

## HOUSE BILL No. 2218

By Representatives Kinzer, Arpke, Billinger, Boman, Brown, Brunk, Calloway, DeGraaf, Donohoe, Fund, Garber, Goico, Goodman, Gregory, Grosserode, Hedke, Henry, Hermanson, Hildabrand, Hoffman, M. Holmes, Howell, Kiegerl, Kleeb, Knox, Landwehr, Mast, McLeland, Meigs, Mesa, Montgomery, O'Brien, O'Hara, Otto, Patton, Peck, Rhoades, Rubin, Ryckman, Scapa, Schwab, Siegfried, Smith, Suellentrop, Vickrey, Weber, Wetta and B. Wolf

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- 1 AN ACT concerning abortion; relating to restrictions on late term  
2 abortions; amending K.S.A. 65-445 and repealing the existing section.  
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4 *Be it enacted by the Legislature of the State of Kansas:*  
5 New Section 1. The legislature hereby finds and declares that:  
6 (a) Pain receptors (nociceptors) are present throughout the unborn  
7 child's entire body by no later than 16 weeks after fertilization and nerves  
8 link these receptors to the brain's thalamus and subcortical plate by no  
9 later than 20 weeks;  
10 (b) by eight weeks after fertilization, the unborn child reacts to  
11 stimuli that would be recognized as painful if applied to an adult human,  
12 for example, by recoiling;  
13 (c) in the unborn child, application of such painful stimuli is  
14 associated with significant increases in stress hormones known as the  
15 stress response;  
16 (d) subjection to such painful stimuli is associated with long-term  
17 harmful neurodevelopmental effects, such as altered pain sensitivity and,  
18 possibly, emotional, behavioral and learning disabilities later in life;  
19 (e) for the purposes of surgery on unborn children, fetal anesthesia is  
20 routinely administered and is associated with a decrease in stress  
21 hormones compared to their level when painful stimuli is applied without  
22 such anesthesia;  
23 (f) the position, asserted by some medical experts, that the unborn  
24 child is incapable of experiencing pain until a point later in pregnancy  
25 than 20 weeks after fertilization predominately rests on the assumption  
26 that the ability to experience pain depends on the cerebral cortex and  
27 requires nerve connections between the thalamus and the cortex.  
28 However, recent medical research and analysis, especially since 2007,  
29 provides strong evidence for the conclusion that a functioning cortex is  
30 not necessary to experience pain;  
31 (g) substantial evidence indicates that children born missing the bulk  
32 of the cerebral cortex, those with hydranencephaly, nevertheless

1 experience pain;

2 (h) in adults, stimulation or ablation of the cerebral cortex does not  
3 alter pain perception, while stimulation or ablation of the thalamus does;

4 (i) substantial evidence indicates that structures used for pain  
5 processing in early development differ from those of adults, using  
6 different neural elements available at specific times during development,  
7 such as the subcortical plate, to fulfill the role of pain processing;

8 (j) consequently, there is substantial medical evidence that an unborn  
9 child is capable of experiencing pain by 20 weeks after fertilization; and

10 (k) it is the purpose of the state to assert a compelling state interest  
11 in protecting the lives of unborn children from the stage at which  
12 substantial medical evidence indicates that they are capable of feeling  
13 pain.

14 New Sec. 2. As used in sections 1 through 3, and amendments  
15 thereto:

16 (a) "Abortion" means the use or prescription of any instrument,  
17 medicine, drug or any other substance or device to terminate the  
18 pregnancy of a woman known to be pregnant with an intention other than  
19 to increase the probability of a live birth, to preserve the life or health of  
20 the child after live birth, or to remove a dead unborn child who died as  
21 the result of natural causes in utero, accidental trauma or a criminal  
22 assault on the pregnant woman or her unborn child, and which causes the  
23 premature termination of the pregnancy.

24 (b) "Bodily function" means physical function. The term "bodily  
25 function" does not include mental or emotional functions.

26 (c) "Department" means the department of health and environment.

27 (d) "Gestational age" means the time that has elapsed since the first  
28 day of the woman's last menstrual period.

29 (e) "Medical emergency" means a condition that, in reasonable  
30 medical judgment, so complicates the medical condition of the pregnant  
31 woman as to necessitate the immediate abortion of her pregnancy without  
32 first determining gestational age to avert her death or for which a delay  
33 necessary to determine gestational age will create serious risk of  
34 substantial and irreversible physical impairment of a major bodily  
35 function. No condition shall be deemed a medical emergency if based on  
36 a claim or diagnosis that the woman will engage in conduct which would  
37 result in her death or in substantial and irreversible physical impairment  
38 of a major bodily function.

39 (f) "Pain-capable unborn child" means an unborn child having  
40 reached the gestational age of 22 weeks or more.

41 (g) "Physician" means a person licensed to practice medicine and  
42 surgery in this state.

43 (h) "Pregnant" or "pregnancy" means that female reproductive

1 condition of having an unborn child in the mother's body.

