

HOUSE BILL No. 2527

By Representative Kinzer

1-25

9 AN ACT concerning abortion; regarding reports on late term abortions;
10 amending K.S.A. 65-445 and 65-6703 and repealing the existing
11 sections.
12

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

14 Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-
15 445. (a) Every medical care facility shall keep written records of all preg-
16 nancies which are lawfully terminated within such medical care facility
17 and shall annually submit a written report thereon to the secretary of
18 health and environment in the manner and form prescribed by the sec-
19 retary. Every person licensed to practice medicine and surgery shall keep
20 a record of all pregnancies which are lawfully terminated by such person
21 in a location other than a medical care facility and shall annually submit
22 a written report thereon to the secretary of health and environment in
23 the manner and form prescribed by the secretary.

24 (b) Each report required by this section shall include the number of
25 pregnancies terminated during the period of time covered by the report,
26 the type of medical facility in which the pregnancy was terminated, in-
27 formation required to be reported under K.S.A. 65-6703 and amend-
28 ments thereto if applicable to the pregnancy terminated, and such other
29 information as may be required by the secretary of health and environ-
30 ment, but the report shall not include the names of the persons whose
31 pregnancies were so terminated. *Each report required by subsection*
32 *(c)(4) of K.S.A. 65-6703, and amendments thereto, shall specify the med-*
33 *ical diagnosis and condition constituting a substantial and irreversible*
34 *impairment of a major bodily function or the medical diagnosis and con-*
35 *dition which necessitated performance of an abortion to preserve the life*
36 *of the pregnant woman. Each report required by K.S.A. 65-6703, and*
37 *amendments thereto, shall include a sworn statement by the physician*
38 *performing the abortion and the referring physician that such physicians*
39 *are not legally or financially affiliated.*

40 (c) Information obtained by the secretary of health and environment
41 under this section shall be confidential and shall not be disclosed in a
42 manner that would reveal the identity of any person licensed to practice
43 medicine and surgery who submits a report to the secretary under this

1 section or the identity of any medical care facility which submits a report
2 to the secretary under this section, except that such information, including
3 information identifying such persons and facilities may be disclosed to
4 the state board of healing arts upon request of the board for disciplinary
5 action conducted by the board and may be disclosed to the attorney gen-
6 eral upon a showing that a reasonable cause exists to believe that a vio-
7 lation of this act has occurred. Any information disclosed to the state
8 board of healing arts or the attorney general pursuant to this subsection
9 shall be used solely for the purposes of a disciplinary action or criminal
10 proceeding. Except as otherwise provided in this subsection, information
11 obtained by the secretary under this section may be used only for statisti-
12 cal purposes and such information shall not be released in a manner
13 which would identify any county or other area of this state in which the
14 termination of the pregnancy occurred. A violation of this subsection (c)
15 is a class A nonperson misdemeanor.

16 (d) In addition to such criminal penalty under subsection (c), any
17 person licensed to practice medicine and surgery or medical care facility
18 whose identity is revealed in violation of this section may bring a civil
19 action against the responsible person or persons for any damages to the
20 person licensed to practice medicine and surgery or medical care facility
21 caused by such violation.

22 (e) For the purpose of maintaining confidentiality as provided by sub-
23 sections (c) and (d), reports of terminations of pregnancies required by
24 this section shall identify the person or facility submitting such reports
25 only by confidential code number assigned by the secretary of health and
26 environment to such person or facility and the department of health and
27 environment shall maintain such reports only by such number.

28 (f) *The annual public report on abortions performed in Kansas issued*
29 *by the secretary of health and environment shall contain the information*
30 *required to be reported by this section to the extent such information is*
31 *not deemed confidential pursuant to this section. The secretary of health*
32 *and environment shall adopt rules and regulations to implement this sec-*
33 *tion. Such rules and regulations shall prescribe, in detail, the information*
34 *required to be kept by the physicians and hospitals and the information*
35 *required in the reports which must be submitted to the secretary.*

36 Sec. 2. K.S.A. 65-6703 is hereby amended to read as follows: 65-
37 6703. (a) No person shall perform or induce an abortion when the fetus
38 is viable unless such person is a physician and has a documented referral
39 from another physician *who is licensed to practice medicine in this state*
40 *and who is not legally or financially affiliated with the physician perform-*
41 *ing or inducing the abortion and both physicians determine provide a*
42 *written determination, based upon a medical judgment that would be*
43 *made by a reasonably prudent physician, knowledgeable in the field, and*

