

SENATE BILL No. 95

By Senators Love, Abrams, Arpke, Baumgardner, Bruce, Donovan, Fitzgerald, Holmes, Kerschen, Knox, LaTurner, Lynn, Masterson, McGinn, O'Donnell, Olson, Ostmeyer, Petersen, Pletcher-Cook, Powell, Pyle, Smith, Tyson, Wagle and Wilborn

1-28

AN ACT concerning abortion; creating the Kansas unborn child protection from dismemberment abortion act

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

Section 1. The provisions of sections 1 through 9, and amendments thereto, shall be known and may be cited as the Kansas unborn child protection from dismemberment abortion act.

Sec. 2. As used in sections 1 through 9, and amendments thereto:

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

(b) (1) "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.

(2) The term "dismemberment abortion" does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, *although it does include an abortion in which a dismemberment abortion, as defined in subsection (b)(1), is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.*

(c) "Knowingly" shall have the same meaning attributed to such term in K.S.A. 2014 Supp. 21-5202, and amendments thereto.

(d) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant

Balloon Amendments for SB 95 #1
House Committee on Appropriations
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; prohibiting an abortion of an unborn child with a detectable fetal heartbeat; amending K.S.A. 2013 Supp. 65-2836, as amended by section 10 of chapter 131 of the 2014 Session Laws of Kansas and K.S.A. 2014 Supp. 65-445 and repealing the existing sections.

1 woman as to necessitate the immediate abortion of her pregnancy to avert
2 the death of the woman or for which a delay necessary to comply with the
3 applicable statutory requirements will create serious risk of substantial and
4 irreversible physical impairment of a major bodily function. No condition
5 shall be deemed a medical emergency if based on a claim or diagnosis that
6 the woman will engage in conduct which would result in her death or in
7 substantial and irreversible physical impairment of a major bodily
8 function.

New

9 Sec. 3. (a) No person shall perform, or attempt to perform, a
10 dismemberment abortion on an unborn child unless: (1) The
11 dismemberment abortion is necessary to preserve the life of the pregnant
12 woman; or (2) a continuation of the pregnancy will cause a substantial and
13 irreversible physical impairment of a major bodily function of the pregnant
14 woman. No condition shall be deemed to exist if it is based on a claim or
15 diagnosis that the woman will engage in conduct that would result in her
16 death or in substantial and irreversible physical impairment of a major
17 bodily function.

18 (b) No woman upon whom an abortion is performed or attempted to
19 be performed shall be liable for performing or attempting to perform a
20 dismemberment abortion. No nurse, technician, secretary, receptionist or
21 other employee or agent who is not a physician, but who acts at the
22 direction of a physician, and no pharmacist or other individual who is not a
23 physician, but who fills a prescription or provides instruments or materials
24 used in an abortion at the direction of or to a physician shall be liable for
25 performing or attempting to perform a dismemberment abortion.

New

26 Sec. 4. The attorney general or any district or county attorney with
27 appropriate jurisdiction may bring a cause of action for injunctive relief
28 against a person who has performed or attempted to perform a
29 dismemberment abortion in violation of section 3, and amendments
30 thereto. Any injunctive relief ordered pursuant to an action filed under this
31 section shall prohibit the defendant from performing or attempting to
32 perform any dismemberment abortions in violation of section 3, and
33 amendments thereto.

New

34 Sec. 5. (a) A cause of action for civil damages against a person who
35 has performed a dismemberment abortion in violation of section 3, and
36 amendments thereto, may be maintained by the following persons, unless,
37 in a case where the plaintiff is not the woman upon whom the abortion was
38 performed, the pregnancy resulted from the plaintiff's criminal conduct:

- 39 (1) A woman upon whom a dismemberment abortion has been
40 performed in violation of section 3, and amendments thereto;
41 (2) the father of the unborn child, if married to the woman at the time
42 the dismemberment abortion was performed; or
43 (3) the parents or custodial guardians of the woman, if the woman has

1 not attained the age of 18 years at the time of the abortion or has died as a
2 result of the abortion.

