



Kansas Legislative Research Department

Providing nonpartisan, objective research and fiscal analysis for the Kansas Legislature since 1934

68-West-Statehouse | 300 SW 10th Ave. | Topeka, Kansas 66612-1504
(785) 296-3181

kslegres@klrd.ks.gov

kslegislature.org/klrd

July 26, 2022

EVOLUTION OF KANSAS LAWS CONCERNING ABORTION

This memorandum follows the evolution of and changes to abortion provisions in Kansas law from territorial times to present day that now are found in Chapter 65 Sections 67 and 67a of the *Kansas Statutes Annotated*. The full text of abortion-related provisions is provided each time there is a change in the law for the years 1855 through 1992. Any changes to statutes are identified by underlined text. Legislation in 1992 codified abortion-related statutes in Chapter 65 of the *Kansas Statutes Annotated*. Changes to these laws are summarized for the years 1993 through 2019. The full text of a 2021 proposed Constitutional amendment regarding regulation of abortion and the current abortion-related statutes is included at the end of this memorandum.

The legislation referenced in this memorandum may also have contained provisions relevant to other subject matters. Only the abortion-related provisions of such legislation are included here. Additionally, language concerning abortion can be found in other chapters of Kansas law, most notably Chapter 40, related to insurance coverage.

HISTORICAL STATUTORY LANGUAGE

1855 Statutes of the Territory of Kansas

Chapter 48, Section 39

Every physician or other person who shall willfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

General Statutes of 1868

Chapter 31, Sections 14, 15, and 44

Section 14. The willful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

Section 15. Every person who shall administer to any woman, pregnant with a quick child, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be guilty of manslaughter in the second degree.

Section 44. Every physician or other person who shall willfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars or by both such fine and imprisonment.

General Statutes of 1903

Chapter 31, Sections 14, 15, and 44

Section 14. The willful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

Section 15. Every person who shall administer to any woman, pregnant with a quick child, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, if the death of such child or mother thereof ensue from the means employed, shall be guilty of manslaughter in the second degree.

Section 44. Every physician or other person who shall willfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars or by both such fine and imprisonment.

General Statutes of 1915, Recodification

Chapter 28, Article 3, Sections 3375, 3376, and 3405

No amendments were made; only the location of the provisions changed.

General Statutes of 1923, Recodification

KSA 21-409, 21-410, 21-437

No amendments were made; only the location of the provisions changed.

General Statutes of 1957

Changes to KSA 21-410

KSA 21-409. The willful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

KSA 21-410 Every person who shall administer to any pregnant woman any medicine, drug, or substance whatsoever, or shall use or employ any instrument or other means with the intent thereby to destroy the fetus, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, if the death of the mother thereof ensue from the means employed, shall be guilty of manslaughter in the first degree.

KSA 21-437. Every physician or other person who shall willfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars or by both such fine and imprisonment.

General Statutes of 1969, Recodification

KSA 21-3407

KSA 21-3407. Criminal Abortion. (1) Criminal abortion is the purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth.

(2) A person licensed to practice medicine and surgery is justified in terminating a pregnancy if he believes there is substantial risk that a continuance of the pregnancy would impair the physical or mental health of the mother or that the child would be

born with physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse; and either: (a) Three persons licensed to practice medicine and surgery, one of whom may be the person performing the abortion, have certified in writing their belief in the justifying circumstances, and have filed such certificate prior to the abortion in the hospital licensed by the state board of health and accredited by the joint commission on accreditation of hospitals where it is to be performed, or in such other place as may be designated by law; or

(b) An emergency exists which requires that such abortion be performed immediately in order to preserve the life of the mother.

(3) For the purpose of this section pregnancy means that condition of a female from the date of conception to the birth of her child.

(4) For the purpose of subsection (2) of this section all illicit intercourse with a female under the age of sixteen (16) years shall be deemed felonious.

(5) Criminal abortion is a class D felony.

General Statutes of 1992

KSA 65-6701 et seq.

65-6701. As used in this act: (a) "Abortion" means the use of any means to intentionally terminate pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or (2) disposition of the product of *in vitro* fertilization prior to implantation.

(b) "Counselor" means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master's or doctor's degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) a registered physician's assistant; or (9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) "Minor" means a person less than 18 years of age.

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

(e) "Unemancipated minor" means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(f) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means.

KSA 65-6702. (a) The use of any drug or device that inhibits or prevents ovulation, fertilization or implantation of an embryo and disposition of the product of *in vitro* fertilization prior to implantation are lawful in this state and neither the state nor any political subdivision of the state shall prohibit the use of any such drug or device or the disposition of such product.

(b) No political subdivision of the state shall regulate or restrict abortion.

KSA 65-6703. (a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) the fetus is affected by a severe or life-threatening deformity or abnormality.

(b) Violation of this section is a class A misdemeanor.

KSA 65-6704. (a) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor's questions to be addressed. A parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the minor's decision-making process regarding whether to have an abortion. Such information and counseling shall include:

- (1) The alternatives available to the minor, including abortion, adoption and other alternatives to abortion;
- (2) An explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;
- (3) Make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available;
- (4) Discussion of the possibility of involving the minor's parent or parents, other adult family members or guardian in the minor's decision-making; and
- (5) Information regarding the provisions of section 5 and the minor's rights under such provision.

(b) After the performance of an abortion on a minor, a counselor shall provide counseling to assist the minor in adjusting to any post-abortion problems that the minor may have.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsections (a) and (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if

the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of subsections (a) and (b) and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this section.

(f) The requirements of subsection (a) shall not apply when, in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion. A physician who does not comply with the requirements of this section by reason of this exception shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

KSA 65-6705. (a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of section 4, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor who counseled the minor as required by section 4 shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the application.

(b) The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

(c) Court proceedings under this section shall be anonymous and the court shall ensure that the minor's identity is kept confidential. The court shall order that a confidential record of the evidence in the proceeding be maintained. All persons shall be excluded from hearings under this section except the minor, her attorney and such other persons whose presence is specifically requested by the applicant or her attorney.

(d) Notice shall be waived if the court finds by a preponderance of the evidence that either: (1) The minor is mature and well-informed enough to make the abortion decision on her own; or (2) notification of a person specified in subsection (a) would not be in the best interest of the minor.

(e) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision as follows: (1) Granting the minor's application for waiver of notice pursuant to this section, if the court finds that the minor is mature and well enough informed to make the abortion decision without notice to a person specified in subsection (a); (2) granting the minor's application for waiver if the court finds that the minor is immature but that notification of a person specified in subsection (a) would not be in the minor's best interest; or (3) denying the application if the court finds that the minor is immature and that waiver of notification of a person specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No notice shall be required under this section if:

(A) The pregnant minor declares that the father of the fetus is one of the persons to whom notice may be given under this section;

(B) In the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion; or

(C) The person or persons who are entitled to notice have signed a written, notarized waiver of notice which is placed in the minor's medical record.

(2) A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the exception of subsection (j)(1)(B) shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

KSA 65-6706. (a) No abortion shall be performed or induced unless:

(1) The woman upon whom the abortion is to be performed or induced gives her informed consent; or

(2) A medical emergency compels the performance or inducement of the abortion.

(b) Consent to an abortion is informed only if the physician who is to perform or induce the abortion or another health care provider informs the woman, in writing not less than eight hours before the abortion, of:

- (1) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
- (2) The gestational age of the fetus at the time the abortion is to be performed;
- (3) The medical risks, if any, associated with terminating the pregnancy or carrying the pregnancy to term; and
- (4) Community resources, if any, available to support the woman's decision to carry the pregnancy to term.

(c) If a medical emergency compels the performance or inducement of an abortion, the attending physician shall inform the woman, prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or to avert substantial and irreversible impairment of the woman's major bodily functions.

KSA 65-6707. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

SUMMARY OF CHANGES 1993-2021

1993

SB 479

The bill classifies the crime of abortion of a viable fetus as a class A person misdemeanor.

1997

SB 204

The bill creates the Woman's-Right-to-Know Act, which specifies information women must receive and how they receive it prior to having an abortion. The bill requires consent to an abortion to be voluntary and informed:

- Prior to the abortion procedure, prior to physical preparation for the abortion, and prior to the administration of medication for the abortion, the woman must meet privately with the physician who is to perform the abortion and the physician's staff to ensure an adequate opportunity to ask questions and obtain information from the physician;
- Any questions the woman might have concerning written information she is given must be answered in her own language;
- Prior to the abortion, the woman must certify in writing on a form provided by the Kansas Department of Health and Environment (KDHE) that she has met with the physician, and the required information was provided;
- Any physician who performs an abortion must receive a copy of the certificate prior to the abortion and report the total number of certifications received monthly to KDHE which must make the number of certifications received available on an annual basis;
- The woman cannot be required to pay any amount for the abortion until the 24-hour waiting period has expired; and
- The following written information must be provided to a pregnant woman at least 24 hours before an abortion:
 - The name of the physician who will perform the abortion;
 - A description of the proposed abortion method and risks associated with that method;
 - Alternatives to the abortion;
 - The probable gestational age and anatomical and physiological characteristics of the fetus at the time the abortion is to be performed;
 - That if the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
 - The following restatement of Kansas law: "No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) the abortion is necessary to preserve the life of the pregnant woman; or (2) the fetus is affected by a severe or life-threatening deformity or abnormality";
 - Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments, including pictures and drawings, and any relevant information on the possibility of the fetus' survival;
 - Commonly used abortion procedures and medical risks associated with each procedure;

- The medical risks associated with carrying a fetus to term;
- Any need for anti-Rh immune globulin therapy, the likely consequences of refusing such therapy, and the cost of the therapy;
- That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and details regarding the availability of such assistance are contained in the printed materials given to her;
- That the information she has received describes the fetus and lists agencies which offer alternatives to abortion with a special section listing adoption services;
- That the father of the fetus is liable to assist in the support of her child, even if he has offered to pay for the abortion (in the case of rape this information may be omitted);
- That she is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled;
- Comprehensive, geographically indexed materials that contain information about public and private agencies and services, including adoption agencies, available to assist her through pregnancy, upon childbirth, and while her child is dependent; available medical assistance benefits; and child support obligations of a child's father;
- A toll-free 24-hour-a-day telephone number which may be used to obtain, orally, a description of agencies in the locality of the caller and the services they offer;
- A statement that it is unlawful to coerce a woman to have an abortion, a physician who performs an abortion without the woman's informed consent is liable for damages, and adoptive parents may pay for prenatal care, childbirth, and neonatal care; and
- This statement: "Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician or the physician's agent provide the enclosed information."

The bill requires KDHE to publish and make available, within 30 days of the effective date of the Act, some of the written information described above. KDHE also is responsible for publishing the certification form required by the Act. KDHE is required to publish those materials in both English and Spanish and to make them available to anyone at no cost.

In the case of an emergency abortion, the physician would be required to inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

Finally, any physician who intentionally, knowingly, or recklessly fails to provide informed consent pursuant to the Act will be guilty of unprofessional conduct as defined in the Healing Arts Act. Any physician who complies with the provisions of the bill cannot be held civilly liable to a patient for failure to obtain informed consent to the abortion.

1998

HB 2531

The bill amends the law regarding abortions and post-viability abortion restrictions. The bill prohibits the use of the partial birth abortion procedure except in certain limited circumstances.

