

STATE OF KANSAS



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GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF HOUSE BILL 2313

This bill is misleading and unnecessary. Federal law already protects newborns, and the procedure being described in this bill does not exist in Kansas in the era of modern medicine.

The intent of this bill is to interfere in medical decisions that should remain between doctors and their patients.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto House Bill 2313.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

A handwritten signature in blue ink, appearing to read "Laura Kelly", written over a horizontal line.

DATED

A handwritten date in blue ink, "April 14, 2023", written over a horizontal line.

HOUSE BILL No. 2313

AN ACT concerning health and healthcare; creating the born-alive infants protection act; providing legal protections for infants born alive; requiring certain standards of care by healthcare providers for infants who are born alive; providing criminal penalties and civil liability for violations of the act; amending K.S.A. 65-445 and repealing the existing section.

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

New Section 1. The provisions of sections 1 through 9, and amendments thereto, shall be known and may be cited as the born-alive infants protection act.

New Sec. 2. As used in sections 2 through 8, and amendments thereto:

(a) "Abortion" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(b) "Born alive" means the complete expulsion or extraction of a human being from its mother, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical cord or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section or induced abortion.

(c) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse or person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board.

(d) "Medical care facility" means the same as defined in K.S.A. 65-425, and amendments thereto.

New Sec. 3. Whenever the terms "child," "human being" or "person" are used in K.S.A. 2022 Supp. 21-5401, 21-5402, 21-5403, 21-5404, 21-5405, 21-5406 and 21-5413(a) and (b), and amendments thereto, such terms shall include each member of the species homo sapiens who is born alive.

New Sec. 4. (a) In the event an abortion or attempted abortion results in a child being born alive, any healthcare provider present at the time the child is born alive shall:

(1) Exercise the same degree of professional skill, care and diligence to preserve the life and health of the child as a reasonably diligent and conscientious healthcare provider would render to any other child born alive at the same gestational age; and

(2) ensure that the child who is born alive is immediately transported to a hospital.

(b) Any healthcare provider or any employee of a medical care facility who has knowledge of a failure to comply with the requirements of subsection (a) shall immediately report such failure to an appropriate law enforcement agency.

New Sec. 5. (a) Any person who knowingly or recklessly violates section 4, and amendments thereto, shall be guilty of a severity level 10, nonperson felony.

(b) Any person who intentionally performs or attempts to perform an overt act that kills a child who is born alive during an abortion or attempted abortion shall be guilty of a severity level 1, person felony.

(c) The provisions of this section shall not apply to the woman upon whom the abortion is performed or attempted.

New Sec. 6. (a) The woman upon whom the abortion or attempted abortion was performed, the father of the child born alive and, if the woman has not attained 18 years of age at the time the abortion or attempted abortion is performed, the parents or custodial guardian of the woman upon whom the abortion or attempted abortion was performed may bring a civil action for any violation of section 4, and amendments thereto, to obtain appropriate relief.

(b) Any person who is not the woman upon whom the abortion or attempted abortion was performed shall be barred from bringing any action under this section if the pregnancy resulted from such person's criminal conduct.

(c) The prevailing party in any action brought under this section may be awarded reasonable attorney fees, except that if the prevailing party is the defendant, then the court shall find that the plaintiff's action was frivolous and brought in bad faith before the court and may award attorney fees to such defendant.

New Sec. 7. In any civil or criminal action brought pursuant to section 5 or 6, and amendments thereto, upon a motion by either party or sua sponte, the court shall determine whether the anonymity of any woman upon whom an abortion or attempted abortion was performed shall be preserved if such woman does not give consent to the public disclosure of her name. If the court determines that such woman's anonymity should be preserved, then the court shall issue appropriate orders to the parties, witnesses and counsel and shall direct that the court records of the proceedings be sealed and all individuals who are not a party to the action, witnesses or counsel be excluded from the courtroom or hearing room to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

New Sec. 8. (a) Each medical care facility in which an infant is born alive subsequent to an abortion or attempted abortion performed on the mother of the infant shall submit an annual report to the secretary of health and environment on the number of such infants in such form and manner as prescribed by the secretary. Such report shall include:

(1) The approximate gestational age of the infant who was born alive expressed in one of the following increments:

- (A) Less than nine weeks;
- (B) nine to 10 weeks;
- (C) 11 to 12 weeks;
- (D) 13 to 15 weeks;
- (E) 16 to 20 weeks;
- (F) 21 to 24 weeks;
- (G) 25 to 30 weeks;
- (H) 31 to 36 weeks; or
- (I) 37 weeks to term;

(2) any medical actions taken to preserve the life of the infant who was born alive;

(3) the outcome for such infants, including survival, death and location of death, such as a clinic, hospital or ambulance, if known; and

(4) the medical conditions of infants who were born alive, including conditions developed prior to and after the attempted abortion.

(b) The secretary may impose a civil fine in any amount not to exceed \$500 on any medical care facility that fails to submit the required report within 30 days after the date such report is due to be submitted to the secretary. The secretary may impose an additional civil fine in an amount not to exceed \$500 for each additional 30-day period that such medical care facility fails to submit the required report. If a medical care facility fails to submit a required report for more than one year following the date that such report is due to be submitted to the

secretary, or submits an incomplete report during such time period and fails to correct the deficiencies in such report, the secretary may bring a civil action for an injunction to compel such medical care facility to submit the required report.

New Sec. 9. If any provision, word, phrase or clause of sections 1 through 8, and amendments thereto, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of sections 1 through 8, and amendments thereto, that can be given effect without the invalid provision, word, phrase, clause or application and to this end, the provisions, words, phrases and clauses of sections 1 through 8, and amendments thereto, are declared severable.

Sec. 10. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies ~~which~~ *that* are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies ~~which~~ *that* are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under ~~subsections (b) and (e) of K.S.A. 65-6703(b) and (c), subsection (j) of K.S.A. 65-6705(j), subsection (e) of K.S.A. 65-6721(c) and K.S.A. 65-6724,~~ and amendments thereto, if applicable to the pregnancy terminated, *information required to be reported under section 8, and amendments thereto*, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated *or upon whom an attempted abortion was performed*. Each report required by ~~subsections (b) and (e) of K.S.A. 65-6703(b) and (c), subsection (j) of K.S.A. 65-6705(j) and subsection (e) of K.S.A. 65-6721(c),~~ and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition ~~which~~ *that* necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.

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

solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner ~~which~~ *that* would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor. *The provisions of this subsection shall expire on July 1, 2028, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.*

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

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports ~~of terminations of pregnancies~~ required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

(f) The annual public report on abortions performed in Kansas issued by the secretary of health and environment shall contain the information required to be reported by this section to the extent such information is not deemed confidential pursuant to this section. The secretary of health and environment shall adopt rules and regulations to implement this section. Such rules and regulations shall prescribe, in detail, the information required to be kept by the physicians and hospitals and the information required in the reports ~~which~~ *that* must be submitted to the secretary.

(g) The Kansas department for children and families shall prepare and publish an annual report on the number of reports of child sexual abuse received by the department from abortion providers. Such report shall be categorized by the age of the victim and the month the report was submitted to the department. The name of the victim and any other identifying information shall be kept confidential by the department and shall not be released as part of the public report.

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Sec. 11. K.S.A. 65-445 is hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.