3 (b) Damages awarded in such an action shall include:

4 (1) Money damages for all injuries, psychological and physical,
5 occasioned by the dismemberment abortion;

6 (2) statutory damages equal to three times the cost of the
7 dismemberment abortion;

8 (3) injunctive relief; and

9 (4) reasonable attorney fees awarded in accordance with subsection
10 (d).

11 (d) (1) If judgment is rendered in favor of the plaintiff in an action
12 brought under section 4, and amendments thereto, or this section, the court
13 shall award reasonable attorney fees to the plaintiff in addition to any other
14 relief that is awarded.

15 (2) If judgment is rendered in favor of the defendant in an action
16 brought under section 4, and amendments thereto, or this section, and the
17 court finds that the plaintiff's action was frivolous and brought in bad faith,
18 the court shall award reasonable attorney fees to the defendant in addition
19 to any other relief that is awarded.

20 (3) No attorney fees shall be assessed against the woman upon whom
21 a dismemberment abortion was performed or attempted to be performed
22 except in accordance with paragraph (2).

23 **New** Sec. 6. Upon a first conviction of a violation of section 3, and
24 amendments thereto, a person shall be guilty of a class A person
25 misdemeanor. Upon a second or subsequent conviction of a violation of
26 section 3, and amendments thereto, a person shall be guilty of a severity
27 level 10, person felony.

28 **New** Sec. 7. In every civil, criminal or administrative proceeding or action
29 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
30 65-6724 or section 3, and amendments thereto, the court shall rule whether
31 the anonymity of any woman upon whom an unlawful abortion has been
32 performed or attempted to be performed shall be preserved from public
33 disclosure if she does not give her consent to such disclosure. The court,
34 upon motion or sua sponte, shall make such a ruling and, upon
35 determining that such woman's anonymity should be preserved, shall issue
36 orders to the parties, witnesses and counsel and shall direct the sealing of
37 the record and exclusion of individuals from courtrooms or hearing rooms
38 to the extent necessary to safeguard her identity from public disclosure.
39 Each such order shall be accompanied by specific written findings
40 explaining why the anonymity of the woman should be preserved from
41 public disclosure, why the order is essential to that end, how the order is
42 narrowly tailored to serve that interest and why no reasonable less
43 restrictive alternative exists. In the absence of written consent of the

1 woman upon whom an unlawful abortion has been performed or attempted
2 to be performed, anyone other than a public official who brings an action
3 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
4 65-6724 or section 3, and amendments thereto, shall do so under a
5 pseudonym. This section shall not be construed to conceal the identity of
6 the plaintiff or of witnesses from the defendant or from attorneys for the
7 defendant.

New

8 Sec. 8. Nothing in sections 1 through 9, and amendments thereto,
9 shall be construed as creating or recognizing a right to abortion, nor a right
10 to a particular method of abortion.

New

11 Sec. 9. If any provision or clause of this act or application thereof to
12 any person or circumstances is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect
14 without the invalid provision or application, and to this end the provisions
15 of this act are declared to be severable.

See attached insert

16 Sec. 14. This act shall take effect and be in force from and after its
17 publication in the statute book.

14.

New Sec. 10. (a) The legislature declares that it finds, according to medical research and contemporary knowledge, all of the following:

- (1) As many as 30% of natural pregnancies end in spontaneous miscarriage;
- (2) less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity;
- (3) over 90% of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac;
- (4) nearly 90% of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac;
- (5) fetal heartbeat, therefore, has become a key, medical predictor that an unborn human individual will reach viability and live birth;
- (6) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;
- (7) The state of Kansas has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born; and
- (8) In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a legitimate interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

(b) As used in this section:

- (1) "Conception" means fertilization.

- (2) "Contraceptive" means a device, drug, or chemical that prevents conception.
- (3) "DNA" means deoxyribonucleic acid.
- (4) "Fertilization" means the fusion of gametes (ovum and sperm) to produce a new human organism; the process which leads to the development of an embryo.
- (5) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.
- (6) "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.
- (7) "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.
- (8) "Gestational sac" comprises the extra embryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.
- (9) "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.
- (10) "Medical emergency" means a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so endangers the life of the pregnant woman or poses a serious risk of substantial and irreversible

physical impairment of a major bodily function of the pregnant woman as to necessitate the immediate performance or inducement of an abortion.