Concerning post-viability abortions:

- Adds a new definition of “viable” to apply only to post-viability abortions under KSA 65-6703 to include “that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures”;
- Replaces the fetal abnormality exception to the post-viability abortion prohibition with an exception that would allow a post-viability abortion if “continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman”;
- Requires a physician to determine gestational age of the fetus according to accepted obstetrical and neonatal practice and standards prior to any abortion, except in the case of a medical emergency.
 - If the physician determines the gestational age to be less than 22 weeks, the physician must document the basis for the determination in the woman’s medical records;
 - After 22 weeks gestational age, the doctor must determine whether the fetus is viable and conduct medical examinations and tests to determine gestational age of the fetus;
 - Viability determination must be made by the physician exercising that degree of care exercised by the ordinary prudent physician engaged in the same or similar circumstances; and
 - Findings and determinations of viability must be recorded in the woman’s medical records;
- Prohibits “legal or financial affiliation,” rather than “financial association,” of the two doctors required to be involved in a post-viability abortion and in partial birth abortion decisions; and

- Requires doctors to report to KDHE the reason for determining gestational age was 22 or more weeks and the fetus was not viable. If a post-22-week viable fetus is aborted, the bill requires a report to KDHE regarding the basis for the determination of fetal age, viability, and necessity for the abortion. Further, doctors are required to retain the woman's medical records, including the determination of gestational age, fetal viability, and necessity for the abortion, and the required written reports to KDHE for at least five years.

A conviction of a violation of any provision of the post-viability abortion restrictions is a class A nonperson misdemeanor for the first offense and a level 10 nonperson felony for second or subsequent offenses. Women upon whom an abortion is performed shall not be prosecuted for conspiracy to violate the post-viability abortion law.

Concerning partial birth abortions:

- Prohibits the use of partial birth abortion procedures on a viable fetus unless the woman has a referral from another doctor and both doctors determine the abortion procedure is necessary to preserve the woman's life or a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the woman; [Note: Viability is defined under KSA 65-6701 to mean when a fetus is capable of survival outside the uterus without the use of extraordinary medical means.]
- Defines a partial birth abortion as an "abortion procedure which includes the deliberate and intentional evacuation of all or a part of the intracranial contents of a viable fetus prior to removal of such otherwise intact fetus from the body of the pregnant woman";
- Requires the doctor to include the reasons for a determination of necessity for a partial birth abortion in reports filed with KDHE; and
- Makes violations of the partial birth abortion provisions a level 10 person felony. Women upon whom an abortion is performed may not be prosecuted for conspiracy to violate the partial birth abortion law.

General Abortion Changes:

- Requires physicians to conform with the Woman's-Right-to-Know Act, regardless of whether an abortion is performed;
- Amends the abortion reporting requirement for medical facilities to include the reports of determination of fetal viability, gestational age, and medical necessity for abortion;
- Amends the definition of unprofessional conduct in the healing arts statutes to include a violation of the post-viability requirements; and
- Deletes language from the Kansas Tort Claims Act providing immunity for governmental entities if confidential information regarding abortions is disclosed.

Senate Sub. for Sub. for HB 2007¹

The bill adds statutes regulating the donation and handling of fetal tissue and creates criminal penalties for violations. The bill also prohibits the sale of fetal tissue. The bill specifically does not prohibit the use of fetal tissue for research or experimentation unless the tissue is obtained or transferred in violation of the act, nor does the bill specifically authorize such use. For purposes of the act, fetal tissue includes any tissue, cells, or organs obtained from a dead human embryo or fetus after an abortion or stillbirth. Transferring fetal tissue to a pathologist for testing or examination or for immediate burial, cremation, or final disposition is not covered by the act.

No one can use fetal tissue for medical, scientific, experimental, or therapeutic purposes without the voluntary and informed consent of the woman donating the tissue. The consent to donate the fetal tissue must not be discussed or obtained prior to obtaining the woman's informed consent to the abortion in accordance with continuing law. The bill also prohibits anyone from offering any inducement to another person to procure an abortion for the medical, scientific, experimental, or therapeutic use of fetal tissue.

The bill prohibits solicitation, acquisition, acceptance, or transfer of fetal tissue for consideration. The bill also prohibits offering any valuable consideration for fetal tissue resulting from an abortion. Consideration is defined to be any:

- Payment made or debt incurred;
- Gift, honorarium, or recognition of value bestowed;
- Price, charge, or fee that is waived, forgiven, reduced, or indefinitely delayed;
- Loan or debt that is canceled or forgiven;
- Transfer of any item from one person to another; or
- Provision of any service or grant of any opportunity for which a charge is customarily made, without charge or for a reduced charge.

The term "consideration" specifically does not include payment of \$25 or less for the cost of transportation, processing, preservation, and storage of the tissue nor the actual cost of transportation if such amount is documented by the delivery service.

The bill prohibits soliciting, offering, acquiring, accepting, or transferring fetal tissue for transplantation if:

- The donor designates the recipient;
- The recipient is related to the donor; or
- The person soliciting, acquiring, or accepting the tissue provided consideration for the cost of the abortion.

Violation of any of the above provisions is a level 2 nonperson felony. The maximum sentence for a conviction is 123 months imprisonment, a fine of \$300,000, or both.

¹ Additionally, 2000 Senate Sub. for SB 599 made technical conforming amendments in the definition of "counselor" related to the Physician Assistant Licensure Act.

The bill requires anyone transferring fetal tissue to report to the Secretary of Health and Environment (Secretary) the:

- Date of transfer;
- Description of the fetal tissue;
- Name and address of the transferor and transferee;
- Amount paid for the transfer;
- Method of transfer or shipment; and
- Name of the delivery service providing transportation of the fetal tissue.

Anyone who ships fetal tissue must disclose to the delivery service that the contents are human tissue.

The name of the woman donating the fetal tissue is confidential and not included in the report to the Secretary. Information obtained by the Secretary under the bill is confidential and cannot be disclosed in a manner that reveals the identity of any person submitting a report. The information, including the identity of the person submitting the report, may be disclosed to the Attorney General if there exists reasonable cause to believe the act has been violated. Information provided to the Attorney General under the act could only be used for criminal prosecution. The bill establishes a procedure for preserving the confidentiality of reports submitted to the Secretary. Violation of the reporting provisions would be a class A nonperson misdemeanor.

2005

HB 2380

The bill creates the Child Rape Protection Act and changes certain duties of the Attorney General.

The bill requires any physician who performs an abortion on a minor who was less than 14 years of age at the time of the abortion to preserve fetal tissue extracted during the abortion. The physician shall submit the tissue to the Kansas Bureau of Investigation (KBI) or to a laboratory designated by the Director of the KBI.

The Attorney General will adopt rules and regulations prescribing:

- The amount and type of fetal tissue to be preserved;
- Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;
- Procedures for documenting the chain of custody of the tissue for use as evidence;
- Procedures for proper disposal of the preserved fetal tissue;

- A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue, which shall include the name of the physician submitting the fetal tissue and the name, complete address of residence, and name of the parent or legal guardian of the minor upon whom the abortion was performed; and
- Procedures for communication with law enforcement agencies regarding evidence and information obtained.

Failure to comply with any provision of the act shall constitute unprofessional conduct under the Board of Healing Arts law and a class A nonperson misdemeanor upon a first conviction and a severity level 10 nonperson felony upon a second or subsequent conviction.

2008

Senate Sub. for HB 2097

The bill requires every maternity center and medical care facility licensed by KDHE to adopt written policies and inform parents regarding their options for the disposition of fetal remains in an event of fetal death.

2009

House Sub. for SB 238

The bill makes several changes to the Woman's-Right-to-Know-Act, which requires certain information to be provided to a woman in order for a physician to obtain voluntary and informed consent prior to the performance of an abortion. The bill adds language that:

- Any physician performing an abortion must inform the woman if a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. Documentation of the physician's certification for an abortion would be required to be retained for at least 10 years. Physicians are required to provide written contact information for free counseling assistance for medically challenging pregnancies and for free perinatal hospice services. Physicians are required to meet with each woman at least 30 minutes prior to an abortion to answer questions and provide information about the abortion;
- Any physician performing an abortion, who uses ultrasound equipment in preparation for abortions, must at least 30 minutes before the procedure inform the woman she has the right to view the ultrasound and receive a picture of the ultrasound at no additional expense to her; offer the woman the opportunity to view the ultrasound and receive a picture; certify in writing the woman was offered the opportunity to view the ultrasound and receive a picture 30 minutes before the abortion; and obtain the woman's signed acceptance or rejection of the opportunity to view the ultrasound or receive a picture. Also, any physician

who uses heart monitoring equipment in preparation for abortions is required at least 30 minutes before the procedure to inform the woman that she has the right to listen to the unborn child's heartbeat at no additional expense to her; offer the woman the opportunity to listen to the heartbeat; certify in writing the woman was offered the opportunity to listen to the heartbeat 30 minutes before the abortion; and obtain the woman's acceptance or rejection of the opportunity to listen to the heartbeat;

- Facilities in which abortions are performed must conspicuously post signs stating the rights of women regarding abortions, except the provision would not apply to facilities that perform abortions only when necessary to prevent the death of a pregnant woman; and
- KDHE must produce a standardized video that includes all the information that is available to women under the Woman's-Right-to-Know Act, which must be available in digital video disk (DVD) format. Additionally, all information, including printed and video materials, must be available in both English and Spanish versions and to be available online on KDHE's website

2011

House Sub. for SB 36, HB 2035, and HB 2218

House Sub. for SB 36. The bill provides for the licensing and regulating of abortion clinics and other medical facilities by KDHE. The Secretary is required to adopt and enforce rules and regulations regarding medical facilities that perform abortions and to collect an initial fee of \$500 and subsequent annual fees of \$500 from each licensee. The Secretary must determine the severity of violations and must assess the corresponding fines for those violations. Inspections of licensed facilities by KDHE are required twice per year.

The bill adds new definitions for two terms regarding facilities that must be licensed: "elective abortion" and "medical emergency." The bill also redefines certain statutory terms in regards to facilities that must be licensed, including "abortion" and "facility."

"Elective abortion" means an abortion for any reason other than to prevent the death of the mother. "Medical emergency" means a condition that so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate a pregnancy. "Facility" means any clinic, hospital or ambulatory surgical center, in which any second or third trimester elective abortion or five or more first trimester elective abortions are performed in a month, excluding any abortions performed due to a medical emergency.

Any facility that performs any second or third trimester abortion, or five or more first trimester abortions within a month, must be licensed. Except in the case of a medical emergency, all abortions, when the gestational age of the unborn child is 22 weeks or more, must be performed in a licensed facility that is either a hospital or an ambulatory surgical center. All other abortions must be performed in a licensed facility, including a hospital, an ambulatory surgical center, or a clinic, except in the case of a medical emergency.

HB 2035. The bill includes modifications to the law regarding prohibitions on late-term and partial birth abortions; requirements for parental consent, with certain exceptions, for abortions involving minors; expansion of and additions to abortion reporting requirements; and addition of a civil cause of action in certain abortion cases. Other changes alter the terminology associated with abortion law, require new rules and regulations regarding partial birth abortions, and grant access by law enforcement to certain abortion reports if violations of the law are suspected.

The term “fetus” is changed to “unborn child” and the bill revises the definitions of “viability,” “abortion,” and “partial birth abortion.” A new definition of “human being” is added.

The bill enhances the reporting requirements regarding the medical diagnosis in general for all cases and, specifically, for those cases involving late-term abortions near or after viability and for those cases involving partial birth abortions. The criteria for who may obtain a partial birth abortion are redefined by deleting the reference to mental function of a pregnant woman.

A civil cause of action is created regarding late-term abortions, partial birth abortions, and parental consent. The Attorney General, district attorney, and county attorney are authorized to prosecute criminal offenses. Disciplinary action by the Board of Healing Arts continues to be an option regarding such violations.

The law requiring parental notice is replaced with a new requirement for parental consent regarding minors. Procedures for court-waiver of consent are established. The required informed consent information is modified by requiring the additional statement the abortion will terminate the life of a whole, separate, unique living human being.

Reporting of sexual abuse is required; KDHE is required to include additional information in its reporting; and law enforcement officials are granted access to KDHE reports.

HB 2218. New restrictions on certain late-term abortions are enacted. The bill adds a new section that lists the Legislature’s findings on the capacity of an unborn child to feel pain.

