon final determination by the court be compiled by*  
19 *the court. One copy of the judicial record shall be given to the minor or*  
20 *an adult chosen by the minor to bring the initial petition under this sec-*  
21 *tion. A second copy of the judicial record shall be sent by the court to the*  
22 *abortion provider who performed or will perform the abortion for inclu-*  
23 *sion in the medical records of the minor. The judicial record shall remain*  
24 *in the minor's medical records and shall be maintained by the abortion*  
25 *provider for at least 10 years.*

26 (n) *The chief judge of each judicial district shall send annual reports*  
27 *to the department of health and environment disclosing in a nonidenti-*  
28 *fying manner:*

29 (1) *The number of minors seeking a bypass of parental notification*  
30 *through court proceedings under this section;*

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

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

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

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

36 (6) *the gestational age of the fetus if the petition is granted.*

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

41 (2) *Such relief shall include:*

42 (A) *Money damages for all injuries, psychological and physical, oc-*  
43 *casioned by the violation of this section;*

1 (B) *the cost of any subsequent medical treatment such minor might*  
2 *require because of the abortion performed without parental notice or*  
3 *knowledge, or without a court order, in violation of this section;*

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

6 (D) *reasonable attorney fees.*

7 (p) *In the course of a judicial hearing to waive parental notice, if the*  
8 *court has reason to suspect that a minor has been injured as a result of*  
9 *physical, mental or emotional abuse or neglect or sexual abuse, the court*  
10 *shall report the matter promptly as provided in subsection (c) of K.S.A.*  
11 *2007 Supp. 38-2223, and amendments thereto. In the course of reporting*  
12 *suspected child abuse or neglect to the appropriate state authorities, noth-*  
13 *ing in this section shall abridge or otherwise modify the anonymity or*  
14 *confidentiality provisions of the judicial waiver proceeding as specified in*  
15 *this section.*

16 Sec. 6. K.S.A. 65-6709 is hereby amended to read as follows: 65-  
17 6709. No abortion shall be performed or induced without the voluntary  
18 and informed consent of the woman upon whom the abortion is to be  
19 performed or induced. Except in the case of a medical emergency, con-  
20 sent to an abortion is voluntary and informed only if:

21 (a) At least 24 hours before the abortion the physician who is to per-  
22 form the abortion or the referring physician has informed the woman in  
23 writing of:

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

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

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

30 (4) the probable gestational age of the fetus at the time the abortion  
31 is to be performed and that Kansas law requires the following: "No person  
32 shall perform or induce an abortion when the fetus is viable unless such  
33 person is a physician and has a documented referral from another phy-  
34 sician not financially associated with the physician performing or inducing  
35 the abortion and both physicians determine that: (1) The abortion is nec-  
36 essary to preserve the life of the pregnant woman; or (2) ~~the fetus is~~  
37 ~~affected by a severe or life-threatening deformity or abnormality.~~ *that a*

38 *continuation of the pregnancy will cause a substantial and irreversible*  
39 *impairment of a major bodily function of the pregnant woman." If the*  
40 *child is born alive, the attending physician has the legal obligation to take*  
41 *all reasonable steps necessary to maintain the life and health of the child;*

42 (5) the probable anatomical and physiological characteristics of the  
43 fetus at the time the abortion is to be performed;

