

## SENATE BILL No. 95

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

1-28

---

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

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

24 (2) The term "dismemberment abortion" does not include an abortion  
25 which uses suction to dismember the body of the unborn child by sucking  
26 fetal parts into a collection container.

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

29 (d) "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 to avert  
32 the death of the woman or for which a delay necessary to comply with the  
33 applicable statutory requirements will create serious risk of substantial and  
34 irreversible physical impairment of a major bodily function. No condition

1 shall be deemed a medical emergency if based on a claim or diagnosis that  
2 the woman will engage in conduct which would result in her death or in  
3 substantial and irreversible physical impairment of a major bodily  
4 function.

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

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

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

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

35 (1) A woman upon whom a dismemberment abortion has been  
36 performed in violation of section 3, and amendments thereto;

37 (2) the father of the unborn child, if married to the woman at the time  
38 the dismemberment abortion was performed; or

39 (3) the parents or custodial guardians of the woman, if the woman has  
40 not attained the age of 18 years at the time of the abortion or has died as a  
41 result of the abortion.

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

43 (1) Money damages for all injuries, psychological and physical,

1 occasioned by the dismemberment abortion;

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

4 (3) injunctive relief; and

5 (4) reasonable attorney fees awarded in accordance with subsection  
6 (d).

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

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

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

19 Sec. 6. Upon a first conviction of a violation of section 3, and  
20 amendments thereto, a person shall be guilty of a class A person  
21 misdemeanor. Upon a second or subsequent conviction of a violation of  
22 section 3, and amendments thereto, a person shall be guilty of a severity  
23 level 10, person felony.

24 Sec. 7. In every civil, criminal or administrative proceeding or action  
25 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.  
26 65-6724 or section 3, and amendments thereto, the court shall rule whether  
27 the anonymity of any woman upon whom an unlawful abortion has been  
28 performed or attempted to be performed shall be preserved from public  
29 disclosure if she does not give her consent to such disclosure. The court,  
30 upon motion or sua sponte, shall make such a ruling and, upon  
31 determining that such woman's anonymity should be preserved, shall issue  
32 orders to the parties, witnesses and counsel and shall direct the sealing of  
33 the record and exclusion of individuals from courtrooms or hearing rooms  
34 to the extent necessary to safeguard her identity from public disclosure.  
35 Each such order shall be accompanied by specific written findings  
36 explaining why the anonymity of the woman should be preserved from  
37 public disclosure, why the order is essential to that end, how the order is  
38 narrowly tailored to serve that interest and why no reasonable less  
39 restrictive alternative exists. In the absence of written consent of the  
40 woman upon whom an unlawful abortion has been performed or attempted  
41 to be performed, anyone other than a public official who brings an action  
42 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.  
43 65-6724 or section 3, and amendments thereto, shall do so under a

1 pseudonym. This section shall not be construed to conceal the identity of  
2 the plaintiff or of witnesses from the defendant or from attorneys for the  
3 defendant.

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

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

12 Sec. 10. This act shall take effect and be in force from and after its  
13 publication in the statute book.