The bill defines a “pain-capable child” as an unborn child that has reached the gestational age of 22 weeks or more and sets restrictions and requirements for physicians performing abortions in cases involving a pain-capable unborn child. Except under statutorily defined circumstances permitted for certain abortions, the bill establishes criminal severity levels for violations under the bill’s provisions that do not conform to the new requirements.

The bill also establishes the circumstances and procedures to be followed for exceptions that would allow abortions where a pain-capable child is present, including cases where specific medical conditions would lead the physician to believe the death of a pregnant woman might result, or there might be a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

The Secretary is required to adopt rules and regulations to collect details about referrals, record-keeping, and reporting requirements for physicians performing such abortions. Medical care facilities are required to keep specific records about procedures associated with such cases involving pain-capable unborn children and to submit such data to KDHE.

The bill provides that “Nothing in this act shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes.”

SB 142 and HB 2253

SB 142. The bill prohibits civil actions for a claim of wrongful life or wrongful birth. The bill also prohibits recovery of damages in any civil action for any physical condition of a minor that existed at birth if such damages arise out of a claim that a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill defines "claim of wrongful birth" as a cause of action brought by a parent, guardian, or individual required to provide for the support of a minor seeking damages due to a physical condition of the minor that existed at the time of birth, and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion. The bill defines "claim of wrongful life" as a cause of action brought by or for a minor seeking damages for the minor due to a physical condition existing at birth and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill clarifies that nothing in the new section should be deemed to create a new cause of action or preclude any otherwise proper cause of action based on a claim that, but for a person's wrongful action or omission, the death or physical injury of the mother would not have occurred, or the handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated so that the health and life of the individual was preserved.

The bill also amends the wrongful death statute to include "unborn child" within the definition of "person" for purposes of the statute. This change allows a wrongful death action for the death of an unborn child caused by the wrongful act or omission of another. "Unborn child" is defined as a living individual organism of the species *homo sapiens, in utero*, at any stage of gestation from fertilization to birth.

The bill clarifies that the provisions of the wrongful death statute do not apply to the death of an unborn child by means of an act committed by the mother, any lawful medical procedure performed by a physician or other licensed medical professional at the request of the pregnant woman or her guardian, the lawful dispensation or administration of lawfully prescribed medication, or a legal abortion.

Both the new provisions and the amendments to the wrongful death section include a severability clause.

HB 2253. The bill prohibits persons from performing or inducing abortions or attempting to perform or induce abortions in instances where the person has knowledge the pregnant woman is seeking an abortion solely on account of the sex of the unborn child.

The bill allows the following persons, unless the pregnancy resulted from the plaintiff's criminal conduct, to obtain appropriate relief in a civil action:

- A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion (in violation of the law enacted by the bill);
- The father, if married to the woman at the time of the abortion; and

- The parents or custodial guardians of the woman, if she has not attained the age of 18 at the time of the abortion.

Relief as applied in the bill includes:

- Money damages for all injuries, psychological and physical, occasioned by the violation;
- Statutory damages equal to three times the cost of the abortion;
- Injunctive relief; and
- Reasonable attorney fees.

The bill further provides that a woman upon whom an abortion is performed cannot be prosecuted under the provisions created by the bill for a conspiracy to violate these provisions pursuant to Kansas law (KSA 2012 Supp. 21-5302). The bill provides that nothing in the provisions is to be construed to create a right to an abortion. Notwithstanding any provision of the section of law created by the bill, a person will not be allowed to perform an abortion that is prohibited by law.

The bill provides that upon a first conviction for violation of the section of law created by the bill, a person will be guilty of a class A person misdemeanor. Upon a second or subsequent provision, a person will be guilty of a severity level 10 person felony.

“Abortion,” as used in the bill, 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, which causes the premature termination of the pregnancy.

The bill also revises the general and late-term abortion statutes, the Woman’s-Right-to-Know Act, and the state tax statutes. In addition, the bill adds a new statutory provision that declares the life of each human being begins at fertilization, with all state laws to be interpreted and construed to protect the rights, privileges, and immunities of the unborn child, subject only to the *U.S. Constitution* and the judicial decisions and interpretations of the U.S. Supreme Court.

The bill further provides that nothing in the new provisions shall apply to an abortion that is necessary to preserve the life of the pregnant woman.

The bill prohibits the use of public funding, tax credits, tax preferences, and state-provided public health care services from being used in any manner to facilitate abortions or in facilities where abortions are performed. The bill clarifies a restriction in the tax credit laws regarding health care deductions and limits a prohibition to include only expenses paid or incurred for abortion coverage.

The bill also prohibits any school district and its employees, agents, and education service providers from offering abortion services. The bill restricts school districts from allowing an abortion services provider and its employees, agents, and volunteers from offering, sponsoring, or furnishing any course materials or instruction related to human sexuality or sexually transmitted diseases.

A statute applying to late-term restrictions is amended to include a reference to attempts to perform or induce an abortion as being prohibited. The bill redefines the term “medical emergency” regarding a pregnant woman, and adds two definitions for the terms “bodily function” and “fertilization” in the general abortion statutes:

- “Medical emergency” regarding a pregnant woman means “a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert the death of the woman or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function.” The concluding new language states “no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function”;
- “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions; and
- “Fertilization” means the fusion of a human spermatozoon with a human ovum.

The Secretary is required to provide information about Down syndrome and other prenatally or postnatally diagnosed conditions and is permitted to authorize and oversee certain activities, including the awarding of grants, contracts, or cooperative agreements to eligible entities. Information about counseling assistance for medically challenging pregnancies and perinatal hospice services is required as an addition to a KDHE listing of websites for national perinatal assistance. The Secretary is required to submit a report on or before January 12, 2015, to the Legislature and the Governor on the effectiveness of the grants, contracts, and cooperative agreements.

The bill also amends the Woman’s-Right-to-Know Act to prescribe new language for signage to be posted in an office, clinic, or other facility in which abortions are performed.

Additional language also is required in certain printed materials to inform pregnant women about the development of an unborn child, legal responsibilities for the unborn child, and a link to the KDHE website materials and organizations to assist the pregnant woman.

The bill addresses the University of Kansas Hospital Authority and amends the law regarding abortions to allow for an abortion to be performed at the hospital in the case of a medical emergency as defined in the bill. In addition, the bill allows any member of the physician faculty of the University of Kansas School of Medicine to perform abortions whenever an abortion is performed outside the scope of any member’s employment and on property not controlled by the University of Kansas Hospital Authority.

The bill includes a severability clause, should any provision or clause be held invalid.

2014

SB 54

The bill amends different statutes pertaining to abortion by adding or revising certain definitions to make them consistent in different statutes, including provisions on licensing abortion facilities, medical emergencies involving abortion, abortions for minors, and abortions at facilities owned by the University of Kansas Hospital Authority. The bill also eliminates certain language, principally in a reference for the web link to KDHE's website.

Specifically, the bill adds a consistent definition of "bodily function" to one section of law, defining the term as physical functions only and not including mental or emotional functions. The bill also modifies the definition of "medical emergency" to make its use in various statutes consistent by removing references to the determination of gestational age and adding language referring to delays necessary to comply with applicable statutory requirements concerning abortion. Other language is removed with regard to a medical emergency, eliminating references to the best medical judgment of the attending physician and the determination of an emergency in order to conform with the new definition of "medical emergency." Another provision addressing the University of Kansas Hospital Authority's facilities is modified regarding the meaning of the term "medical emergency" and the performance of abortions under certain enumerated conditions.

The bill also removes the words "objective, nonjudgmental, scientifically accurate" from language required by law to be posted, along with a web link to information from KDHE, on the websites of private offices, freestanding surgical outpatient clinics, or other facilities or clinics where abortions are performed.

Finally, the bill removes inconsistent language in a statute pertaining to late term abortions for conformity with the Woman's-Right-to-Know Act concerning abortions performed when the gestational age of the unborn child is less than 22 weeks and where abortions may be performed.

2015

SB 95 and Senate Sub. for HB 2228

SB 95. The bill creates the Kansas Unborn Child Protection from Dismemberment Abortion Act (Act) and 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.

The bill defines several terms, including "abortion" and "dismemberment abortion." As defined in the bill, dismemberment abortion means, with the purpose of causing the death on 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.

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.

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 that 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.

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.

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 monetary 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.

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.

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.

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

The bill states a judicial 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 bill declares the provisions of the Act to be severable.

Senate Sub. for HB 2228. The bill adds language to law concerning the administration of abortifacient drugs.

The bill requires that, except in the case of an abortion performed in a hospital through inducing labor, when RU-486 (mifepristone) is used for the purpose of inducing an abortion, the drug must initially be administered by or in the same room as and in the physical presence of the physician prescribing, dispensing, or otherwise providing the drug to the patient.

The bill also requires when any drug other than RU-486 (mifepristone) is used for the purpose of inducing an abortion, the prescription or the drug must be given to the patient in the same room as and in the physical presence of the physician prescribing, dispensing, or otherwise providing the drug to the patient.

These requirements do not apply in the case of a medical emergency.

2017

SB 83

The bill amends the Woman's-Right-to-Know Act as it relates to what constitutes voluntary and informed consent before an abortion can be performed. The bill requires additional information about the physician performing an abortion to be provided to a woman at least 24 hours in advance of the procedure.

Specifically, the bill requires the following information be provided:

- The name of the physician;
- The year the physician received a medical doctor's degree;
- The date the physician's employment began at the facility where the procedure is to be performed;
- The name of any hospital where the physician has lost clinical privileges; and
- The following information notated by marking a box indicating "yes" or a box indicating "no":
 - Whether any disciplinary action has been taken against the physician by the State Board of Healing Arts (Board);
 - If the "yes" box is marked, a website address to the Board documentation for each disciplinary action must be provided;
 - Whether the physician has malpractice insurance;
 - Whether the physician has clinical privileges at any hospital within 30 miles of the facility where the procedure is to be performed;
 - If the "yes" box is marked, the name of each hospital and date the privileges were issued must be provided; and
 - Whether the physician is a resident of Kansas.

The information listed above must be provided on white paper, in a printed format, in black ink, and in 12-point Times New Roman font.

The bill states that if any of the laws related to abortion found in KSA Chapter 65, Article 67, are enjoined, all other provisions in that section of law will be enforced as if the enjoined provisions had not been enacted. If the injunction on the provisions ceases to be in effect, the provisions will have full force and effect.

PROPOSED CONSTITUTIONAL AMENDMENT LANGUAGE

Note: The 2021 Legislature approved an amendment to the *Kansas Constitution* to be submitted to voters at the primary election held in August 2022². If voters approve the amendment, a new section would be added to the Bill of Rights as follows:

Section 22. Regulation of abortion. Because Kansans value both women and children, the constitution of the state of Kansas does not require government funding of abortion and does not create or secure a right to abortion. To the extent permitted by the constitution of the United States, the people, through their elected state representatives and state senators, may pass laws regarding abortion, including, but not limited to, laws that account for circumstances of pregnancy resulting from rape or incest, or circumstances of necessity to save the life of the mother.³

CURRENT STATUTORY LANGUAGE

KSA 65-4a01. Definitions.⁴

As used in KSA 65-4a01 through 65-4a12, 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) “Ambulatory surgical center” means an ambulatory surgical center as defined in KSA 65-425, and amendments thereto.

(c) “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.

(d) “Clinic” means any facility, other than a hospital or ambulatory surgical center, in which any second or third trimester, or five or more first trimester abortions are performed in a month.

(e) “Department” means the department of health and environment.

² See [2021 HCR 5003](#).

³ On July 22, 2022, Attorney General Derek Schmidt issued [AG Opinion 2022-007](#), concluding passage of the amendment would not ban or restrict abortion or any medical treatment, nor would it affect a physician’s ability to render care for ectopic pregnancies, miscarriages, or fetal demise.

⁴ The provisions of KSA 65-4a01 through KSA 65-4a12, concerning abortion facility licensure, were ruled unconstitutional on December 3, 2021, by an order of the trial court in *Nausser v. Norman*, 2011-CV-1298 (Shawnee County, 2021).