- 1 (6) the medical risks associated with carrying a fetus to term; and  
2 (7) any need for anti-Rh immune globulin therapy, if she is Rh neg-  
3 ative, the likely consequences of refusing such therapy and the cost of  
4 the therapy.
- 5 (b) At least 24 hours before the abortion, the physician who is to  
6 perform the abortion, the referring physician or a qualified person has  
7 informed the woman in writing that:
- 8 (1) Medical assistance benefits may be available for prenatal care,  
9 childbirth and neonatal care, and that more detailed information on the  
10 availability of such assistance is contained in the printed materials given  
11 to her and described in K.S.A. 65-6710, and amendments thereto;
- 12 (2) the printed materials in K.S.A. 65-6710, and amendments thereto,  
13 describe the fetus and list agencies which offer alternatives to abortion  
14 with a special section listing adoption services;
- 15 (3) the father of the fetus is liable to assist in the support of her child,  
16 even in instances where he has offered to pay for the abortion except that  
17 in the case of rape this information may be omitted; and
- 18 (4) the woman is free to withhold or withdraw her consent to the  
19 abortion at any time prior to invasion of the uterus without affecting her  
20 right to future care or treatment and without the loss of any state or  
21 federally-funded benefits to which she might otherwise be entitled.
- 22 (c) ~~Prior~~ *At least 30 minutes prior* to the abortion procedure, prior  
23 to physical preparation for the abortion and prior to the administration  
24 of 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 in-  
27 formation from the physician concerning the abortion.
- 28 (d) At least 24 hours before the abortion, the woman is given a copy  
29 of the printed materials described in K.S.A. 65-6710, and amendments  
30 thereto. If the woman asks questions concerning any of the information  
31 or materials, answers shall be provided to her in her own language.
- 32 (e) The woman certifies in writing on a form provided by the de-  
33 partment, prior to the abortion, that the information required to be pro-  
34 vided under subsections (a), (b) and (d) has been provided and that she  
35 has met with the physician who is to perform the abortion on an individual  
36 basis as provided under subsection (c). All physicians who perform abor-  
37 tions shall report the total number of certifications received monthly to  
38 the department. The department shall make the number of certifications  
39 received available on an annual basis.
- 40 (f) Prior to the performance of the abortion, the physician who is to  
41 perform the abortion or the physician's agent receives a copy of the writ-  
42 ten certification prescribed by subsection (e) of this section.
- 43 (g) The woman is not required to pay any amount for the abortion

1 procedure until the 24-hour waiting period has expired.

2 (h) A physician who will use ultrasound equipment in the perform-  
3 ance of the abortion shall inform the woman that she has the right to view  
4 the ultrasound image of her unborn child at least 30 minutes prior to the  
5 performance of the abortion, shall offer her the opportunity to do so, shall  
6 certify in writing that the pregnant woman was offered the opportunity  
7 to view the ultrasound image at least 30 minutes prior to the performance  
8 of the abortion and shall obtain the pregnant woman's signed acceptance  
9 or rejection of the opportunity to view the image. If the woman accepts  
10 the offer and requests to view the ultrasound she shall be allowed to view  
11 it. The physician's certification shall be time-stamped at the time the op-  
12 portunity to view the ultrasound image was offered.

13 (i) A physician who will use heart monitor equipment in the perform-  
14 ance of the abortion shall inform the woman that she has the right to  
15 listen to the heartbeat of her unborn child at least 30 minutes prior to the  
16 performance of the abortion, shall offer her the opportunity to do so, shall  
17 certify in writing that the pregnant woman was offered the opportunity  
18 to listen to the heartbeat of her unborn child at least 30 minutes prior to  
19 the performance of the abortion and shall obtain the pregnant woman's  
20 signed acceptance or rejection of the opportunity to listen to the heartbeat  
21 of the unborn child. If the woman accepts the offer and requests to listen  
22 to the heartbeat of the unborn child she shall be allowed to listen to it.  
23 The physician's certification shall be time-stamped at the time the oppor-  
24 tunity to listen to the heartbeat of the unborn child was offered.

25 (j) The physician's certification required by subsections (h) and (i)  
26 together with the pregnant woman's signed acceptance or rejection of such  
27 offer shall be placed in the woman's medical file in the physician's office  
28 and kept for 10 years. However, in the case of a minor, the physician shall  
29 keep a copy of the certification and the signed acceptance or rejection in  
30 the minor's medical file for five years past the minor's majority, but in no  
31 event less than 10 years.

