

HOUSE BILL No. 2166

By Representative Huebert

1-29

10 AN ACT concerning abortion; relating to late-term ~~and partial birth~~  
11 abortion; amending K.S.A. 65-6701, ~~65-6703, 65-6711 and 65-6721~~  
12 ~~and K.S.A. 2008 Supp. 76-3308~~ and repealing the existing sections  
13 [section].  
14

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

16 Section 1. K.S.A. 65-6701 is hereby amended to read as follows: 65-  
17 6701. As used in this act:

18 (a) "Abortion" means the use of any means to intentionally terminate  
19 a pregnancy except for the purpose of causing a live birth. Abortion does  
20 not include: (1) The use of any drug or device that inhibits or prevents  
21 ovulation, fertilization or the implantation of an embryo; or (2) disposition  
22 of the product of *in vitro* fertilization prior to implantation.

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

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

36 ~~(c)~~ [(d)] "Department" means the department of health and  
37 environment.

38 ~~(d)~~ [(e)] "Gestational age" means the time that has elapsed since the  
39 first day of the woman's last menstrual period.

40 ~~(e)~~ [(f)] "Medical emergency" means that condition which, on the  
41 basis of the physician's good faith clinical judgment, so complicates the  
42 medical condition of a pregnant woman as to necessitate the immediate  
43 abortion of her pregnancy to avert her death or for which a delay will

1 create serious risk of ~~a~~ substantial and irreversible ~~impairment~~ *physical*  
2 ~~disorder, physical illness or physical injury~~ [**impairment**] of a major bod-  
3 ily function.

4 ~~(f)~~ [(g)] “Minor” means a person less than 18 years of age.

5 ~~(g)~~ [(h)] “Physician” means a person licensed to practice medicine  
6 and surgery in this state.

7 ~~(h)~~ [(i)] “Pregnant” or “pregnancy” means that female reproductive  
8 condition of having a fetus in the mother’s body.

9 ~~(i)~~ [(j)] “Qualified person” means an agent of the physician who is a  
10 psychologist, licensed social worker, registered professional counselor,  
11 registered nurse or physician.

12 ~~(j)~~ [(k)] “Unemancipated minor” means any minor who has never  
13 been: (1) Married; or (2) freed, by court order or otherwise, from the  
14 care, custody and control of the minor’s parents.

15 ~~(k)~~ [(l)] “Viable” means that stage of gestation when, in the best med-  
16 ical judgment of the attending physician, the fetus is capable of sustained  
17 survival outside the uterus without the application of extraordinary med-  
18 ical means.

19 ~~Sec. 2. K.S.A. 65-6703 is hereby amended to read as follows: 65-~~  
20 ~~6703. (a) No person shall perform or induce an abortion when the fetus~~  
21 ~~is viable unless such person is a physician and has a documented referral~~  
22 ~~from another physician not legally or financially affiliated with the phy-~~  
23 ~~sician performing or inducing the abortion and both physicians determine~~  
24 ~~that: (1) The abortion is necessary to preserve the life of the pregnant~~  
25 ~~woman; or (2) a continuation of the pregnancy will cause a substantial~~  
26 ~~and irreversible impairment~~ *physical disorder, physical illness or physical*  
27 ~~injury~~ of a major bodily function of the pregnant woman.

28 ~~—(b) (1) Except in the case of a medical emergency, prior to perform-~~  
29 ~~ing an abortion upon a woman, the physician shall determine the gesta-~~  
30 ~~tional age of the fetus according to accepted obstetrical and neonatal~~  
31 ~~practice and standards applied by physicians in the same or similar cir-~~  
32 ~~cumstances. If the physician determines the gestational age is less than~~  
33 ~~22 weeks, the physician shall document as part of the medical records of~~  
34 ~~the woman the basis for the determination.~~

35 ~~—(2) If the physician determines the gestational age of the fetus is 22~~  
36 ~~or more weeks, prior to performing an abortion upon the woman the~~  
37 ~~physician shall determine if the fetus is viable by using and exercising~~  
38 ~~that degree of care, skill and proficiency commonly exercised by the or-~~  
39 ~~inary skillful, careful and prudent physician in the same or similar cir-~~  
40 ~~cumstances. In making this determination of viability, the physician shall~~  
41 ~~perform or cause to be performed such medical examinations and tests~~  
42 ~~as are necessary to make a finding of the gestational age of the fetus and~~  
43 ~~shall enter such findings and determinations of viability in the medical~~

1 record of the woman.