(f) “Elective abortion” means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which would result in her death.

(g) “Facility” means any clinic, hospital, or ambulatory surgical center, in which any second or third trimester elective abortion, or five or more first trimester elective abortions are performed in a month, excluding any abortion performed due to a medical emergency.

(h) “Gestational age” has the same meaning ascribed thereto in KSA 65-6701, and amendments thereto, and shall be determined pursuant to KSA 65-6703, and amendments thereto.

(i) “Hospital” means a hospital as defined in subsection (a) or (b) of KSA 65-425, and amendments thereto.

(j) “Medical emergency” means a condition that, in a reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(k) “Physician” has the same meaning ascribed thereto in KSA 65-6701, and amendments thereto.

(l) “Secretary” means the secretary of the department of health and environment.

KSA 65-4a02. Licensure, facilities performing abortions; posting; fee.

(a) A facility shall be licensed in accordance with KSA 65-4a01 through 65-4a12, and amendments thereto.

(b) Any facility seeking licensure for the performance of abortions shall submit an application for such license to the department on forms and in the manner required by the secretary. Such application shall contain such information as the secretary may reasonably require, including affirmative evidence of the ability of the applicant to comply with such reasonable standards and rules and regulations adopted pursuant to KSA 65-4a09, and amendments thereto.

(c) Upon receipt of such application and verification by the department that the applicant is in compliance with all applicable laws and rules and regulations, the secretary shall issue a license to the applicant.

(d) A license issued under this section shall be posted in a conspicuous place in a public area within the facility. The issuance of a license does not guarantee adequacy of individual care, treatment, personal safety, fire safety or the well-being of any occupant of such facility. A license is not assignable or transferable.

(e) A license shall be effective for one year following the date of issuance. A license issued under this section shall apply only to the premises described in the application and in the license issued thereon, and only one location shall be described in each license.

(f) At the time application for a license is made the applicant shall pay license fee in the amount of \$500. Fees paid pursuant to this section shall not be refunded by the secretary.

(g) The secretary may make exceptions to the standards set forth in law or in rules and regulations when it is determined that the health and welfare of the community require the services of the hospital or ambulatory surgical center and that the exceptions, as granted, will have no significant adverse impact on the health, safety, or welfare of the patients of such hospital or ambulatory surgical center.

KSA 65-4a03. License; annual renewal.

Applicants for an annual license renewal shall file an application with the department and pay the license fee in accordance with KSA 65-4a02, and amendments thereto. Applicants for an annual license renewal shall also be subject to a licensing inspection in accordance with KSA 65-4a05, and amendments thereto.

KSA 65-4a04. Facility name change; ownership change; notice.

(a) No proposed facility shall be named, nor may any existing facility have its name changed to, the same or similar name as any other facility licensed pursuant to KSA 65-4a01 through 65-4a12, and amendments thereto. If the facility is affiliated with one or more other facilities with the same or similar name, then the facility shall have the geographic area in which it is located as part of its name.

(b) Within 30 days after the occurrence of any of the following, a facility shall apply for an amended license by submitting such application to the department:

- (1) A change of ownership either by purchase or lease; or
- (2) a change in the facility's name or address.

KSA 65-4a05. Inspections; frequency; confidentiality of certain records.

(a) The secretary shall make or cause to be made such inspections and investigations of each facility at least twice each calendar year and at such other times as the secretary determines necessary to protect the public health and safety and to implement and enforce the provisions of KSA 65-4a01 through 65-4a12, and amendments thereto, and rules and regulations adopted pursuant to KSA 65-4a09, and amendments thereto. At least one inspection shall be made each calendar year without providing prior notice to the facility. For that purpose, authorized agents of the secretary shall have access to a facility during regular business hours.

(b) Information received by the secretary through filed reports, inspections or as otherwise authorized under KSA 65-4a01 through 65-4a12, and amendments thereto, shall not

be disclosed publicly in such manner as to identify individuals. Under no circumstances shall patient medical or other identifying information be made available to the public, and such information shall always be treated by the department as confidential.

KSA 65-4a06. Licensure; denial, suspension or revocation; procedures license violation classes; penalties; fines.

(a) When the secretary determines that a facility is in violation of any applicable law or rule and regulation relating to the operation or maintenance of such facility, the secretary, upon proper notice, may deny, suspend, or revoke the license of such facility, or assess a monetary penalty after notice and an opportunity for hearing has been given to the licensee in accordance with the provisions of the Kansas Administrative Procedure Act.

(b) Either before or after formal charges have been filed, the secretary and the facility may enter into a stipulation which shall be binding upon the secretary and the facility entering into such stipulation, and the secretary may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by this section against the facility entering into such stipulation.

(c) The secretary may temporarily suspend or temporarily limit the license of any facility in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the secretary determines that there is cause to believe that grounds exist under this section for immediate action authorized by this section against the facility and that the facility's continuation in operation would constitute an imminent danger to the public health and safety.

(d) Violations of KSA 65-4a01 through KSA 65-4a12, and amendments thereto, or of any rules and regulations adopted thereunder shall be deemed one of the following:

(1) Class I violations are those that the secretary determines to present an imminent danger to the health, safety, or welfare of the patients of the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the secretary, is required for correction. Each day such a violation shall exist after expiration of such time shall be considered a subsequent violation.

(2) Class II violations are those, other than class I violations, that the secretary determines to have a direct or immediate relationship to the health, safety or welfare of the facility's patients. The citation of a class II violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(3) Class III violations are those that are not classified as class I or II, or those that are against the best practices as interpreted by the secretary. The citation of a class III violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(e) The secretary shall consider the following factors when determining the severity of a violation:

- (1) Specific conditions and their impact or potential impact for on the health, safety or welfare of the facility's patients;
- (2) efforts by the facility to correct the violation
- (3) overall conditions of the facility;
- (4) the facility's history of compliance; and
- (5) any other pertinent conditions that may be applicable.

(f) Any monetary penalty assessed by the secretary shall be assessed in accordance with the following fine schedule:

(1) For class I violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, a fine of not less than \$200 and not more than \$1,000;
- (B) two violations, a fine of not less than \$500 and not more than \$2,000;
- (C) three violations, a fine of not less than \$1,000 and not more than \$5,000;
- (D) four or more violations, a fine of \$5,000;

(2) for class II violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, a fine of not less than \$100 and not more than \$200;
- (B) two violations, a fine of not less than \$200 and not more than \$1,000;
- (C) three violations, a fine of not less than \$500 and not more than \$2,000;
- (D) four violations, a fine of not less than \$1,000 and not more than \$5,000;
- (E) five or more violations, a fine of \$5,000;

(3) for class III violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, there shall be no fine;
- (B) two violations, a fine of not less than \$100 and not more than \$500;
- (C) three violations, a fine of not less than \$200 and not more than \$1,000;

(D) four violations, a fine of not less than \$500 and not more than \$2,000;

(E) five violations, a fine of not less than \$1,000 and not more than \$5,000; and

(F) six or more violations, a fine of \$5,000.

KSA 65-4a07. Late term abortions; performed in hospital or ambulatory surgical center only; exception.

Except in the case of a medical emergency, an abortion performed when the gestational age of the unborn child is 22 weeks or more shall be performed in a hospital or ambulatory surgical center licensed pursuant to this act. All other abortions shall be performed in a facility licensed pursuant to this act, except that a hospital or ambulatory surgical center that does not meet the definition of a facility under this act and that is licensed pursuant to KSA 65-425 *et seq.*, and amendments thereto, may perform abortions.

KSA 65-4a08. Operating without a valid license; criminal penalties.

(a) It shall be unlawful to operate a facility within Kansas without possessing a valid license issued annually by the secretary pursuant to KSA 65-4a02, and amendments thereto, with no requirement of culpable mental state.

(b) It shall be unlawful for a person to perform or induce an abortion in a facility unless such person is a physician, with clinical privileges at a hospital located within 30 miles of the facility, with no requirement of culpable mental state.

(c) Violation of subsection (a) or (b) is a class A nonperson misdemeanor and shall constitute unprofessional conduct under KSA 65-2837, and amendments thereto.

KSA 65-4a09. Rules and regulations; secretary of health and environment.

(a) The secretary shall adopt rules and regulations for the licensure of facilities for the performance of abortions.

(b) The secretary shall adopt rules and regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reporting, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, information on and access to patient follow-up care and any other areas of medical practice necessary to carry out the purposes of KSA 65-4a01 through 65-4a12, and amendments thereto, for facilities for the performance of abortions. At a minimum these rules and regulations shall prescribe standards for:

(1) Adequate private space that is specifically designated for interviewing, counseling and medical evaluations;

(2) dressing rooms for staff and patients;

- (3) appropriate lavatory areas;
- (4) areas for preprocedure hand washing;
- (5) private procedure rooms;
- (6) adequate lighting and ventilation for abortion procedures;
- (7) surgical or gynecologic examination tables and other fixed equipment;
- (8) postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs;
- (9) emergency exits to accommodate a stretcher or gurney;
- (10) areas for cleaning and sterilizing instruments; and
- (11) adequate areas for the secure storage of medical records and necessary equipment and supplies.

(c) The secretary shall adopt rules and regulations to prescribe facility supplies and equipment standards, including supplies and equipment, that are required to be immediately available for use or in an emergency. At a minimum these rules and regulations shall:

- (1) Prescribe required equipment and supplies, including medications, required for conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the facility anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period;
- (2) require that the number or amount of equipment and supplies at the facility is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient;
- (3) prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power;
- (4) prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the facility or operated by facility staff;
- (5) require ultrasound equipment in facilities; and
- (6) require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

(d) The secretary shall adopt rules and regulations relating to facility personnel. At a minimum these rules and regulations shall require that:

(1) The facility designate a medical director of the facility who is licensed to practice medicine and surgery in Kansas;

(2) physicians performing surgery in a facility are licensed to practice medicine and surgery in Kansas, demonstrate competence in the procedure involved and are acceptable to the medical director of the facility;

(3) a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available;

(4) another individual is present in the room during a pelvic examination or during the abortion procedure and if the physician is male then the other individual shall be female;

(5) a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the facility when abortions are performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged;

(6) surgical assistants receive training in the specific responsibilities of the services the surgical assistants provide; and

(7) volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules and regulations adopted by the director for different types of volunteers based on their responsibilities.

(e) The secretary shall adopt rules and regulations relating to the medical screening and evaluation of each facility patient. At a minimum these rules and regulations shall require:

(1) A medical history included in the following:

(A) Reported allergies to medications, antiseptic solutions or latex;

(B) obstetric and gynecologic history; and

(C) past surgeries;

(2) a physical examination including a bimanual examination estimating uterine size and palpation of the adnexa;

(3) the appropriate laboratory tests including:

(A) For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure;

(B) a test for anemia as indicated;

(C) Rh typing, unless reliable written documentation of blood type is available;
and

(D) other tests as indicated from the physical examination;

(4) an ultrasound evaluation for all patients who elect to have an abortion of an unborn child. The rules shall require that if a person who is not a physician performs and ultrasound examination, that person shall have documented evidence that the person completed a course in the operation of ultrasound equipment as prescribed in rules and regulations. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the unborn child; and

(5) that the physician is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations and shall verify the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

(f) The secretary shall adopt rules and regulations relating to the abortion procedure. At a minimum these rules and regulations shall require:

(1) That medical personnel is available to all patients throughout the abortion procedure;

(2) standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations;

(3) appropriate use of local anesthesia, analgesia and sedation if ordered by the physician;

(4) the use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions; and

(5) the use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

(g) The secretary shall adopt rules and regulations that prescribe minimum recovery room standards. At a minimum these rules and regulations shall require that:

(1) Immediate postprocedure care consists of observation in a supervised recovery room for as long as the patient's condition warrants;

(2) the facility arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected;

(3) a licensed health professional who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the facility until all patients are discharged;

(4) a physician or a nurse who is advanced cardiovascular life support certified shall remain on the premises of the facility until all patients are discharged and to facilitate the transfer of emergency cases if hospitalization of the patient or viable unborn child is necessary. A physician or nurse shall be readily accessible and available until the last patient is discharged;

(5) a physician or trained staff member discusses Rho(d) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate postoperative period or that it will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record;

(6) written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies;

(7) there is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and gestational age of the unborn child;

(8) the physician assures that a licensed health professional from the facility makes a good faith effort to contact the patient by telephone, with the patient's consent, within 24 hours after surgery to assess the patient's recovery; and

(9) equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable unborn child to the hospital.

