

Approved: April 2, 2008

Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 11, 2008, in Room 313-S of the Capitol.

All members were present except: Representative Dillmore - Excused
Representative Peterson - Excused

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Others attending:

See attached list.

The Chair opened the meeting for bill introductions. Representative Raj Goyle, Representative Joe Patton and Representative Jeff Whitham requested the introduction of a bill concerning funeral picketing. Moved by Chairman Siegfroid, seconded by Representative Huebert, without objection, the bill was accepted.

Representative Forrest Knox requested a bill concerning child daycare. Moved by Chairman Siegfroid, seconded by Representative Huebert, without objection, the bill will be accepted as a committee bill.

Representative Owen Donohoe requested a bill concerning insurance companies and doctors outside the network. Moved by Chairman Siegfroid, seconded by Representative Steve Huebert, without objection, the bill was accepted as a committee bill.

Representative Dale Swenson requested a bill that sunsets wrongful death suit caps. Moved by Chairman Siegfroid, seconded by Representative Steve Huebert, without objection, the bill was accepted as a committee bill.

The Chair opened the floor for consideration of **HB 2736** - Amendments to late-term abortion laws; reporting requirements; waiver of parental notice; civil remedies for violations of law. Representative Huebert moved that **HB 2736** be moved favorable for passage.

Representative Lance Kinzer presented a balloon for **HB 2736**. He explained that the balloon would clarify and extend the persons required to make reports. On page 9 line 14, the word "custodial" would be removed. On page 12, starting with paragraph (B), language changed for clarity changed to "and the minor is granted a waiver of notice by a court of competent jurisdiction in accordance with the provisions of this section". The word "or" is added to page 12 line 12. The third provision removes the words from section (C) on page 12 and replaces them with "a medical emergency exists for the pregnant minor as defined in K. S. A. 65-6701 and amendments thereto." Page 14 clarifies the information provided to the patient. Section 7 is stricken in its entirety. (Attachment 1)

Representative Kinzer moved the amendment for **HB 2736**, seconded by Representative Olson. The motion passed by a vote of 13-4.

Representative Brunk moved to remove the contents of **SB 389**, insert the language of **HB 2736** as amended into **House Substitute for SB 389**. The motion was seconded by Representative Huebert. The motion passed.

Representative Mah moved to remove the contents of **House Substitute for SB 389** and insert the language of **HB 2615** into **House Substitute for SB 389**. Representative Loganbill seconded the motion.

The Chair opened the floor for discussion of the motion. Representative Mah stated that she thought that this was a more passable bill and asked the Committee to compromise by passing **HB 2615**.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 11, 2008, in Room 313-S of the Capitol.

Representative Kinzer stated that the provisions in **HB 2736** as amended provide us with an opportunity to do many things regarding lack of clarity, lack of reporting and lack of enforcement. It was his hope that the Committee would retain and move **House Substitute for S 389** be passed. He opposed the motion.

Representative Loganbill stated that **HB 2615** came out of the special interim committee. She said it was a compromise bill and came out with only one no vote. She was in favor of the motion.

Representative Hodge said that other countries have strong laws limiting abortion, but in Kansas abortion is legal any time, any place, for any reason. He will vote against this motion.

Representative McCray -Miller asked if the Secretary of Health stated that they could change these forms.

Chairman Siegfroid explained that Mr. Carmody, the person who chaired the special committee that developed the late term abortion bill gave testimony in the interim committee that it was the understanding of the committee that the diagnosis and explanation of the diagnosis was a part of the process before a viable baby was aborted. He stated that we had a representative of the attorney general's office and it was his opinion also that the diagnosis and explanation of the diagnosis should be part of the process. One of the associates from the Secretary of KDHE testified that in their opinion, she did not believe that they had the authority to tell the abortion doctors how to populate the form that the department had developed.

Representative Swenson asked if Representative Kinzer thought that **HB 2615** would be easier to get a pass from the governor. Representative Kinzer answered that the language in **HB 2615** was so similar to the proviso that the governor vetoed last summer, that he would not speculate on what she would do with **HB 2736**.

Representative Faust-Goudeau concurred with Representative Mah. As a member of the interim committee, she asked that the Committee support **HB 2615**.

The Chairman called the question. The motion failed by the vote of 13 to 7.

Representative Brunk moved House Substitute for 389 favorable for passage. Representative Huebert seconded the motion. Motion passed 13 to 7.

The following Committee members asked to be recorded as voting no to **House Substitute for SB 389**:

Representative Oletha Faust-Goudeau
Representative Broderick Henderson
Representative Luis Ruiz
Representative Judy Loganbill
Representative McCray - Miller

The Chair opened the floor for discussion of **House Substitute for SB 329**.

The Chair and Committee members discussed possible amendments to the bill.

Representative Carlson requested a bill regarding the right of the public to hunt and fish. Moved by Chairman Siegfroid, seconded by Representative Brunk, without objection, the bill was accepted as a committee bill.

Chairman Siegfroid adjourned the meeting. The next meeting will be on March 12, 2008, at 1:30 pm in room 313-S.

House Federal and State Affairs Guest list

Date 3/11

Name

Organization

Doty Meyer

George W. Bush

[Signature]

Priggen, Seth

DOTES

[Signature]

House Sub Bill for SB ~~388~~
389
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

2-1

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.

and

K.S.A. 2007 Supp. 38-2223

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

K.S.A. 2007 Supp. 38-2223 is hereby amended to read as follows:

(see attached)

and renumber the remaining sections accordingly

House Fed and State Committee
March 11, 2008

Attachment /

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 ~~(e)~~ (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

1-4

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

1-5

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

1-1

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

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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;*

, and the minor is granted a waiver of notice by a court of competent jurisdiction in accordance with the provisions of this section

or

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.~~

a medical emergency exists for the pregnant minor as defined in K.S.A. 65-6701, and amendments thereto

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

9-1

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;*

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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;

(6) the contact information for free counseling assistance for medically challenging pregnancies and free perinatal hospice service to provide maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers and specialty nurses;

and renumber the remaining paragraphs accordingly

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~~

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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 (c) 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.

and K.S.A. 2007 Supp. 38-2223

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

38-2223. (a) *Persons making reports.* (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);

(A) The following persons, *or their agents acting in the scope of their employment*, providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief administrative officers of medical care facilities;

(B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

(C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; and

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers appointed under K.S.A. 23-1001 et seq., and amendments thereto, and mediators appointed under K.S.A. 23-602, and amendments thereto.

(2) In addition to the reports required under subsection (a)(1), any person who has reason to suspect that a child may be a child in need of care may report the matter as provided in subsection (b) and (c).

(b) *Form of report.* (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

(2) When reporting a suspicion that a child may be in need of care, the reporter shall disclose protected health information freely and cooperate fully with the secretary and law enforcement throughout the investigation and any subsequent legal process.

(c) *To whom made.* Reports made pursuant to this section shall be made to the secretary, except as follows:

(1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to K.S.A. 2007 Supp. 38-2226, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.

(2) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or

the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(d) *Death of child.* Any person who is required by this section to report a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) *Violations.* (1) Willful and knowing failure to make a report required by this section is a class B misdemeanor. It is not a defense that another mandatory reporter made a report.

(2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.

(3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.

(f) *Immunity from liability.* Anyone who, without malice, participates in the making of a report to the secretary or a law enforcement agency relating to a suspicion a child may be a child in need of care or who participates in any activity or investigation relating to the report or who participates in any judicial proceeding resulting from the report shall have immunity from any civil liability that might otherwise be incurred or imposed.