2 ~~—(3)—~~ If the physician determines the gestational age of a fetus is 22 or  
3 more weeks, and determines that the fetus is not viable and performs an  
4 abortion on the woman, the physician shall report such determinations  
5 and the reasons for such determinations in writing to the medical care  
6 facility in which the abortion is performed for inclusion in the report of  
7 the medical care facility to the secretary of health and environment under  
8 K.S.A. 65-445, and amendments thereto, or if the abortion is not per-  
9 formed in a medical care facility, the physician shall report such deter-  
10 minations and the reasons for such determinations in writing to the sec-  
11 retary of health and environment as part of the written report made by  
12 the physician to the secretary of health and environment under K.S.A.  
13 65-445, and amendments thereto.

14 ~~—(4)—~~ If the physician who is to perform the abortion determines the  
15 gestational age of a fetus is 22 or more weeks, and determines that the  
16 fetus is viable, both physicians under subsection (a) determine in accord-  
17 ance with the provisions of subsection (a) that an abortion is necessary to  
18 preserve the life of the pregnant woman or that a continuation of the  
19 pregnancy will cause a substantial and irreversible impairment *physical*  
20 *disorder, physical illness or physical injury* of a major bodily function of  
21 the pregnant woman and the physician performs an abortion on the  
22 woman, the physician who performs the abortion shall report such deter-  
23 minations, the reasons for such determinations and the basis for the  
24 determination that an abortion is necessary to preserve the life of the  
25 pregnant woman or that a continuation of the pregnancy will cause a  
26 substantial and irreversible impairment *physical disorder, physical illness*  
27 *or physical injury* of a major bodily function of the pregnant woman in  
28 writing to the medical care facility in which the abortion is performed for  
29 inclusion in the report of the medical care facility to the secretary of  
30 health and environment under K.S.A. 65-445, and amendments thereto,  
31 or if the abortion is not performed in a medical care facility, the physician  
32 who performs the abortion shall report such determinations, the reasons  
33 for such determinations and the basis for the determination that an abor-  
34 tion is necessary to preserve the life of the pregnant woman or that a  
35 continuation of the pregnancy will cause a substantial and irreversible  
36 impairment *physical disorder, physical illness or physical injury* of a ma-  
37 jor bodily function of the pregnant woman in writing to the secretary of  
38 health and environment as part of the written report made by the phy-  
39 sician to the secretary of health and environment under K.S.A. 65-445,  
40 and amendments thereto.

41 ~~—(5)—~~ The physician shall retain the medical records required to be kept  
42 under paragraphs (1) and (2) of this subsection (b) for not less than five  
43 years and shall retain a copy of the written reports required under para-

- 1 ~~graphs (3) and (4) of this subsection (b) for not less than five years.~~
- 2 ~~—(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 K.S.A. 21-3302, and amendments thereto.~~
- 3 ~~—(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.~~
- 4 ~~—(e) As used in this section, “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.~~
- 5 ~~—(f) 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.~~
- 6 ~~—(g) 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.~~
- 7 ~~—Sec. 3. K.S.A. 65-6711 is hereby amended to read as follows: 65-6711. 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 a substantial and irreversible impairment *physical disorder, physical illness or physical injury* of a major bodily function.~~
- 8 ~~—Sec. 4. K.S.A. 65-6721 is hereby amended to read as follows: 65-6721. (a) No person shall perform or induce a partial birth abortion on a viable fetus 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 the abortion and both physicians determine: (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 impairment *physical disorder, physical illness or physical injury* of a major physical or mental function of the pregnant woman.~~
- 9 ~~—(b) As used in this section:~~
- 10 ~~—(1) “Partial birth abortion” means 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.~~
- 11 ~~—(2) “Partial birth abortion” shall not include the: (A) Suction curet-~~