(h) The secretary shall adopt rules and regulations that prescribe standards for follow-up visits. At a minimum these rules and regulations shall require that:

(1) A postabortion medical visit is offered and scheduled within four weeks after the abortion, if accepted by the patient, including a medical examination and a review of the results of all laboratory tests;

(2) a urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs or induces abortions shall be consulted; and

(3) the physician performing or inducing the abortion, or a person acting on behalf of the physician performing or inducing the abortion, shall make all reasonable efforts to ensure that the patient remains for a subsequent examination so that the physician can assess the patient's medical condition. A brief description of the efforts made to comply with this [these] requirements, including the date, time and

identification by name of the person making such efforts, shall be included in the patient's medical record.

(i) The secretary shall adopt rules and regulations to prescribe minimum facility incident reporting. At a minimum these rules and regulations shall require that:

(1) The facility records each incident resulting in a patient's or viable unborn child's serious injury occurring at a facility and shall report them in writing to the department within 10 days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at a facility and that creates a serious risk of substantial impairment of a major body organ;

(2) if a patient's death occurs, other than an unborn child's death properly reported pursuant to law, the facility shall report such death to the department of health and environment not later than the next department business day; and

(3) incident reports are filed with the department of health and environment and appropriate professional regulatory boards.

(j) (1) The secretary shall adopt rules and regulations requiring each facility to establish and maintain an internal risk management program which, at a minimum, shall consist of:

(A) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(B) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(C) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk manager of the facility.

(2) As used in this subsection, the term "reportable incident" means an act by a health care provider which:

(A) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient or

(B) may be grounds for disciplinary action by the appropriate licensing agency.

(k) The rules and regulations adopted by the secretary pursuant to this section do not limit the ability of a physician or other health care professional to advise a patient on any health issue. The secretary periodically shall review and update current practice and technology standards under KSA 65-4a01 through 65-4a12, and amendments thereto, and based on current practice or technology adopt by rules and regulations alternative practice or technology standards found by the secretary to be as effective as those enumerated in KSA 65-4a01 through 65-4a12, and amendments thereto.

(l) The provisions of KSA 65-4a01 through 65-4a12, and amendments thereto, and the rules and regulations adopted pursuant thereto shall be in addition to any other laws and rules

and regulations which are applicable to facilities defined as clinics under KSA 65-4a01, and amendments thereto.

(m) In addition to any other penalty provided by law, whenever in the judgment of the secretary of health and environment any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this section, or any rules and regulations adopted under the provisions of this section, the secretary shall make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the secretary that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

KSA 65-4a10. Performance of abortions; only physicians; RU-486 or any drug induced abortion requirements; violations.

(a) No abortion shall be performed or induced by any person other than a physician licensed to practice medicine in the state of Kansas.

(b) (1) Except in the case of an abortion performed in a hospital through inducing labor: (A) When RU-486 (mifepristone) is used for the purpose of inducing an abortion, the drug shall initially be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug to the patient; and (B) when any other drug is used for the purpose of inducing an abortion, the drug or the prescription for such drug shall be given to the patient by or in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug or prescription to the patient.

(2) The provisions of this subsection shall not apply in the case of a medical emergency.

(c) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make all reasonable efforts to ensure that the patient returns 12 to 18 days after the administration or use of such drug for a subsequent examination so that the physician can confirm that the pregnancy has been terminated and assess the patient's medical condition. A brief description of the efforts made to comply with this subsection, including the date, time and identification by name of the person making such efforts, shall be included in the patient's medical record.

(d) A violation of this section shall constitute unprofessional conduct under KSA 65-2837, and amendments thereto.

KSA 65-4a11. Act does not create right to abortion.

Nothing in KSA 65-4a01 through 65-4a12, and amendments thereto, shall be construed as creating or recognizing a right to abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

KSA 65-4a12. Severability clause.

The provisions of KSA 65-4a01 through 65-4a12, and amendments thereto, are declared to be severable, and if any provision, or the application thereof, to any person shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of KSA 65-4a01 through 65-4a12, and amendments thereto.

KSA 65-6701. Definitions.

As used in KSA 65-6701 through 65-6721, 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) “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.

(c) “Counselor” means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master’s level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors; (4) a licensed physician assistant; or (5) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(d) “Department” means the department of health and environment.

(e) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

(f) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(g) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(h) “Minor” means a person less than 18 years of age.

(i) “Physician” means a person licensed to practice medicine and surgery in this state.

(j) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

(k) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, licensed marriage and family therapist, licensed master’s level psychologist, licensed clinical psychotherapist, registered nurse or physician.

(l) “Unemancipated minor” means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor’s parents.

(m) “Viable” means that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures.

KSA 65-6702. Drugs or devices for birth control or fertilization lawful; political subdivisions prohibited from limiting abortion.

(a) The use of any drug or device that inhibits or prevents ovulation, fertilization or implantation of an embryo and disposition of the product of *in vitro* fertilization prior to implantation are lawful in this state and neither the state nor any political subdivision of the state shall prohibit the use of any such drug or device or the disposition of such product.

(b) No political subdivision of the state shall regulate or restrict abortion.

KSA 2018 Supp. 65-6703. Abortion when unborn child viable; restrictions and prohibitions; civil damages and criminal penalties for violations.

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

(b) Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician’s written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written

determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination 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 KSA 65-445, and amendments thereto. Such determination shall specify:

- (1) If the unborn child was determined to be nonviable and the medical basis of such determination;
- (2) If the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or
- (3) If a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would constitute a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

(c) (1) Except in the case of a medical emergency, prior to performing or inducing, or attempting to perform or induce an abortion upon a woman, the physician shall determine the gestational age of the unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination. The medical basis for the determination of the gestational age of the unborn child 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 KSA 65-445, and amendments thereto.

- (2) If the physician determines the gestational age of the unborn child is 22 or more weeks, prior to performing or inducing, or attempting to perform or induce an abortion upon the woman the physician shall determine if the unborn child is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the unborn child and shall enter such findings and determinations of viability in the medical record of the woman.
- (3) If the physician determines the gestational age of an unborn child is 22 or more weeks, and determines that the unborn child is not viable and performs an abortion on the woman, the physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under KSA 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments thereto.

- (4) If the physician who is to perform the abortion determines the gestational age of an unborn child is 22 or more weeks, and determines that the unborn child is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under KSA 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments thereto.
 - (5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (c) for not less than 10 years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (c) for not less than 10 years.
- (d) The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:
- (1) A detailed list of the information that must be kept by a physician under paragraphs (1) and (2) of subsection (c);
 - (2) The contents of the written reports required under paragraphs (3) and (4) of subsection (c); and
 - (3) Detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.
- (e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to KSA 2017 Supp. 21-5302, and amendments thereto.

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

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

(2) Such relief shall include:

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

(B) Statutory damages equal to three times the cost of the abortion; and

(C) Reasonable attorney fees.

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

(i) Nothing in this section shall be construed to restrict the authority of the board of healing arts to engage in a disciplinary action.

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

(k) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10 nonperson felony.

KSA 65-6704. Abortion upon minor; required information and counseling.

(a) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor's questions to be addressed. A parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the minor's decision-making process regarding whether to have an abortion. Such information and counseling shall include:

(1) The alternatives available to the minor, including abortion, adoption and other alternatives to abortion;

- (2) An explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;
- (3) Make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available;
- (4) Discussion of the possibility of involving the minor's parent or parents, other adult family members or guardian in the minor's decision-making; and
- (5) Information regarding the provisions of KSA 65-6705, and amendments thereto, and the minor's rights under such provisions.

(b) After the performance of an abortion on a minor, a counselor shall provide counseling to assist the minor in adjusting to any post-abortion problems that the minor may have.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsections (a) and (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of subsections (a) and (b) and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this section.

(f) The requirements of subsection (a) shall not apply when a medical emergency exists. A physician who does not comply with the requirements of this section by reason of this exception shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

KSA 65-6705. Same; written consent of certain persons required before performance of abortion; waiver of requirement; court proceedings; penalties; judicial record and report; civil action.

(a) Except in the case of a medical emergency, no person shall perform an abortion upon an unemancipated minor, unless the person first obtains the notarized written consent of the minor and both parents or the legal guardian of the minor.

- (1) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

- (2) If the minor's parents are married and one parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.
- (3) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father, stepfather or legal guardian, then the written consent of the minor's mother shall be sufficient. Notice of such circumstances shall be reported to the proper authorities as provided in KSA 2017 Supp. 38-2223, and amendments thereto.

(b) After receiving counseling as provided by subsection (a) of KSA 65-6704, and amendments thereto, the minor may object to the written consent requirement set forth in subsection (a). If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the written consent requirement. If the minor so desires, the counselor who counseled the minor as required by KSA 65-6704, and amendments thereto, shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the petition. The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

(c) Court proceedings under this section shall be anonymous and the court shall ensure that the minor's identity is kept confidential. The court shall order that a confidential record of the evidence in the proceeding be maintained. All persons shall be excluded from hearings under this section except the minor, her attorney and such other persons whose presence is specifically requested by the applicant or her attorney.

(d) Consent shall be waived if the court finds by clear and convincing evidence that either: (1) The minor is mature and well-informed enough to make the abortion decision on her own; or (2) the consent of the individuals specified in subsection (a) would not be in the best interest of the minor.

(e) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision as follows:

- (1) Granting the minor's application for waiver of consent pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without the consent of the individuals specified in subsection (a);
- (2) Granting the minor's application for waiver of consent if the court finds that the minor is immature but that consent of the individuals specified in subsection (a) would not be in the minor's best interest; or
- (3) Denying the application if the court finds that the minor is immature and that waiver of the consent of the individuals specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or

other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No consent shall be required under this section when a medical emergency exists.

(2) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. The medical basis for the determination 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 KSA 65-445, and amendments thereto.

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

(m) Prior to conducting proceedings under this section, the court may require the minor to participate in an evaluation session with a psychiatrist, licensed psychologist or licensed clinical social worker. Such evaluation session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and materials referred to in KSA 65-6708 et seq., and amendments thereto, in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure or extortion by any other persons. The results of such evaluation shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to or at the proceedings initiated pursuant to this section.

(n) In determining if a minor is mature and well-enough informed to make the abortion decision without parental consent, the court shall take into account the minor's experience level, perspective and judgment. In assessing the minor's experience level, the court shall consider,

along with any other relevant factors, the minor's age, experience working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the minor's perspective, the court shall consider, along with any other relevant factors, what steps the minor has taken to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the minor's judgment, the court shall consider, along with any other relevant factors, her conduct since learning of her pregnancy and her intellectual ability to understand her options and to make informed decisions.

(o) The judicial record of any court proceedings initiated pursuant to this section shall upon final determination by the court be compiled by the court. One copy of the judicial record shall be given to the minor or an adult chosen by the minor to bring the initial petition under this section. A second copy of the judicial record shall be sent by the court to the abortion provider who performed or will perform the abortion for inclusion in the minor's medical records and shall be maintained by the abortion provider for at least 10 years.

(p) The chief judge of each judicial district shall send annual reports to the department of health and environment disclosing in a nonidentifying manner:

- (1) The number of minors seeking a bypass of the parental consent requirements through court proceedings under this section;
- (2) The number of petitions granted;
- (3) The reasons for granting such petitions;
- (4) Any subsequent actions taken to protect the minor from domestic or predator abuse;
- (5) Each minor's state of residence, age and disability status; and
- (6) The gestational age of the unborn child if the petition is granted.