2 New Sec. 3. (a) No person shall perform or induce, or attempt to  
3 perform or induce an abortion upon a pain-capable unborn child unless  
4 such person is a physician and has a documented referral from another  
5 physician not legally or financially affiliated with the physician  
6 performing or inducing, or attempting to perform or induce the abortion  
7 and both physicians provide a written determination, based upon a  
8 medical judgment arrived at using and exercising that degree of care, skill  
9 and proficiency commonly exercised by the ordinary skillful, careful and  
10 prudent physician in the same or similar circumstances and that would be  
11 made by a reasonably prudent physician, knowledgeable in the field, and  
12 knowledgeable about the case and the treatment possibilities with respect  
13 to the conditions involved, that: (1) The abortion is necessary to preserve  
14 the life of the pregnant woman; or (2) a continuation of the pregnancy  
15 will cause a substantial and irreversible physical impairment of a major  
16 bodily function of the pregnant woman. No such condition shall be  
17 deemed to exist if it is based on a claim or diagnosis that the woman will  
18 engage in conduct which would result in her death or in substantial and  
19 irreversible physical impairment of a major bodily function.

20 (b) Except in the case of a medical emergency, a copy of the written  
21 documented referral and of the abortion-performing physician's written  
22 determination shall be provided to the pregnant woman no less than 30  
23 minutes prior to the initiation of the abortion. The written determination  
24 shall be time-stamped at the time it is delivered to the pregnant woman.  
25 The medical basis for the determination shall also be reported by the  
26 physician as part of the written report made by the physician to the  
27 secretary of health and environment under K.S.A. 65-445, and  
28 amendments thereto. Such determination shall specify:

29 (1) If the abortion is necessary to preserve the life of the pregnant  
30 woman and the medical basis of such determination, including the  
31 specific medical condition the physician believes would cause the death  
32 of the pregnant woman; or

33 (2) if a continuation of the pregnancy will cause a substantial and  
34 irreversible physical impairment of a major bodily function of the  
35 pregnant woman and the medical basis of such determination, including  
36 the specific medical condition the physician believes would constitute a  
37 substantial and irreversible impairment of a major bodily function of the  
38 pregnant woman.

39 (c) (1) Except in the case of a medical emergency, prior to  
40 performing or inducing, or attempting to perform or induce an abortion  
41 upon a woman, the physician shall determine the gestational age of the  
42 unborn child according to accepted obstetrical and neonatal practice and  
43 standards applied by physicians in the same or similar circumstances. In

1 making such a determination, the physician shall make such inquiries of  
2 the woman and perform or cause to be performed such medical  
3 examinations and tests as a reasonably prudent physician, knowledgeable  
4 about the case and medical conditions involved, would consider  
5 necessary to perform in making an accurate diagnosis with respect to  
6 gestational age. The physician shall document as part of the medical  
7 records of the woman the basis for the determination of gestational age.  
8 The physician shall report such determinations, the medical basis and the  
9 reasons for such determinations in writing to the medical care facility in  
10 which the abortion is performed for inclusion in the report of the medical  
11 care facility to the secretary of health and environment under K.S.A. 65-  
12 445, and amendments thereto, or if the abortion is not performed in a  
13 medical care facility, the physician who performs the abortion shall report  
14 such determinations, the medical basis and the reasons for such  
15 determinations in writing to the secretary of health and environment as  
16 part of the written report made by the physician to the secretary of health  
17 and environment under K.S.A. 65-445, and amendments thereto.

18 (2) If the physician determines the gestational age of the unborn  
19 child is 22 or more weeks, then no abortion of the pain-capable unborn  
20 child shall be performed or induced, or attempted to be performed or  
21 induced except as provided for in subsection (a). In such event, the  
22 physician who performs the abortion shall report such determinations, the  
23 medical basis and the reasons for such determinations, including the  
24 specific medical diagnosis for the determination that an abortion is  
25 necessary to preserve the life of the pregnant woman or that a  
26 continuation of the pregnancy will cause a substantial and irreversible  
27 physical impairment of a major bodily function of the pregnant woman  
28 and the name of the referring physician required by subsection (a) in  
29 writing to the medical care facility in which the abortion is performed for  
30 inclusion in the report of the medical care facility to the secretary of  
31 health and environment under K.S.A. 65-445, and amendments thereto,  
32 or if the abortion is not performed in a medical care facility, the physician  
33 who performs the abortion shall report such determinations, the medical  
34 basis and the reasons for such determinations, including the specific  
35 medical diagnosis for the determination that an abortion is necessary to  
36 preserve the life of the pregnant woman or that a continuation of the  
37 pregnancy will cause a substantial and irreversible physical impairment  
38 of a major bodily function of the pregnant woman and the name of the  
39 referring physician required by subsection (a) in writing to the secretary  
40 of health and environment as part of the written report made by the  
41 physician to the secretary of health and environment under K.S.A. 65-  
42 445, and amendments thereto.