1 ~~tage abortion procedure; (B) suction aspiration abortion procedure; or~~  
2 ~~(C) dilation and evacuation abortion procedure involving dismemberment~~  
3 ~~of the fetus prior to removal from the body of the pregnant woman.~~  
4 ~~—(c) If a physician determines in accordance with the provisions of~~  
5 ~~subsection (a) that a partial birth abortion is necessary and performs a~~  
6 ~~partial birth abortion on the woman, the physician shall report such de-~~  
7 ~~termination and the reasons for such determination in writing to the med-~~  
8 ~~ical care facility in which the abortion is performed for inclusion in the~~  
9 ~~report of the medical care facility to the secretary of health and environ-~~  
10 ~~ment under K.S.A. 65-445, and amendments thereto, or if the abortion~~  
11 ~~is not performed in a medical care facility, the physician shall report the~~  
12 ~~reasons for such determination in writing to the secretary of health and~~  
13 ~~environment as part of the written report made by the physician to the~~  
14 ~~secretary of health and environment under K.S.A. 65-445, and amend-~~  
15 ~~ments thereto. The physician shall retain a copy of the written reports~~  
16 ~~required under this subsection for not less than five years.~~  
17 ~~—(d) A woman upon whom an abortion is performed shall not be pros-~~  
18 ~~ecuted under this section for a conspiracy to violate this section pursuant~~  
19 ~~to K.S.A. 21-3302, and amendments thereto.~~  
20 ~~—(e) Nothing in this section shall be construed to create a right to an~~  
21 ~~abortion. Notwithstanding any provision of this section, a person shall not~~  
22 ~~perform an abortion that is prohibited by law.~~  
23 ~~—(f) Upon conviction of a violation of this section, a person shall be~~  
24 ~~guilty of a severity level 10 person felony.~~  
25 ~~—Sec. 5. K.S.A. 2008 Supp. 76-3308 is hereby amended to read as~~  
26 ~~follows: 76-3308. (a) The authority shall have all the powers necessary to~~  
27 ~~carry out the purposes and provisions of this act, including, without lim-~~  
28 ~~itation, the following powers to:~~  
29 ~~—(1) Have the duties, privileges, immunities, rights, liabilities and dis-~~  
30 ~~abilities of a body corporate and a political instrumentality of the state;~~  
31 ~~—(2) have perpetual existence and succession;~~  
32 ~~—(3) adopt, have and use a seal and to alter the same at its pleasure;~~  
33 ~~—(4) sue and be sued in its own name;~~  
34 ~~—(5) make and execute contracts, guarantees or any other instruments~~  
35 ~~and agreements necessary or convenient for the exercise of its powers~~  
36 ~~and functions including, without limitation, to make and execute contracts~~  
37 ~~with hospitals or other health care businesses to operate and manage any~~  
38 ~~or all of the hospital facilities or operations and to incur liabilities and~~  
39 ~~secure the obligations of any entity or individual;~~  
40 ~~—(6) borrow money and to issue bonds evidencing the same and pledge~~  
41 ~~all or any part of the authority's assets therefor;~~  
42 ~~—(7) purchase, lease, trade, exchange or otherwise acquire, maintain,~~  
43 ~~hold, improve, mortgage, sell, lease and dispose of personal property;~~

1 whether tangible or intangible, and any interest therein; and to purchase,  
2 lease, trade, exchange or otherwise acquire real property or any interest  
3 therein, and to maintain, hold, improve, mortgage, lease and otherwise  
4 transfer such real property, so long as such transactions do not conflict  
5 with the mission of the authority as specified in this act;  
6 ~~—(8)—incur or assume indebtedness to, and enter into contracts with~~  
7 ~~the Kansas development finance authority, which is authorized to borrow~~  
8 ~~money and provide financing for the authority;~~  
9 ~~—(9)—develop policies and procedures generally applicable to the pro-~~  
10 ~~curement of goods, services and construction, based upon sound business~~  
11 ~~practices;~~  
12 ~~—(10)—contract for and to accept any gifts, grants and loans of funds,~~  
13 ~~property, or any other aid in any form from the federal government, the~~  
14 ~~state, any state agency, or any other source, or any combination thereof,~~  
15 ~~and to comply with the provisions of the terms and conditions thereof;~~  
16 ~~—(11)—acquire space, equipment, services, supplies and insurance nec-~~  
17 ~~essary to carry out the purposes of this act;~~  
18 ~~—(12)—deposit any moneys of the authority in any banking institution~~  
19 ~~within or without the state or in any depository authorized to receive such~~  
20 ~~deposits, one or more persons to act as custodians of the moneys of the~~  
21 ~~authority, to give surety bonds in such amounts in form and for such~~  
22 ~~purposes as the board requires;~~  
23 ~~—(13)—procure such insurance, participate in such insurance plans or~~  
24 ~~provide such self insurance or both as it deems necessary or convenient~~  
25 ~~to carry out the purposes and provisions of this act; the purchase of in-~~  
26 ~~surance, participation in an insurance plan or creation of a self-insurance~~  
27 ~~fund by the authority shall not be deemed as a waiver or relinquishment~~  
28 ~~of any sovereign immunity to which the authority or its officers, directors,~~  
29 ~~employees or agents are otherwise entitled;~~  
30 ~~—(14)—appoint, supervise and set the salary and compensation of a pres-~~  
31 ~~ident of the authority who shall be appointed by and serve at the pleasure~~  
32 ~~of the board;~~  
33 ~~—(15)—fix, revise, charge and collect rates, rentals, fees and other~~  
34 ~~charges for the services or facilities furnished by or on behalf of the au-~~  
35 ~~thority, and to establish policies and procedures regarding any such serv-~~  
36 ~~ice rendered for the use, occupancy or operation of any such facility, such~~  
37 ~~charges and policies and procedures not to be subject to supervision or~~  
38 ~~regulation by any commission, board, bureau or agency of the State; and~~  
39 ~~—(16)—do any and all things necessary or convenient to carry out the~~  
40 ~~authority's purposes and exercise the powers given in this act.~~  
41 ~~—(b)—The authority may create, own in whole or in part, or otherwise~~  
42 ~~acquire or dispose of any entity organized for a purpose related to or in~~  
43 ~~support of the mission of the authority.~~