1 *knowledgeable about the case and the treatment possibilities with respect*
2 *to the conditions involved, that: (1) The abortion is necessary to preserve*
3 *the life of the pregnant woman; or (2) a continuation of the pregnancy*
4 *will cause a substantial and irreversible impairment of a major bodily*
5 *function of the pregnant woman.*

6 *(b) Except in the case of a medical emergency, a copy of the written*
7 *documented referral and of the abortion-performing physician's written*
8 *determination shall be provided to the pregnant woman no less than 30*
9 *minutes prior to the initiation of the abortion. The written determination*
10 *shall be time-stamped at the time it is delivered to the pregnant woman.*
11 *Such determination shall specify:*

12 *(1) If the fetus was determined to be nonviable and the medical basis*
13 *of such determination;*

14 *(2) if the abortion is necessary to preserve the life of the pregnant*
15 *woman and the medical basis of such determination, including the specific*
16 *medical condition the physician believes would cause the death of the*
17 *pregnant woman; or*

18 *(3) if a continuation of the pregnancy will cause a substantial and*
19 *irreversible impairment of a major bodily function of the pregnant woman*
20 *and the medical basis of such determination, including the specific medical*
21 *condition the physician believes would cause a substantial and irreversible*
22 *impairment of a major bodily function of the pregnant woman.*

23 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to per-
24 forming an abortion upon a woman, the physician shall determine the
25 gestational age of the fetus according to accepted obstetrical and neonatal
26 practice and standards applied by physicians in the same or similar cir-
27 cumstances. If the physician determines the gestational age is less than
28 22 weeks, the physician shall document as part of the medical records of
29 the woman the basis for the determination. *The medical reasons for the*
30 *determination of the gestational age of the fetus shall also be reported by*
31 *the physician as part of the written report made by the physician to the*
32 *secretary of health and environment under K.S.A. 65-445, and amend-*
33 *ments thereto.*

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

1 *gestational age of the fetus shall also be reported by the physician as part*
2 *of the written report made by the physician to the secretary of health and*
3 *environment under K.S.A. 65-445, and amendments thereto.*

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

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

1 (5) The physician shall retain the medical records required to be kept
2 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than
3 ~~five~~ 10 years and shall retain a copy of the written reports required under
4 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10
5 years.

6 (d) *The secretary of health and environment shall adopt rules and*
7 *regulations to administer this section. These rules and regulations shall*
8 *include:*

9 (1) *A detailed list of the information that must be kept by a physician*
10 *under paragraphs (1) and (2) of subsection (c);*

11 (2) *the contents of the written reports required under paragraphs (3)*
12 *and (4) of subsection (c); and*

13 (3) *detailed information that must be provided by a physician to in-*
14 *sure that the specific medical basis and clinical diagnosis regarding the*
15 *woman and the viability or lack of viability of the fetus is reported.*

16 ~~(e)~~ (e) A woman upon whom an abortion is performed shall not be
17 prosecuted under this section for a conspiracy to violate this section pur-
18 suant to K.S.A. 21-3302, and amendments thereto.

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

22 ~~(g)~~ (g) As used in this section, “viable” means that stage of fetal de-
23 velopment when it is the physician’s judgment according to accepted ob-
24 stetrical or neonatal standards of care and practice applied by physicians
25 in the same or similar circumstances that there is a reasonable probability
26 that the life of the child can be continued indefinitely outside the mother’s
27 womb with natural or artificial life-supportive measures.

28 (h) *The prosecution of violations of this section may be brought by*
29 *the attorney general, by the district attorney or county attorney for the*
30 *county where the violation occurred.*

31 ~~(i)~~ (i) If any provision of this section is held to be invalid or uncon-
32 stitutional, it shall be conclusively presumed that the legislature would
33 have enacted the remainder of this section without such invalid or un-
34 constitutional provision.

35 ~~(g)~~ (j) Upon a first conviction of a violation of this section, a person
36 shall be guilty of a class A nonperson misdemeanor. Upon a second or
37 subsequent conviction of a violation of this section, a person shall be guilty
38 of a severity level 10, nonperson felony.

39 Sec. 3. K.S.A. 65-445 and 65-6703 are hereby repealed.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the statute book.