

## **Born-alive Infants Protection Act; HB 2313**

**HB 2313** enacts the Born-alive Infants Protection Act (Act).

### ***Definitions***

The bill defines the following terms:

- “Abortion” means the same as defined in KSA 65-6701 [*Note: This definition is amended by 2023 HB 2264, which was passed by the Legislature on April 6, 2023.*];
- “Born alive” means the complete expulsion or extraction of a human being from its mother, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion;
- “Healthcare provider” means a physician, licensed physician assistant, licensed advanced practice registered nurse, or person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences Regulatory Board; and
- “Medical care facility” means a hospital, ambulatory surgical center, or recuperation center, except that “medical care facility” does not include a hospice that is certified to participate in the Medicare program and that provides services only to hospice patients.

The bill also specifies that the definitions of terms “child,” “human being,” or “person” include each member of the species *Homo sapiens* who is born alive.

### ***Requirements for Health Care Providers***

In the event an abortion or attempted abortion results in a child being born alive, the bill requires any health care provider present at the time the child is born alive to:

- Exercise the same degree of professional skill, care, and diligence, to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age; and
- Ensure that the child who is born alive is immediately transported to a hospital.

The bill requires any health care provider or any employee of a medical care facility who has knowledge of a failure to comply with the reporting requirements to immediately report such failure to an appropriate law enforcement agency.

### ***Penalties***

The bill provides for any person who knowingly or recklessly violates the requirements for care and reporting to be guilty of a severity level 10 nonperson felony.

Any person who intentionally performs or attempts to perform an overt act that kills a child who is born alive during an abortion or attempted abortion is guilty of a severity level 1 person felony.

The provisions of this section do not apply to the woman upon whom the abortion is performed or attempted.

### ***Civil Action***

A civil action with appropriate relief for any violation of the requirements for care and reporting could only be filed by the woman upon whom the abortion or attempted abortion was performed; the father of the child born alive; and, if the woman is not at least 18 years of age at the time the abortion or attempted abortion is performed, the parents or custodial guardian of the woman.

The bill bars any person who is not the woman upon whom the abortion or attempted abortion was performed from bringing any action if the pregnancy resulted from such person's criminal conduct.

The bill provides for the prevailing party to be awarded reasonable attorney fees, except when the prevailing party is the defendant. If the defendant prevails, the bill directs the court to find that the plaintiff's action was frivolous and brought in bad faith before the court, and the court could award attorney fees to such defendant.

### ***Anonymity and Requirements to Prevent Public Disclosure***

In any civil or criminal action brought pursuant to sections regarding penalties or civil action, upon a motion by either party or on the court's own accord, the bill directs the court to determine whether the anonymity of such woman should be preserved.

If the court determines the woman's anonymity should be preserved, the bill directs the court to issue appropriate orders to the parties, witnesses, and counsel and direct that court records of the proceedings be sealed and all individuals who are not a party to the action, witnesses, or counsel be excluded from the courtroom or hearing room to the extent necessary to safeguard the woman's identity from public disclosure. Each order must 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.

This section should not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

### ***Annual Report***

Each medical care facility in which an infant is born alive subsequent to an abortion or attempted abortion performed on the mother of the infant must submit an annual report to the Secretary of Health and Environment (Secretary).

The bill requires the report to include these specific items:

- The number of infants born alive subsequent to an abortion or attempted abortion;
- The approximate gestational age of the infant who was born alive expressed in one of the following increments:
  - Less than 9 weeks;
  - 9 to 10 weeks;
  - 11 to 12 weeks;
  - 13 to 15 weeks;
  - 16 to 20 weeks;
  - 21 to 24 weeks;
  - 25 to 30 weeks;
  - 31 to 36 weeks; or
  - 37 weeks to term;
- Any medical actions taken to preserve the life of the infant who was born alive;
- The outcome for such infants, including survival, death, and location of death, such as a clinic, hospital, or ambulance, if known; and
- The medical conditions of infants who were born alive, including conditions developed prior to and after the attempted abortion.

The bill authorizes the Secretary to impose a civil fine in any amount not to exceed \$500 on any medical care facility that fails to submit the required report within 30 days after the date such report is due to be submitted to the Secretary.

The bill authorizes the Secretary to impose an additional civil fine in an amount not to exceed \$500 for each additional 30-day period that such medical care facility fails to submit the required report. If a medical care facility fails to submit a required report for more than one year following the due date, or submits an incomplete report during such time period and fails to correct the deficiencies in such report, the Secretary may bring a civil action for an injunction to compel such medical care facility to submit the required report.

### ***Severability***

The bill declares the provisions, words, phrases, and clauses of the bill to be severable, and provide that if any provision, word, phrase, or clause of the bill or the application of the bill to any person or circumstance is held invalid, the unaffected provisions, words, phrases, clauses, or applications remain effective.

### ***Reporting and Sunset on Disclosure Exclusion***

The bill amends a statute regarding reporting of the number of pregnancies lawfully terminated to the Secretary to add information required to be reported under the Act and specify the report may not include the names of persons upon whom an attempted abortion was performed.

The bill also adds a sunset date of July 1, 2028, for the subsection providing for the confidentiality of information obtained by the Secretary for these purposes and prohibiting disclosure in a manner that would reveal the identity of physicians or county or other area of the state reporting to the Secretary. The Legislature may review and reenact such provisions before July 1, 2028.