- 1 ~~—(c) The authority may participate in joint ventures with individuals,~~  
2 ~~corporations, governmental bodies or agencies, partnerships, associations,~~  
3 ~~insurers or other entities to facilitate any activities or programs consistent~~  
4 ~~with the public purpose and intent of this act.~~
- 5 ~~—(d) The authority may create a nonprofit entity or entities for the~~  
6 ~~purpose of soliciting, accepting and administering grants, outright gifts~~  
7 ~~and bequests, endowment gifts and bequests and gifts and bequests in~~  
8 ~~trust which entity or entities shall not engage in trust business.~~
- 9 ~~—(e) In carrying out any activities authorized by this act, the authority~~  
10 ~~may provide appropriate assistance, including the making of loans and~~  
11 ~~providing time of employees, to corporations, partnerships, associations,~~  
12 ~~joint ventures or other entities, whether or not such corporations, part-~~  
13 ~~nerships, associations, joint ventures or other entities are owned or con-~~  
14 ~~trolled in whole or in part, directly or indirectly, by the authority.~~
- 15 ~~—(f) Effective with the transfer date, all moneys of the authority shall~~  
16 ~~be deposited in one or more banks or trust companies in one or more~~  
17 ~~special accounts. All banks and trust companies are authorized to give~~  
18 ~~security for such deposits if required by the authority. The moneys in~~  
19 ~~such accounts shall be paid out on a warrant or other orders of the trea-~~  
20 ~~surer of the authority or any such other person or persons as the authority~~  
21 ~~may authorize to execute such warrants or orders.~~
- 22 ~~—(g) Notwithstanding any provision of law to the contrary, the author-~~  
23 ~~ity, effective with the transfer date, may invest the authority's operating~~  
24 ~~funds in any obligations or securities as authorized by the board. The~~  
25 ~~board shall adopt written investment guidelines.~~
- 26 ~~—(h) The authority is authorized to negotiate contracts with one or~~  
27 ~~more qualified parties to provide collection services. The selection of a~~  
28 ~~collection services provider shall be based on responses to a request for~~  
29 ~~proposals from qualified professional firms and shall be administered in~~  
30 ~~accordance with policies adopted by the board.~~
- 31 ~~—(i) Notwithstanding any provision of law to the contrary, no abortion~~  
32 ~~shall be performed, except in the event of a medical emergency, in any~~  
33 ~~medical facility, hospital or clinic owned, leased or operated by the au-~~  
34 ~~thority. The provisions of this subsection are not applicable to any mem-~~  
35 ~~ber of the physician faculty of the university of Kansas school of medicine~~  
36 ~~on property not owned, leased or operated by the authority. As used in~~  
37 ~~this subsection, "medical emergency" means a pregnant woman's medical~~  
38 ~~condition that, on the basis of a physician's good faith clinical judgment,~~  
39 ~~necessitates an immediate abortion to avert the woman's death or to avert~~  
40 ~~a serious risk of a substantial and irreversible impairment *physical dis-*~~  
41 ~~*order, physical illness or physical injury* of a major bodily function.~~
- 42 Sec. 6- [2.] K.S.A. 65-6701, 65-6703, 65-6711 and 65-6721 and  
43 K.S.A. 2008 Supp. 76-3308 are [is] hereby repealed.

1     Sec. ~~7~~ [3.] This act shall take effect and be in force from and after  
2     its publication in the statute book.