

CHAPTER 28

HOUSE Substitute for SENATE BILL No. 238

AN ACT concerning abortion; regarding the woman's right-to-know act; amending K.S.A. 65-6709 and 65-6710 and repealing the existing sections.

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

Section 1. K.S.A. 65-6709 is hereby amended to read as follows: 65-6709. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

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

(2) a description of the proposed abortion method;

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

(4) the probable gestational age of the fetus at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) ~~the fetus is affected by a severe or life-threatening deformity or abnormality that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.~~" If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

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

(6) *the contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services;*

~~(6)~~ (7) the medical risks associated with carrying a fetus to term; and

~~(7)~~ (8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

(1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;

(2) ~~the printed informational materials in K.S.A. 65-6710, and amendments thereto,~~ *are available in printed form and online, and describe the fetus and list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;*

(3) the father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted; and

(4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled.

(c) *At least 30 minutes* prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy

of the ~~printed~~ informational materials described in K.S.A. 65-6710, and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

(h) *A physician who will use ultrasound equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:*

(1) *informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;*

(2) *informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;*

(3) *offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;*

(4) *certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and*

(5) *obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.*

*If the woman accepts the offer and requests to view the ultrasound image, receive a physical picture of the ultrasound image or both, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image was offered.*

(i) *A physician who will use heart monitor equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:*

(1) *informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;*

(2) *offers the woman the opportunity to listen to the heartbeat of her unborn child;*

(3) *certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and*

(4) *obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.*

*If the woman accepts the offer and requests to listen to the heartbeat of her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.*

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

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

*Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease.*

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

*(l) For purposes of this section, the term “medically challenging pregnancy” means a pregnancy where the fetus is diagnosed as having: (1) A severe anomaly; or (2) an illness, disease or defect which is invariably fatal.*

Sec. 2. K.S.A. 65-6710 is hereby amended to read as follows: 65-6710. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible ~~printed~~ *informational* materials:

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

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

(2) *Printed* materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of a fetus at two-week gestational increments, and any relevant information on the possibility of the fetus’ survival. Any such pictures or drawings shall contain the dimensions of the fetus and shall be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the fetus at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying a fetus to term.

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

(4) *A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images, using the best available ultrasound technology, of a fetus at two*

*week gestational increments.*

(b) The *print* materials required under this section shall be printed in a typeface large enough to be clearly legible. The *informational video* shall be published in *digital video disc* format. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

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

Sec. 3. K.S.A. 65-6709 and 65-6710 are hereby repealed.

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

Approved March 27, 2009.

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