(q) (1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.

(2) Such relief shall include:

- (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
- (B) The cost of any subsequent medical treatment such minor might require because of the abortion performed without parental consent or knowledge, or without a court order, in violation of this section;
- (C) Statutory damages equal to three times the cost of the abortion; and
- (D) Reasonable attorney fees.

(r) In the course of a judicial hearing to waive parental consent, if the court has reason to suspect that a minor has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection (c) of KSA 2017 Supp. 38-2223, and amendments thereto. In the course of reporting suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.

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

KSA 65-6707. Same; severability clause.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

KSA 65-6708. Woman's-right-to-know act; citation.

KSA 65-6701 and KSA 65-6708 to 65-6715, inclusive, and amendments thereto shall be known and may be cited as the woman's-right-to-know act.

KSA 65-6709. Same; abortion, informed consent required; information required to be given to women, certification of receipt; offer to view ultrasound image and hear heartbeat, certification of offer; required signage.

No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing, which shall be provided on white paper in a printed format in black ink with 12-point times new roman font, of:

- (1) The following information concerning the physician who will perform the abortion;
 - (A) The name of such physician;
 - (B) The year in which such physician received a medical doctor's degree;
 - (C) The date on which such physician's employment commenced at the facility where the abortion is to be performed;
 - (D) Whether any disciplinary action has been taken against such physician by the state board of healing arts by marking either a box indicating "yes" or a box

indicating “no” and if the box indicating “yes” is marked, then provide the website addresses to the board documentation for each disciplinary action;

- (E) Whether such physician has malpractice insurance by marking either a box indicating “yes” or a box indicating “no”;
 - (F) Whether such physician has clinical privileges at any hospital located within 30 miles of the facility where the abortion is to be performed by marking either a box indicating “yes” or a box indicating “no” and if the box indicating “yes” is marked, then provide the name of each such hospital and the date such privileges were issued;
 - (G) The name of any hospital where such physician has lost clinical privileges; and
 - (H) Whether such physician is a resident of this state by marking either a box indicating “yes” or a box indicating “no”;
- (2) A description of the proposed abortion method;
 - (3) A description of risks related to the proposed abortion method, including risk of premature birth in future pregnancies, risk of breast cancer and risks to the woman’s reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
 - (4) The probable gestational age of the unborn child at the time the abortion is to be performed and that Kansas law requires the following: “No person shall perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
 - (5) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
 - (6) The contact information for counseling assistance for medically challenging pregnancies, the contact information for perinatal hospice services and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;
 - (7) The medical risks associated with carrying an unborn child to term; and
 - (8) Any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

- (1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in KSA 65-6710, and amendments thereto;
- (2) The informational materials in KSA 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;
- (3) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted;
- (4) The woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled;
- (5) The abortion will terminate the life of a whole, separate, unique, living human being; and
- (6) By no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery.

(c) At least 30 minutes prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy of the informational materials described in KSA 65-6710, and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The total number of certifications shall be reported by the physician as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments

thereto. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

(h) A physician who will use ultrasound equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

- (1) Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;
- (2) Informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;
- (3) Offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;
- (4) Certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and
- (5) Obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

If the woman accepts the offer and requests to view the ultrasound image, receive a physical picture of the ultrasound image or both, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image was offered.

(i) A physician who will use heart monitor equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

- (1) Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;
- (2) Offers the woman the opportunity to listen to the heartbeat of her unborn child;
- (3) Certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and
- (4) Obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

If the woman accepts the offer and requests to listen to the heartbeat of her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.

(j) The physician's certification required by subsections (h) and (i) together with the pregnant woman's signed acceptance or rejection of such offer shall be placed in the woman's medical file in the physician's office and kept for 10 years. However, in the case of a minor, the physician shall keep a copy of the certification and the signed acceptance or rejection in the minor's medical file for five years past the minor's majority, but in no event less than 10 years.

(k) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed shall conspicuously post a sign in a location so as to be clearly visible to patients. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least three quarters of an inch boldfaced type. The sign shall include the address for the pregnancy resources website published and maintained by the department of health and environment, and the following text:

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease. It is unlawful for anyone to make you have an abortion against your will, even if you are a minor. The father of your child must provide support for the child, even if he has offered to pay for an abortion. If you decide not to have an abortion, you may qualify for financial help for pregnancy, childbirth and newborn care. If you qualify, medicaid will pay or help pay the cost of doctor, clinic, hospital and other related medical expenses, including childbirth delivery services and care for your newborn baby. Many agencies are willing to provide assistance so that you may carry your child to term, and to assist you after your child's birth.

The provisions of this subsection shall not apply to any private office, freestanding surgical outpatient clinic or other facility or clinic which performs abortions only when necessary to prevent the death of the pregnant woman.

(l) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment's website that provides informed consent materials under the woman's-right-to-know act. Such link shall read: "The Kansas Department of Health and Environment maintains a website containing information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here."

(m) For purposes of this section:

(1) The term "human being" means an individual living member of the species of *homo sapiens*, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

- (2) The term “medically challenging pregnancy” means a pregnancy where the unborn child is diagnosed as having: (A) A severe anomaly; or (B) an illness, disease or defect which is invariably fatal.

KSA 65-6710. Same; materials to be published and distributed by the department of health and environment; materials to be available at no cost.

(a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible informational materials:

- (1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including, but not limited to, a list of providers of free ultrasound services and adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, and that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

“Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician or the physician’s agent provide the enclosed information.”

- (2) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of an unborn child at two-week gestational increments, and any relevant information on the possibility of the unborn child’s survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic. The material shall include the following statements: (A) That by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain; (B) that there is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain; (C) that anesthesia is routinely administered to unborn

children who are 20 weeks from fertilization or older who undergo prenatal surgery; (D) that less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity, and a fetal heartbeat is, therefore, a key medical indicator that an unborn child is likely to achieve the capacity for live birth; and (E) that abortion terminates the life of a whole, separate, unique, living human being. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, including risk of premature birth in future pregnancies, risk of breast cancer, risks to the woman's reproductive health and the medical risks associated with carrying an unborn child to term.

(3) The printed materials shall, at a minimum, contain the following text:

Your doctor is required to tell you about the nature of the physical and emotional risks of both the abortion procedure and carrying a child to term. The doctor must tell you how long you have been pregnant and must give you a chance to ask questions and discuss your decision about the pregnancy carefully and privately in your own language.

In order to determine the gestational age of the unborn child, the doctor may use ultrasound equipment preparatory to the performance of an abortion. You have the right to view the ultrasound image of the unborn child at no additional expense, and you have the right to receive a picture of the unborn child.

A directory of services is also available. By calling or visiting the agencies and offices in the directory you can find out about alternatives to abortion, assistance to make an adoption plan for your baby or locate public and private agencies that offer medical and financial help during pregnancy, during childbirth and while you are raising your child.

Furthermore, you should know that: (A) It is unlawful for any individual to coerce you to undergo an abortion. Coercion is the use of express or implied threats of violence or intimidation to compel a person to act against such person's will; (B) abortion terminates the life of a whole, separate, unique, living human being; (C) any physician who fails to provide informed consent prior to performing an abortion may be guilty of unprofessional conduct and liable for damages; (D) you are not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired; (E) the father of your child is legally responsible to assist in the support of the child, even in instances where the father has offered to pay for an abortion; and (F) the law permits adoptive parents to pay the costs of prenatal care, childbirth and neonatal care.

Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek assistance from such agencies in order to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician, or the physician's agent, provide this information.

Pregnancy begins at fertilization with the union of a man's sperm and a woman's egg to form a single-cell embryo. This brand new being contains the original copy of a new individual's complete genetic code. Gender, eye color and other traits are determined at fertilization.

Most significant developmental milestones occur long before birth during the first eight weeks following fertilization when most body parts and all body systems appear and begin to function. The main divisions of the body, such as the head, chest, abdomen, pelvis, arms and legs are established by about four weeks after fertilization. Eight weeks after fertilization, except for the small size, the developing human's overall appearance and many internal structures closely resemble the newborn.

Pregnancy is not just a time for growing all the parts of the body. It is also a time of preparation for survival after birth. Starting more than 30 weeks before birth, many common daily activities seen in children and adults begin in the womb. These activities include, but are not limited to, hiccups, touching the face, breathing motions, urination, right- or left-handedness, thumb-sucking, swallowing, yawning, jaw movement, reflexes, REM sleep, hearing, taste and sensation.

Unless otherwise noted, all prenatal ages in the rest of these materials are referenced from the start of the last normal menstrual period. This age is two weeks greater than the age since fertilization.

By five weeks, development of the brain, the spinal cord and the heart is well underway. The heart begins beating at five weeks and one day, and is visible by ultrasound almost immediately. By six weeks, the heart is pumping the unborn child's own blood to such unborn child's brain and body. All four chambers of the heart are present, and more than one million heartbeats have occurred. The head, chest and abdominal cavities have formed and the beginnings of the arms and legs are easily seen. At 6½ weeks, rapid brain development continues with the appearance of the cerebral hemispheres. At 7½ weeks, the unborn child reflexively turns away in response to light touch on the face. The fingers also begin to form on the hand.

By 8½ weeks, the bones of the jaw and collarbone begin to harden. Brainwaves have been measured and recorded by this point in gestation. By nine weeks, the hands move, the neck turns and hiccups begin. Girls also now have ovaries and boys have testes. The unborn child's heart is nearly fully formed, and the heart rate peaks at about 170 beats per minute and will gradually slow down until birth. Electrical recordings of the heart at 9½ weeks are very similar to the EKG tracing of the unborn child.

By 10 weeks, intermittent breathing motions begin, and the kidneys begin to produce and release urine. All the fingers and toes are free and fully formed, and several hundred muscles are now present. The hands and feet move frequently, and most unborn children show the first signs of right- or left-handedness. Pain receptors in the skin, the sensory nerves connecting them to the spinal cord, and the nerve tracts in the spinal cord that will carry pain impulses to the brain are all present by this time. Experts estimate the 10-week unborn child possesses approximately 90% of the 4,500 body parts found in adults. This means

approximately 4,000 permanent body parts are present just eight weeks after fertilization.

By 11 weeks, the head moves forward and back, the jaw actively opens and closes and the unborn child periodically sighs and stretches. The face, palms of the hands and soles of the feet are sensitive to light touch. The unborn child begins thumb-sucking and swallowing amniotic fluid. The uterus is now present, and girls' ovaries now contain reproductive cells that will give rise to eggs later in life.

At 12 weeks, fingerprints start forming, while fingernails and toenails begin to grow. The bones are hardening in many locations. The heartbeat can be detected with a hand-held doppler fetal monitor, or external heart rate monitor. By 13 weeks the lips and nose are fully formed and the unborn child can make complex facial expressions.

At 14 weeks, taste buds are present all over the mouth and tongue. The unborn child now produces a wide variety of hormones. Also, the arms reach final proportion to body size. By 15 weeks, the entire unborn child, except for parts of the scalp, responds to light touch, and tooth development is underway.

At 16 weeks, a pregnant woman may begin to feel the unborn child move. The unborn child also begins making several digestive enzymes. Around 17 weeks, blood cell formation moves to its permanent location inside the bone marrow, and the unborn child begins storing energy in the form of body fat.

By 18 weeks, the formation of the breathing passages, called the bronchial tree, is complete. The unborn child will release stress hormones in response to being poked with a needle. By 19 weeks, the unborn child's heart has beaten more than 20 million times.

By 20 weeks, nearly all organs and structures of the unborn child have been formed. The larynx, or voice box, moves in a way similar to movement seen during crying after birth. The skin has developed sweat glands and is covered by a greasy white substance called vernix, which protects the skin from the long exposure to amniotic fluid. At 21 weeks, breathing patterns, body movements and the heart rate begin to follow daily cycles called circadian rhythms.