43 (3) The physician shall retain the medical records required to be kept

1 under this subsection for not less than 10 years.

2 (d) The secretary of health and environment shall adopt rules and  
3 regulations to administer this section. Such rules and regulations shall  
4 include:

5 (1) A detailed list of the information that must be kept by a  
6 physician under this section;

7 (2) the contents of the written reports required under this section;  
8 and

9 (3) detailed specifications regarding information that must be  
10 provided by a physician in order to comply with the obligation to disclose  
11 the medical basis and specific medical diagnosis relied upon in  
12 determining gestational age and in determining that an abortion is  
13 necessary to preserve the life of the pregnant woman, or that a  
14 continuation of the pregnancy will cause a substantial and irreversible  
15 physical impairment of a major bodily function of the pregnant woman.

16 (e) A woman upon whom an abortion is performed or induced, or  
17 attempted to be performed or induced shall not be prosecuted under this  
18 section for a conspiracy to violate this section pursuant to section 34 of  
19 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
20 thereto.

21 (f) Nothing in this section shall be construed to create a right to an  
22 abortion. Notwithstanding any provision of this section, a person shall not  
23 perform an abortion that is prohibited by law.

24 (g) (1) A woman upon whom an abortion is performed in violation  
25 of this section, the father, if married to the woman at the time of the  
26 abortion, and the parents or custodial guardian of the woman, if the  
27 woman has not attained the age of 18 years at the time of the abortion,  
28 may in a civil action obtain appropriate relief, unless, in a case where the  
29 plaintiff is not the woman upon whom the abortion was performed, the  
30 pregnancy resulted from the plaintiff's criminal conduct.

31 (2) Such relief shall include:

32 (A) Money damages for all injuries, psychological and physical,  
33 occasioned by the violation of this section;

34 (B) statutory damages equal to three times the cost of the abortion;  
35 and

36 (C) reasonable attorney fees.

37 (h) The prosecution of violations of this section may be brought by  
38 the attorney general or by the district attorney or county attorney for the  
39 county where any violation of this section is alleged to have occurred.

40 (i) If any provision of this section is held to be invalid or  
41 unconstitutional, it shall be conclusively presumed that the legislature  
42 would have enacted the remainder of this section without such invalid or  
43 unconstitutional provision.

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

5 Sec. 4. K.S.A. 65-445 is hereby amended to read as follows: 65-445.

6 (a) Every medical care facility shall keep written records of all  
7 pregnancies which are lawfully terminated within such medical care  
8 facility and shall annually submit a written report thereon to the secretary  
9 of health and environment in the manner and form prescribed by the  
10 secretary. Every person licensed to practice medicine and surgery shall  
11 keep a record of all pregnancies which are lawfully terminated by such  
12 person in a location other than a medical care facility and shall annually  
13 submit a written report thereon to the secretary of health and environment  
14 in the manner and form prescribed by the secretary.

15 (b) Each report required by this section shall include the number of  
16 pregnancies terminated during the period of time covered by the report,  
17 the type of medical facility in which the pregnancy was terminated,  
18 information required to be reported under K.S.A. 65-6703 *and section 2*,  
19 and amendments thereto, if applicable to the pregnancy terminated, and  
20 such other information as may be required by the secretary of health and  
21 environment, but the report shall not include the names of the persons  
22 whose pregnancies were so terminated.

23 (c) Information obtained by the secretary of health and environment  
24 under this section shall be confidential and shall not be disclosed in a  
25 manner that would reveal the identity of any person licensed to practice  
26 medicine and surgery who submits a report to the secretary under this  
27 section or the identity of any medical care facility which submits a report  
28 to the secretary under this section, except that such information, including  
29 information identifying such persons and facilities may be disclosed to  
30 the state board of healing arts upon request of the board for disciplinary  
31 action conducted by the board and may be disclosed to the attorney  
32 general upon a showing that a reasonable cause exists to believe that a  
33 violation of this act has occurred. Any information disclosed to the state  
34 board of healing arts or the attorney general pursuant to this subsection  
35 shall be used solely for the purposes of a disciplinary action or criminal  
36 proceeding. Except as otherwise provided in this subsection, information  
37 obtained by the secretary under this section may be used only for  
38 statistical purposes and such information shall not be released in a  
39 manner which would identify any county or other area of this state in  
40 which the termination of the pregnancy occurred. A violation of this  
41 subsection (c) is a class A nonperson misdemeanor.

42 (d) In addition to such criminal penalty under subsection (c), any  
43 person licensed to practice medicine and surgery or medical care facility

1 whose identity is revealed in violation of this section may bring a civil  
2 action against the responsible person or persons for any damages to the  
3 person licensed to practice medicine and surgery or medical care facility  
4 caused by such violation.

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

11 Sec. 5. K.S.A. 65-445 is hereby repealed.

12 Sec. 6. This act shall take effect and be in force from and after its  
13 publication in the statute book.