

2018 Kansas Statutes

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 K.S.A. 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 K.S.A. 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 K.S.A. 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 K.S.A. 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 K.S.A. 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 K.S.A. 2018 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.

History: L. 2011, ch. 41, § 3; July 1.