By 22 weeks, the cochlea, the organ of hearing, reaches adult size, and the unborn child begins hearing and responding to various sounds. All the skin layers and structures are now complete. The unborn child reacts to stimuli that would be recognized as painful if applied to an adult human. By 22 weeks, some infants can live outside the womb with specialized medical care, and survival rates have been reported as high as 40% in some medical centers. Between 20 and 23 weeks, rapid eye movements begin, which are similar to the REM sleep pattern seen when children and adults have dreams.

By 24 weeks, more than 30 million heartbeats have occurred. Survival rates for infants born at 24 weeks have been reported as high as 81%. By 25 weeks, breathing motions may occur up to 44 times per minute.

By 26 weeks, sudden, loud noises trigger a blink-startle response in the unborn child and may increase body movement, the heart rate and swallowing. The lungs begin to produce a substance necessary for breathing after birth. The survival rate of infants born at 26 weeks has been reported as high as 95%.

By 28 weeks, the sense of smell is functioning and the eyes produce tears. Nearly all infants born between this point and full term survive. By 29 weeks, pupils of the eyes react to light. By 31 weeks, the heart has beat more than 40 million times, and wrinkles in the skin disappear as more fat deposits are formed.

By 32 weeks, breathing movements occur up to 40% of the time. By 34 weeks true alveoli, or air “pocket” cells, begin developing in the lungs. At 36 weeks, scalp hair is silky and lies against the head. By 37 weeks, the unborn child has a firm hand grip, and the heart has beat more than 50 million times. The unborn child initiates labor, ideally around 40 weeks, leading to childbirth.

By state law, no person shall perform or induce an abortion when the unborn child is viable or pain-capable unless such person is a physician and has a documented referral. The physician who performs or induces an abortion when the unborn child is viable must have a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion. Both physicians must determine that the abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical bodily function of the pregnant woman. If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

What about adoption? Women or couples facing an untimely pregnancy who choose not to take on the full responsibilities of parenthood have another option, which is adoption. Counseling and support services are a key part of adoption and are available from a variety of adoption agencies and parent support groups across the state. A list of adoption agencies is available. There are several ways to make a plan for adoption, including through a child placement agency or through a private attorney. Although fully anonymous adoptions are available, some degree of openness in adoption is more common, such as permitting the birth mother to choose the adoptive parents. A father only has the right to consent to an adoption or refuse consent and raise the child if he provides support for the mother during the last six months of the pregnancy.

The father of a child has a legal responsibility to provide for the support, educational, medical and other needs of the child. In Kansas, that responsibility includes child support payments to the child’s mother or legal guardian. A child has rights of inheritance from the father and may be eligible through him for benefits such as life insurance, social security, pension, veteran’s or disability benefits. Further, the child benefits from knowing the father’s medical history and any potential health problems that can be passed genetically. A father’s and mother’s rights are equal regarding access, care and custody.

Paternity can be established in Kansas by two methods: (A) The father and mother, at the time of birth, can sign forms provided by the hospital acknowledging paternity and the father’s name is added to the birth certificate; or

(B) a legal action can be brought in a court of law to determine paternity and establish a child support order. Issues of paternity affect your legal rights and the rights of the child.

The decision regarding your pregnancy is one of the most important decisions you will ever make. There are lists of state, county and local health and social service agencies and organizations available to assist you. You are encouraged to contact these groups if you need more information so you can make an informed decision.

- (4) A certification form to be used by physicians or their agents under subsection (e) of KSA 65-6709, and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman's-right-to-know act.
- (5) A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images, using the best available ultrasound technology, of an unborn child at two week gestational increments.

(b) The print materials required under this section shall be printed in a typeface large enough to be clearly legible. The informational video may be published in digital video disc format or in the latest video technology available. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

KSA 65-6711. Same; information where medical emergency compels performances of an abortion.

Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

KSA 65-6712. Same; failure to provide informed consent and printed materials under act is unprofessional conduct.

Any physician who intentionally, knowingly or recklessly fails to provide in accordance with KSA 65-6709 and amendments thereto the printed materials described in KSA 65-6710 and amendments thereto, whether or not an abortion is actually performed on the woman, is guilty of unprofessional conduct as defined in KSA 65-2837 and amendments thereto.

KSA 65-6714. Same; severability clause.

The provisions of this act are declared to be severable, and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of the woman's-right-to-know act.

KSA 65-6715. Same; act does not create or recognize a right to abortion or make lawful an abortion that is currently unlawful.

(a) Nothing in the woman's-right-to-know act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of the woman's-right-to-know act to make lawful an abortion that is currently unlawful.

KSA 65-6721. Partial birth abortion; restrictions and prohibitions; civil damages and criminal penalties for violations.

(a) No person shall perform or induce a partial birth abortion on an unborn child unless such person is a physician and has a documented referral from another physician who is licensed to practice in this state, and who is not legally or financially affiliated with the physician performing or inducing the abortion and both physicians provide a written determination, based upon a medical judgment that would be made by a reasonably prudent physician, knowledgeable in the field and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that the partial birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) As used in this section, "partial birth abortion" means an abortion procedure in which the person performing the abortion deliberately and intentionally vaginally delivers a living unborn child until, in the case of a head-first presentation, the entire head of the unborn child is outside the body of the mother, or, in the case of a breech presentation, any part of the trunk of the unborn child past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living unborn child, and performs the overt act, other than completion of delivery, that kills the partially delivered living unborn child.

(c) (1) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination, the medical basis, including the specific medical diagnosis and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under KSA 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determination, the medical basis, including the specific medical diagnosis, and the reasons for such determination in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than 10 years.

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

(A) A detailed list of the contents of the written reports required under paragraph (1) of this subsection; and

(B) Detailed information that must be provided by a physician to insure that the specific medical basis and clinical diagnosis regarding the woman is reported.

(d) (1) The father, if married to the woman at the time of the abortion, and, if the woman has not attained the age of 18 years at the time of the abortion, the parents or custodial guardian of the woman, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include:

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

(B) Statutory damages equal to three times the cost of the abortion; and

(C) Reasonable attorney fees.

(e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to KSA 2017 Supp. 21-5302, and amendments thereto.

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

(g) Upon conviction of a violation of this section, a person shall be guilty of a severity level 8 person felony.

KSA 65-6722. Abortion of pain-capable unborn child; legislative findings.

The legislature hereby finds and declares that:

(a) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks;

(b) By eight weeks after fertilization, the unborn child reacts to touch. By 20 weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling;

(c) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response;

(d) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life;

(e) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without such anesthesia;

(f) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;

(g) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain;

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

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

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

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

KSA 65-6723. Same; definitions.

As used in KSA 2017 Supp. 65-6722 through 65-6724, 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) "Bodily function" means physical function. The term "bodily function" does not include mental or emotional functions.

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

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

(e) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

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

(g) “Physician” means a person licensed to practice medicine and surgery in this state.

(h) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

KSA 65-6724. Same; certain abortions prohibited, exceptions; determination of gestational age; civil action; criminal penalties.

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

(b) Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician’s written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination 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 KSA 65-445, and amendments thereto. Such determination shall specify:

- (1) If the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or
- (2) If a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the

physician believes would constitute a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(c) (1) Except in the case of a medical emergency, prior to performing or inducing, or attempting to perform or induce an abortion upon a woman, the physician shall determine the gestational age of the unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to gestational age. The physician shall document as part of the medical records of the woman the basis for the determination of gestational age. The physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the medical care facility in which the abortion is performed or induced for inclusion in the report of the medical care facility to the secretary of health and environment under KSA 65-445, and amendments thereto, or if the abortion is not performed or induced in a medical care facility, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments thereto.

(2) If the physician determines the gestational age of the unborn child is 22 or more weeks, then no abortion of the pain-capable unborn child shall be performed or induced, or attempted to be performed or induced except as provided for in subsection (a). In such event, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the medical care facility in which the abortion is performed or induced for inclusion in the report of the medical care facility to the secretary of health and environment under KSA 65-445, and amendments thereto, or if the abortion is not performed or induced in a medical care facility, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under KSA 65-445, and amendments thereto.

(3) The physician shall retain the medical records required to be kept under this subsection for not less than 10 years.

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

- (1) A detailed list of the information that must be kept by a physician under this section;
- (2) The contents of the written reports required under this section; and
- (3) Detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining gestational age and in determining that an abortion is necessary to preserve the life of the pregnant woman, or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

(e) A woman upon whom an abortion is performed or induced, or attempted to be performed or induced shall not be prosecuted under this section for a conspiracy to violate this section pursuant to KSA 2017 Supp. 21-5302, and amendments thereto.

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

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

(2) Such relief shall include:

- (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
- (B) Statutory damages equal to three times the cost of the abortion; and
- (C) Reasonable attorney fees.

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

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

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

KSA 65-6725. Same; construction of act.

Nothing in this act shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes.

KSA 65-6726. Abortion based on gender; prohibited.

(a) No person shall perform or induce an abortion or attempt to perform or induce an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the unborn child.

(b) (1) A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion, in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.

(2) Such relief shall include:

- (A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;
- (B) Statutory damages equal to three times the cost of the abortion;
- (C) Injunctive relief; and
- (D) Reasonable attorney fees.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to KSA 2017 Supp. 21-5302, and amendments thereto.

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

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

(f) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(g) For purposes of this section, the term "abortion" has the same meaning as such term is defined in KSA 65-6701, and amendments thereto.

KSA 65-6731. Prohibition on certain funding for abortions; definitions.

As used in KSA 2017 Supp. 65-6731 through 65-6738, and amendments thereto:

(a) “Abortion” has the same meaning as such term is defined in KSA 65-6701, and amendments thereto.

(b) “Health benefit plan” means any hospital or medical expense policy, health, hospital or medical services corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by any employer or any certificate issued under any such policy, contract or plan.

(c) “Health care entity” means an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization or any other health care facility or organization.

(d) “School district” means any public school district organized under the laws of this state.

(e) “State agency” has the same meaning as such term is defined in KSA 75-3701, and amendments thereto.

KSA 65-6732. Legislative declaration that life begins at fertilization.

(a) The legislature hereby finds and declares the following:

- (1) The life of each human being begins at fertilization;
- (2) Unborn children have interests in life, health and well-being that should be protected; and
- (3) The parents of unborn children have protectable interests in the life, health and well-being of the unborn children of such parents.

(b) On and after July 1, 2013, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States supreme court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes Annotated.

(c) As used in this section:

- (1) “Fertilization” means the fusion of a human spermatozoon with a human ovum.
- (2) “Unborn children” or “unborn child” shall include all unborn children or the offspring of human beings from the moment of fertilization until birth at every stage of biological development.

(d) Nothing in this section shall be construed as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

KSA 65-6733. Prohibition on certain funding for abortion.

Except to the extent required by federal law:

(a) No moneys appropriated from the state general fund or from any special revenue fund shall be expended for any abortion;

(b) No tax credit shall be allowed against any income tax, premium or privilege tax liability and no exemption shall be granted from sales or compensating use tax for that portion of such amounts paid or incurred for an abortion, or that portion of such amounts paid or incurred for a health benefit plan, including premium assistance, for the purchase of an optional rider for coverage of abortion in accordance with KSA 2017 Supp. 40-2,190, and amendments thereto;

(c) In the case of any tax-preferred trust or account, the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary; and

(d) No health care services provided by any state agency, or any employee of a state agency while acting within the scope of such employee's employment, shall include abortion, nor shall money appropriated from the state general fund or from any special revenue fund be used to pay for the lease or operation of any facility in which abortions are performed.

KSA 65-6734. Same; school districts.

No school district, employee or agent thereof, or educational service provider contracting with such school district shall provide abortion services. No school district shall permit any person or entity to offer, sponsor or otherwise furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases if such person or entity is an abortion services provider, or an employee, agent or volunteer of an abortion services provider.

