

SENATE BILL No. 202

By Senator Taddiken

2-4

9 AN ACT concerning abortion; amending K.S.A. 65-445 and 65-6703 and
10 repealing the existing sections.

11

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

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

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

31 (c) Information obtained by the secretary of health and environment
32 under this section shall be confidential and shall not be disclosed in a
33 manner that would reveal the identity of any person licensed to practice
34 medicine and surgery who submits a report to the secretary under this
35 section or the identity of any medical care facility which submits a report
36 to the secretary under this section, except that such information, including
37 information identifying such persons and facilities ~~may~~ shall be disclosed
38 to the state board of healing arts upon request of the board for disciplinary
39 action conducted by the board and ~~may~~ shall be disclosed to the attorney
40 general upon a showing that a reasonable cause exists to believe that a
41 violation of this act has occurred. Any information disclosed to the state
42 board of healing arts or the attorney general pursuant to this subsection
43 shall be used solely for the purposes of a disciplinary action or criminal

1 proceeding. Except as otherwise provided in this subsection, information
2 obtained by the secretary under this section may be used only for statis-
3 tical purposes and such information shall not be released in a manner
4 which would identify any county or other area of this state in which the
5 termination of the pregnancy occurred. A violation of this subsection (c)
6 is a class A nonperson misdemeanor.

7 (d) In addition to such criminal penalty under subsection (c), any
8 person licensed to practice medicine and surgery or medical care facility
9 whose identity is revealed in violation of this section may bring a civil
10 action against the responsible person or persons for any damages to the
11 person licensed to practice medicine and surgery or medical care facility
12 caused by such violation.

13 (e) For the purpose of maintaining confidentiality as provided by sub-
14 sections (c) and (d), reports of terminations of pregnancies required by
15 this section shall identify the person or facility submitting such reports
16 only by confidential code number assigned by the secretary of health and
17 environment to such person or facility and the department of health and
18 environment shall maintain such reports only by such number.

19 (f) *The secretary of health and environment shall adopt rules and*
20 *regulations to implement this section. Such rules and regulations shall*
21 *prescribe, in detail, the information required to be kept by the physicians*
22 *and hospitals and the information required in the reports which must be*
23 *submitted to the secretary.*

24 Sec. 2. K.S.A. 65-6703 is hereby amended to read as follows: 65-
25 6703. (a) No person shall perform or induce an abortion when the fetus
26 is viable unless such person is a physician and has a documented referral
27 from another *Kansas* physician not legally or financially affiliated with the
28 physician performing or inducing the abortion and both physicians de-
29 termine that: (1) The abortion is necessary to preserve the life of the
30 pregnant woman; or (2) a continuation of the pregnancy will cause a
31 substantial and irreversible impairment of a major bodily function of the
32 pregnant woman.

33 (b) (1) Except in the case of a medical emergency, prior to perform-
34 ing an abortion upon a woman, the physician shall determine the gesta-
35 tional age of the fetus according to accepted obstetrical and neonatal
36 practice and standards applied by physicians in the same or similar cir-
37 cumstances. If the physician determines the gestational age is less than
38 22 weeks, the physician shall document as part of the medical records of
39 the woman the basis for the determination. *The medical reasons for the*
40 *determination of the gestational age of the fetus also shall be reported by*
41 *the physician as part of the written report made by the physician to the*
42 *secretary of health and environment under K.S.A. 65-445, and amend-*
43 *ments thereto.*

1 (2) If the physician determines the gestational age of the fetus is 22
2 or more weeks, prior to performing an abortion upon the woman the
3 physician shall determine if the fetus is viable by using and exercising
4 that degree of care, skill and proficiency commonly exercised by the or-
5 dinary skillful, careful and prudent physician in the same or similar cir-
6 cumstances. In making this determination of viability, the physician shall
7 perform or cause to be performed such medical examinations and tests
8 as are necessary to make a finding of the gestational age of the fetus and
9 shall enter such findings and determinations of viability in the medical
10 record of the woman. *The medical reasons for the determination of the*
11 *gestational age of the fetus also shall be reported by the physician as part*
12 *of the written report made by the physician to the secretary of health and*
13 *environment under K.S.A. 65-445, and amendments thereto.*