(11) "Physician" means a person who is licensed to practice medicine and surgery.

(12) "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

(13) "Serious risk of substantial and irreversible physical impairment of a major bodily function" has the same meaning as in section K.S.A. 65-6723, and amendments thereto.

(14) "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

(15) "Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of subsection (c)(1)(A), "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.

(16) "Unborn human individual" means an individual organism of the species *homo sapiens* from fertilization until live birth.

(c) (1) (A) A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good faith understanding of standard medical practice, provided that if rules have

been adopted under subsection (B) of this section, the method chosen may be one that is consistent with the rules. The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.

(B) The secretary of health and environment may adopt rules specifying the appropriate methods of determining the presence of a fetal heartbeat of an unborn individual based on standard medical practice.

(2) (A) Except as provided in subsection (c)(2)(B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with subsection (c)(1)(A) whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat. If a physician performs an abortion on a pregnant woman prior to determining if the fetus the pregnant woman is carrying has a detectable fetal heartbeat, that physician is subject to disciplinary action under K.S.A. 65-2836, and amendments thereto.

(B) Subsection (c)(2)(A) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with that subsection.

(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in subsection (c)(2)(B) of this section shall make written notations in the pregnant woman's medical records of both of the following:

- (i) The physician's belief that a medical emergency necessitating the abortion existed; and

(ii) the medical condition of the pregnant woman that assertedly prevented compliance with subsection (c)(2)(A) of this section.

(iii) For at least seven years from the date the notations are made, the physician shall maintain in the physician's own records a copy of the notations.

(D) A person is not in violation of subsection (c)(2)(A) of this section if the person acts in accordance with subsection (c)(1)(A) of this section and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(d) (1) If a person who intends to perform or induce an abortion on a pregnant woman has determined, under subsection (c)(1)(A) of this section, that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the person shall not, except as provided in subsection (d)(2) of this section, perform or induce the abortion until all of the following requirements have been met and at least twenty-four hours have elapsed after the last of the requirements is met:

(A) The person intending to perform or induce the abortion shall inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat.

(B) The person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual or, if the secretary of health and environment has specified statistical probability information pursuant to rules adopted under subsection (d)(3) of this section, shall provide to the pregnant woman that information.

- (C) The pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual the pregnant woman is carrying to term.
- (2) Subsection (d)(1) of this section does not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with that subsection.
- (3) The secretary of health and environment may adopt rules that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. The rules shall be based on available medical evidence.
- (4) This section does not have the effect of repealing or limiting any other provision of Kansas law relating to informed consent for an abortion.
- (e) (1) (A) Except as provided in subsection (c)(1)(B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with subsection (c)(1)(A) of this section. Whoever violates this section is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a severity level 8, person felony.

(B) Subsection (e)(1)(A) of this section does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. A physician who performs a medical procedure as described in this section shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. A physician who performs a medical procedure as described in this subsection shall place the written document required by this subsection in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in the physician's own records.

(C) A person is not in violation of subsection (e)(1)(A) of this section if the person acts in accordance with subsection (c)(1)(A) of this section and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(2) Subsection (e)(1)(A) of this section does not have the effect of repealing or limiting any other provision of Kansas law that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.

(f) (1) (A) A person who performs or induces an abortion on a pregnant woman shall do whichever of the following is applicable:

- (i) If the reason for the abortion purportedly is to preserve the health of the pregnant woman, the person shall specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition.
- (ii) If the reason for the abortion is other than to preserve the health of the pregnant woman, the person shall specify in a written document that maternal health is not the purpose of the abortion.

(B) The person who specifies the information in the document described in subsection (f)(1)(A) of this section shall place the document in the pregnant woman's medical records. For at least seven years from the date the document is created, the person who specifies the information shall maintain a copy of the document in the person's own records.

(2) (A) A woman on whom an abortion was performed or induced in violation of subsections (c)(2)(A), (d)(1), or (e)(1)(A) may file a civil action for the wrongful death of her unborn child.

(B) A woman who prevails in an action filed under subsection (f)(2)(A) of this section shall receive both of the following from the person who committed the violations described in subsection (f)(2)(A) of this section:

- (i) Damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence (at the mother's election at any time prior to final judgment) subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive;

(ii) Court costs and reasonable attorney's fees.

