

Creation of the Unborn Protection from Dismemberment Act; SB 95

SB 95 creates the Kansas Unborn Child Protection from Dismemberment Abortion Act (Act). The bill defines relevant terms, establishes exceptions for the prohibition on dismemberment abortions, clarifies the individuals exempt from liability for involvement in dismemberment abortions, allows for injunctive relief and civil damages, establishes who may seek civil damages and what the damages include, authorizes the award of reasonable attorney fees, establishes penalties for violation of the Act, specifies the conditions under which the court orders the anonymity of a woman upon whom an abortion has been performed or attempted be preserved from public disclosure, clarifies no right to abortion nor a right to a particular method of abortion would be created, and includes a severability clause. Specific bill details follow.

Definitions

The bill defines several terms, including “abortion” and “dismemberment abortion.” Dismemberment abortion is defined as an abortion “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 at a portion of the unborn child’s body in order to cut or rip it off.”

The bill establishes dismemberment abortion does not include an abortion that uses suction to dismember the body of an unborn child. The bill clarifies a dismemberment abortion includes the use of suction subsequent to a dismemberment abortion to extract fetal parts after the death of the unborn child. “Medical emergency” and “knowingly” also are defined.

Restrictions on the Performance of a Dismemberment Abortion

The bill prohibits the performance of or the attempt to perform a dismemberment abortion unless the procedure is necessary to preserve the life of the pregnant woman or a continuation of the pregnancy would cause a substantial and irreversible physical impairment of a major bodily function. A claim or diagnosis the woman would engage in conduct resulting in her death or in substantial and irreversible physical impairment of a major bodily function does not allow for a dismemberment abortion under the Act.

Exemption from Liability

The following persons are exempt from liability under the Act:

- The woman upon whom an abortion is performed or attempted;
- A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician, but acts under the direction of a physician; and

- A pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician.

Available Causes of Action and Damages

The Attorney General or any district or county attorney with appropriate jurisdiction is authorized to bring a cause of action for injunctive relief against a person who performs or attempts to perform a dismemberment abortion in violation of the Act and, if the order is granted, prohibits the defendant from performing or attempting to perform any dismemberment abortions in violation of the Act.

A cause of action for civil damages is available to the following persons against a person who performs a dismemberment abortion in violation of the Act (unless the plaintiff is not the woman upon whom the abortion was performed and the pregnancy is a result of the plaintiff's criminal conduct):

- A woman upon whom a dismemberment abortion is performed in violation of the Act;
- The father of the unborn child, who is married to the woman at the time the dismemberment abortion is performed; or
- The parents or custodial guardians of a woman under 18 years of age at the time of the abortion or who dies as a result of the abortion.

Damages awarded in a cause of action for civil damages include money damages for psychological and physical damages caused by a dismemberment abortion, statutory damages equal to three times the cost of the dismemberment abortion, injunctive relief, and reasonable attorney fees under specified conditions.

In causes of action for injunctive relief, in addition to the awarding of other relief, attorney fees are awarded to a successful plaintiff or to a successful defendant if the court finds the plaintiff's action was frivolous and brought in bad faith. A woman upon whom a dismemberment abortion is performed or attempted is not assessed attorney fees, unless the court finds her action was frivolous or brought in bad faith.

Penalties for Violation of Act

A first conviction for a dismemberment abortion performed or attempted in violation of the Act is a Class A person misdemeanor. A second or subsequent conviction is a severity level 10, person felony.

Anonymity of Woman Absent Consent to Disclose

In every civil, criminal, or administrative proceeding or action arising out of a violation of the conditions under which an abortion on a viable or pain-capable unborn child or a partial birth or a dismemberment abortion may be performed, the court has authority to determine whether to preserve from public disclosure the anonymity of the woman upon whom the unlawful abortion is performed or attempted if the woman did not consent to the disclosure. Upon a ruling the anonymity of the woman should be preserved, the court is authorized to issue orders to the parties, witnesses, and counsel; direct the record be sealed; and exclude individuals from the courtroom or hearing rooms, as needed, to safeguard her identity from public disclosure.

Orders to preserve the identity of the woman require accompanying specific written findings explaining the need for anonymity, why the order is essential, the narrow tailoring of the order to accomplish anonymity, and why no reasonable less restrictive alternative exists. Unless a woman upon whom an unlawful abortion is performed or attempted consents to the disclosure of her identity, anyone other than a public official bringing a cause of action for a violation of the conditions under which an abortion on a viable or pain-capable unborn child or a partial birth or dismemberment abortion could be performed is required to do so under a pseudonym. The anonymity provisions are not to be construed to conceal the identity of the plaintiff or witnesses from the defendant or attorneys for the defendant.

Right to an Abortion not Recognized or Created

The bill does not create or recognize a right to an abortion or to a specific abortion method.

Severability Clause

A holding that a provision or application of the Act is invalid would not affect the validity of the remaining provisions that could be given effect without the invalid provision or application. The provisions of the Act are declared to be severable.