KSA 65-6735. Same; construction of act.

Nothing in KSA 2017 Supp. 65-6731 through 65-6738, and amendments thereto, shall repeal, amend or have any effect on any other state law to the extent such law imposes any limitation on the use of funds for abortion, more restrictive than the limitations set forth in KSA 2017 Supp. 65-6731 through 65-6738, and amendments thereto.

KSA 65-6736. Same; no requirement to provide or right to an abortion.

Nothing in KSA 2017 Supp. 65-6731 through 65-6738, and amendments thereto, shall be construed:

- (a) To require any state agency or municipality to provide or pay for any abortion; or
- (b) As creating or recognizing a right to an abortion.

KSA 65-6737. Same; discrimination prohibited.

No state agency shall discriminate against any individual or institutional health care entity on the basis that such health care entity does not provide, pay for or refer for abortions.

KSA 65-6738. Same; applicability of act.

The limitations set forth in KSA 2017 Supp. 65-6731 through 65-6738, and amendments thereto, shall not apply to an abortion which is necessary to preserve the life of the pregnant woman.

KSA 65-6739. Same; severability.

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

KSA 65-6741. Kansas unborn child protection from dismemberment abortion act; citation of act.⁵

The provisions of KSA 2017 Supp. 65-6741 through 65-6749, and amendments thereto, shall be known and may be cited as the Kansas unborn child protection from dismemberment abortion act.

KSA 65-6742. Definitions.

As used in KSA 2017 Supp. 65-6741 through 65-6749, 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.

5 The provisions of KSA 65-6741 through KSA 65-6749, known as the Kansas Unborn Child Protection from Dismemberment Abortion Act, were ruled unconstitutional on remand from the Kansas Supreme Court by an order of the trial court in *Hodes & Nauser v. Schmidt*, 2015-CV-490 (Shawnee County, 2021).

(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 KSA 2017 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 woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

KSA 65-6743. Dismemberment abortion prohibited; exceptions.

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

(b) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician, but who acts at the direction of a physician, and no 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 shall be liable for performing or attempting to perform a dismemberment abortion.

KSA 65-6744. Cause of action for injunctive relief.

The attorney general or any district or county attorney with appropriate jurisdiction may bring a cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of KSA 2017 Supp. 65-6743, and amendments thereto. Any injunctive relief ordered pursuant to an action filed under this section shall prohibit

the defendant from performing or attempting to perform any dismemberment abortions in violation of KSA 2017 Supp. 65-6743, and amendments thereto.

KSA 65-6745. Civil action for violation of act.

(a) A cause of action for civil damages against a person who has performed a dismemberment abortion in violation of KSA 2017 Supp. 65-6743, and amendments thereto, may be maintained by the following persons, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct:

- (1) A woman upon whom a dismemberment abortion has been performed in violation of KSA 2017 Supp. 65-6743, and amendments thereto;
- (2) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or
- (3) The parents or custodial guardians of the woman, if the woman has not attained the age of 18 years at the time of the abortion or has died as a result of the abortion.

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

- (1) Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion;
- (2) Statutory damages equal to three times the cost of the dismemberment abortion;
- (3) Injunctive relief; and
- (4) Reasonable attorney fees awarded in accordance with subsection (d).

(d) (1) If judgment is rendered in favor of the plaintiff in an action brought under KSA 2017 Supp. 65-6744, and amendments thereto, or this section, the court shall award reasonable attorney fees to the plaintiff in addition to any other relief that is awarded.

(2) If judgment is rendered in favor of the defendant in an action brought under KSA 2017 Supp. 65-6744, and amendments thereto, or this section, and the court finds that the plaintiff's action was frivolous and brought in bad faith, the court shall award reasonable attorney fees to the defendant in addition to any other relief that is awarded.

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

KSA 65-6746. Criminal penalties for violation of act.

Upon a first conviction of a violation of KSA 2017 Supp. 65-6743, and amendments thereto, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of KSA 2017 Supp. 65-6743, and amendments thereto, a person shall be guilty of a severity level 10, person felony.

KSA 65-6747. Legal proceedings; public disclosure of name of woman, orders against such disclosure.

In every civil, criminal or administrative proceeding or action arising out of a violation of KSA 65-6703, 65-6721, KSA 2017 Supp. 65-6724 or 65-6743, and amendments thereto, the court shall rule whether the anonymity of any woman upon whom an unlawful abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or *sua sponte*, shall make such a ruling and, upon determining that such woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her 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. In the absence of written consent of the woman upon whom an unlawful abortion has been performed or attempted to be performed, anyone other than a public official who brings an action arising out of a violation of KSA 65-6703, 65-6721, KSA 2017 Supp. 65-6724 or 65-6743, and amendments thereto, shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

KSA 65-6748. Construction of act.

Nothing in KSA 2017 Supp. 65-6741 through 65-6749, and amendments thereto, shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

KSA 65-6749. Severability.

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

KSA 65-6750. Effect of injunction or other judicial order on provisions of article 67.

If any of the provisions of article 67 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, are temporarily or permanently enjoined or otherwise restricted and not given their full force and effect by judicial order, all other provisions of article 67 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, not so enjoined or otherwise

restricted shall be enforced as though such enjoined or otherwise restricted provisions had not been enacted, provided, that if any such temporary or permanent injunction or other judicial order is stayed, lifted, dissolved or otherwise ceases to have effect, then such provisions shall have full force and effect.

KSA 65-67a01. Fetal organs or tissue; definitions.

As used in this act:

(a) "Abortion" means an abortion as defined by KSA 65-6701, and amendments thereto.

(b) (1) "Consideration" means:

(A) Any payment made or debt incurred;

(B) Any gift, honorarium or recognition of value bestowed;

(C) Any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed;

(D) Any loan or debt which is canceled or otherwise forgiven; or

(E) The transfer of any item from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge.

(2) "Consideration" shall not mean:

(A) A payment in an amount not to exceed \$25 for the cost of transporting, processing, preserving and storing fetal tissue; or

(B) A payment in an amount not to exceed the actual cost, as documented by the delivery service, of transporting fetal tissue.

(c) "Delivery service" means a common carrier as defined by KSA 66-105, and amendments thereto, or other person or entity used to transport fetal tissue.

(d) "Fetal tissue" means any tissue, cells or organs obtained from a dead human embryo or fetus after an abortion or after a stillbirth.

(e) "Person" means a person as defined by KSA 65-425, and amendments thereto.

(f) "Stillbirth" means a stillbirth as defined by KSA 65-2401, and amendments thereto.

KSA 65-67a02. Same; construction of act.

Except as specifically provided by this act, nothing in this act shall be construed as either permitting or prohibiting the use of fetal tissue for any type of scientific, research, laboratory or other kind of experimentation either prior to or subsequent to any abortion or stillbirth.

KSA 65-67a03. Same; when act not applicable.

This act shall not apply to:

- (a) The transfer of fetal tissue to a pathologist for testing or examination; or
- (b) The transfer of fetal tissue for the purpose of immediate burial, cremation or final disposition.

KSA 65-67a04. Same; prohibitions; penalty.

(a) No person shall solicit, offer, knowingly acquire or accept or transfer any fetal tissue for consideration.

(b) No person shall solicit, offer or knowingly acquire or accept or transfer any fetal tissue for the purpose of transplantation of such tissue into another person if:

- (1) The fetal tissue will be or is obtained pursuant to an abortion; and
- (2) (A) The donation of such fetal tissue will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such donating individual;
 - (B) Such fetal tissue will be transplanted into a relative of the donating individual;
or
 - (C) The person who solicits or knowingly acquires or accepts the donation of such fetal tissue has provided consideration for the costs associated with such abortion.

(c) Any person who intentionally, knowingly or recklessly violates this section shall be guilty of a severity level 2 nonperson felony.

KSA 65-67a05. Same; transfers of tissue; reports.

(a) Every person who transfers fetal tissue to another person shall submit annually a written report to the secretary of the department of health and environment which contains the following:

- (1) The date of transfer;

- (2) A description of the fetal tissue;
- (3) The name and address of the transferor and the transferee;
- (4) The amount of consideration received by the transferor for making the transfer;
- (5) The mode of transfer or shipment; and
- (6) The name of the delivery service.

(b) The identity of the woman donating the fetal tissue shall be confidential and shall not be included in any report required by this section.

(c) No person shall ship fetal tissue without disclosing to the delivery service that human tissue is contained in such shipment.

(d) Except as provided herein, 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 who submits a report to the secretary under this section. Such information, including information identifying any person submitting a report hereunder, may be disclosed to the attorney general upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the attorney general pursuant to this subsection shall be used solely for the purposes of a criminal prosecution.

(e) For the purpose of maintaining confidentiality, reports required by this section shall identify the name and address of the person submitting such report only by confidential code number assigned by the secretary of health and environment to such person and the department of health and environment shall maintain such reports only by such number.

(f) Any person who intentionally, knowingly or recklessly violates this section shall be guilty of a class A nonperson misdemeanor.

KSA 65-67a06. Same; prohibitions; penalty.

(a) No person shall offer any monetary or other inducement to any other person for the purpose of procuring an abortion for the medical, scientific, experimental or therapeutic use of fetal organs or tissue.

(b) No person shall offer or accept any valuable consideration for the fetal organs or tissue resulting from an abortion. Nothing in this subsection shall prohibit payment for burial or other final disposition of the fetal remains or payment for a pathological examination, autopsy or postmortem examination of the fetal remains.

(c) Any person who intentionally, knowingly or recklessly violates this section shall be guilty of a severity level 2 nonperson felony.

KSA 65-67a07. Same; consent of donor.

(a) No person shall use fetal organs or tissue for medical, scientific, experimental or therapeutic use without the voluntary and informed consent of the woman donating such tissue. Such consent shall not be discussed or obtained prior to obtaining the consent required under KSA 65-6709, and amendments thereto.

(b) A person who intentionally, knowingly or recklessly violates this section shall be guilty of a severity level 2 nonperson felony.

KSA 65-67a08. Same; severability.

If any provision of this section [act] is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder of this section [act] without such invalid or unconstitutional provision.

KSA 65-67a09. Child rape protection act; submission of fetal tissue from certain abortions; physicians' duties; rules and regulations; noncompliance, penalties.

(a) This section shall be known and may be cited as the child rape protection act.

(b) As used in this section:

(1) "Abortion" has the meaning provided in KSA 65-6701, and amendments thereto.

(2) "Physician" means any person licensed to practice medicine and surgery.

(c) Any physician who performs an abortion on a minor who was less than 14 years of age at the time of the abortion procedure shall preserve, in accordance with rules and regulations adopted by the attorney general pursuant to this section, fetal tissue extracted during such abortion. The physician shall submit such tissue to the Kansas bureau of investigation or to a laboratory designated by the director of the Kansas bureau of investigation.

(d) The attorney general shall adopt rules and regulations prescribing:

(1) The amount and type of fetal tissue to be preserved and submitted by a physician pursuant to this section;

(2) Procedures for the proper preservation of such tissue for the purpose of DNA testing and examination;

(3) Procedures for documenting the chain of custody of such tissue for use as evidence;

(4) Procedures for proper disposal of fetal tissue preserved pursuant to this section;

(5) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name of the

physician submitting the fetal tissue and the name, complete address of residence and name of the parent or legal guardian of the minor upon whom the abortion was performed; and

- (6) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this section.

(e) Failure of a physician to comply with any provision of this section or any rule or regulation adopted hereunder:

- (1) Shall constitute unprofessional conduct for the purposes of KSA 65-2837, and amendments thereto; and
- (2) Is a class A nonperson misdemeanor upon a first conviction and a severity level 10 nonperson felony upon a second or subsequent conviction.

KSA 65-67a10. Disposition of fetal remains.

Every maternity center and medical care facility licensed by the department of health and environment to operate in the state shall adopt written policies and inform parents regarding their options for disposition or taking of fetal remains in an event of a fetal death.