(C) If the defendant in an action filed under subsection (f)(2)(A) of this section prevails and the court finds that the commencement of the action constitutes frivolous conduct and that the defendant was adversely affected by the frivolous conduct, the court shall award reasonable attorney's fees to the prevailing defendant.

(3) All of the information the physician is required to certify in writing or determine under subsections (c), (d), (e) and (f) of this section shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(g) A pregnant woman on whom an abortion is performed in violation of subsection (c) or (e) is not guilty of violating subsection (c) or (e) or of attempting to commit, conspiring to commit or complicity in committing a violation of subsection (c) or (e) and is not subject to a civil penalty based on that violation.

(h) Nothing in this section prohibits the sale, use, prescription, or administration of a measure, drug or chemical designed for contraceptive purposes.

(i) (1) It is the intent of the Kansas legislature that a court judgment or order suspending enforcement of any provision of this section is not to be regarded as tantamount to repeal of that section or provision.

(2) After the issuance of a decision by the supreme court of the United States overruling *Roe v. Wade*, 410 U.S. 113 (1973), the issuance of any other court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the constitution of the United States restoring, expanding, or

clarifying the authority of states to prohibit or regulate abortion entirely or in part, the attorney general may apply to the pertinent state or federal court for either or both of the following:

- (A) A declaration that any one or more provisions of this section are constitutional;
- (B) a judgment or order lifting an injunction against the enforcement of any one or more provisions of this section.
- (3) If the attorney general fails to apply for the relief described in subsection (i)(2) of this section within the thirty-day period after an event described in that subsection occurs, any district attorney may apply to the appropriate district, state or federal court for such relief.
- (4) If any provision of this section is held invalid, or if the application of such provision to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end, the provisions of this section are severable. In particular, it is the intent of the legislature that any invalidity or potential invalidity of a provision of this section is not to impair the immediate and continuing enforceability of the remaining provisions. It is furthermore the intent of the legislature that the provisions of this section are not to have the effect of repealing or limiting any other laws of this state, except as specified by this section.
- (j) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Sec. 11. K.S.A. 2014 Supp. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which 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 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 (f) of K.S.A. 65-6705(i), subsection (e) of K.S.A. 65-6721(c) and, K.S.A. 2014 Supp. 65-6724 and section 10(c), (d), (e) and (f), and amendments thereto, if applicable to the pregnancy terminated, 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. Each report required by ~~subsections (b) and (e) of K.S.A. 65-6703(b) and (c), subsection (f) of K.S.A. 65-6705(i) 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 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 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 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.
- (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 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.

Sec. 12. K.S.A. 2013 Supp. 65-2836, as amended by section 10 of chapter 131 of the 2014 Session Laws of Kansas, is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

- (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.
- (c) The licensee has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, whether or not related to the practice of the healing arts. The licensee has been convicted in a special or general court-martial, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony or substantially similar offense in another jurisdiction, or following conviction in a general court-martial occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony or convicted in a general court-martial and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a $\frac{2}{3}$ majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.
- (d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee's ability to practice the healing arts with reasonable skill and safety to patients is impaired by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. All information, reports, findings and other records relating to impairment shall be confidential and not subject to discovery by or release to any person or entity outside of a board proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

- (k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.
- (l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and amendments thereto.
- (m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.
- (n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.
- (o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.
- (p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.
- (q) The licensee has violated a federal law or regulation relating to controlled substances.
- (r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

- (w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments thereto.
- (z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.
- (aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.
- (bb) The licensee as the supervising physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.
- (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2013 Supp. 21-5407, and amendments thereto, as established by any of the following:
 - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2013 Supp. 21-5407, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

(dd) The licensee has given a worthless check or stopped payment on a debit or credit card for fees or moneys legally due to the board.

(ee) The licensee has knowingly or negligently abandoned medical records.

(ff) The licensee has performed an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable fetal heartbeat, as provided in section 10, and amendments thereto.

Sec. 13. K.S.A. 2013 Supp. 65-2836, as amended by section 10 of chapter 131 of the 2014 Session Laws of Kansas, and K.S.A. 2014 Supp. 65-445 are hereby repealed.