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

38 *Notice: It is against the law for anyone, regardless of their relationship to*  
39 *you, to force you to have an abortion. By law, we cannot perform an*  
40 *abortion on you unless we have your freely given and voluntary consent.*  
41 *It is against the law to perform an abortion on you against your will. You*  
42 *have the right to contact any local or state law enforcement agency to*  
43 *receive protection from any actual or threatened physical abuse or vio-*



1 *lence. You have the right to change your mind at any time prior to the*  
2 *actual abortion and request that the abortion procedure cease.*

3 *The provisions of this subsection shall not apply to any private office,*  
4 *freestanding surgical outpatient clinic or other facility or clinic which*  
5 *performs abortions only when necessary to prevent the death of the preg-*  
6 *nant woman.*

7 Sec. 7. K.S.A. 65-6710 is hereby amended to read as follows: 65-  
8 6710. (a) The department shall cause to be published and distributed  
9 widely, within 30 days after the effective date of this act, and shall update  
10 on an annual basis, the following easily comprehensible printed materials:

11 (1) Geographically indexed materials designed to inform the woman  
12 of public and private agencies and services available to assist a woman  
13 through pregnancy, upon childbirth and while her child is dependent,  
14 including but not limited to, adoption agencies. The materials shall in-  
15 clude a comprehensive list of the agencies, a description of the services  
16 they offer and the telephone numbers and addresses of the agencies; and  
17 inform the woman about available medical assistance benefits for prenatal  
18 care, childbirth and neonatal care and about the support obligations of  
19 the father of a child who is born alive. The department shall ensure that  
20 the materials described in this section are comprehensive and do not  
21 directly or indirectly promote, exclude or discourage the use of any agency  
22 or service described in this section. The materials shall also contain a toll-  
23 free 24-hour a day telephone number which may be called to obtain,  
24 orally, such a list and description of agencies in the locality of the caller  
25 and of the services they offer. The materials shall state that it is unlawful  
26 for any individual to coerce a woman to undergo an abortion, that any  
27 physician who performs an abortion upon a woman without her informed  
28 consent may be liable to her for damages. Kansas law permits adoptive  
29 parents to pay costs of prenatal care, childbirth and neonatal care. The  
30 materials shall include the following statement:

31 “Many public and private agencies exist to provide counseling and  
32 information on available services. You are strongly urged to seek  
33 their assistance to obtain guidance during your pregnancy. In ad-  
34 dition, you are encouraged to seek information on abortion services,  
35 alternatives to abortion, including adoption, and resources available  
36 to post-partum mothers. The law requires that your physician or  
37 the physician’s agent provide the enclosed information.”

38 (2) Materials that inform the pregnant woman of the probable ana-  
39 tomical and physiological characteristics of the fetus at two-week gesta-  
40 tional increments from fertilization to full term, including pictures or  
41 drawings representing the development of a fetus at two-week gestational  
42 increments, and any relevant information on the possibility of the fetus’  
43 survival. Any such pictures or drawings shall contain the dimensions of

1 the fetus and shall be realistic. The materials shall be objective, nonjudg-  
2 mental and designed to convey only accurate scientific information about  
3 the fetus at the various gestational ages. The material shall also contain  
4 objective information describing the methods of abortion procedures  
5 commonly employed, the medical risks commonly associated with each  
6 such procedure and the medical risks associated with carrying a fetus to  
7 term.

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

12 (b) The materials required under this section shall be printed in a  
13 typeface large enough to be clearly legible. The materials shall be made  
14 available in both English and Spanish language versions.

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

18 (d) *The materials required under this section shall be updated on an*  
19 *annual basis.*

20 Sec. 8. K.S.A. 65-445, 65-2836, 65-6703, 65-6704, 65-6705, 65-6709,  
21 65-6710 and 65-6713 are hereby repealed.

22 Sec. 9. This act shall take effect and be in force from and after its  
23 publication in the statute book.