14 (3) If the physician determines the gestational age of a fetus is 22 or
15 more weeks, and determines that the fetus is not viable and performs an
16 abortion on the woman, the physician shall report such determinations
17 and the *medical basis and* reasons for such determinations *that the fetus*
18 *is not viable* in writing to the medical care facility in which the abortion
19 is performed for inclusion in the report of the medical care facility to the
20 secretary of health and environment under K.S.A. 65-445 and amend-
21 ments thereto or if the abortion is not performed in a medical care facility,
22 the physician shall report such determinations and the *medical basis and*
23 reasons for such determinations in writing to the secretary of health and
24 environment as part of the written report made by the physician to the
25 secretary of health and environment under K.S.A. 65-445 and amend-
26 ments thereto.

27 (4) If the physician who is to perform the abortion determines the
28 gestational age of a fetus is 22 or more weeks, and determines that the
29 fetus is viable, both physicians under subsection (a) determine in accord-
30 ance with the provisions of subsection (a) that an abortion is necessary to
31 preserve the life of the pregnant woman or that a continuation of the
32 pregnancy will cause a substantial and irreversible impairment of a major
33 bodily function of the pregnant woman and the physician performs an
34 abortion on the woman, the physician who performs the abortion shall
35 report such determinations, ~~the reasons~~ *and shall report the specific med-*
36 *ical or clinical diagnosis* for such determinations and the basis for the
37 determination that an abortion is necessary to preserve the life of the
38 pregnant woman or that a continuation of the pregnancy will cause a
39 substantial and irreversible impairment of a major bodily function of the
40 pregnant woman in writing to the medical care facility in which the abor-
41 tion is performed for inclusion in the report of the medical care facility
42 to the secretary of health and environment under K.S.A. 65-445 and
43 amendments thereto or if the abortion is not performed in a medical care

1 facility, the physician who performs the abortion shall report such deter-
2 minations, ~~the reasons~~ *and shall report the specific medical basis and*
3 *clinical diagnosis* for such determinations and the basis for the determi-
4 nation that an abortion is necessary to preserve the life of the pregnant
5 woman or that a continuation of the pregnancy will cause a substantial
6 and irreversible impairment of a major bodily function of the pregnant
7 woman in writing to the secretary of health and environment as part of
8 the written report made by the physician to the secretary of health and
9 environment under K.S.A. 65-445 and amendments thereto.

10 (5) The physician shall retain the medical records required to be kept
11 under paragraphs (1) and (2) of this subsection (b) for not less than five
12 years and shall retain a copy of the written reports required under para-
13 graphs (3) and (4) of this subsection (b) for not less than five years.

14 (6) *The secretary of health and environment shall adopt rules and*
15 *regulations listing, in detail, the specific types of information that must*
16 *be kept by a physician under paragraphs (1) and (2) of this subsection*
17 *(b). In addition, such rules and regulations shall specify, in detail, the*
18 *contents of the written reports required under paragraphs (3) and (4) of*
19 *this subsection (b) to insure the specific medical basis and clinical diag-*
20 *nosis regarding the woman and the viability or lack of viability of the*
21 *fetus is reported.*

22 (c) A woman upon whom an abortion is performed shall not be prosec-
23 ecuted under this section for a conspiracy to violate this section pursuant
24 to K.S.A. 21-3302, and amendments thereto.

25 (d) Nothing in this section shall be construed to create a right to an
26 abortion. Notwithstanding any provision of this section, a person shall not
27 perform an abortion that is prohibited by law.

28 (e) As used in this section, “viable” means that stage of fetal devel-
29 opment when it is the physician’s judgment according to accepted obstet-
30 rical or neonatal standards of care and practice applied by physicians
31 in the same or similar circumstances that there is a reasonable probability
32 that the life of the child can be continued indefinitely outside the mother’s
33 womb with natural or artificial life-supportive measures.

34 (f) If any provision of this section is held to be invalid or unconsti-
35 tutional, it shall be conclusively presumed that the legislature would have
36 enacted the remainder of this section without such invalid or unconsti-
37 tutional provision.

38 (g) Upon a first conviction of a violation of this section, a person shall
39 be guilty of a class A nonperson misdemeanor. Upon a second or subse-
40 quent conviction of a violation of this section, a person shall be guilty of
41 a severity level 10, nonperson felony.

42 Sec. 3. K.S.A. 65-445 and 65-6703 are hereby repealed.

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