

SENATE BILL No. 320

By Committee on Ways and Means

3-21

1 AN ACT concerning health and healthcare; creating the born-alive infants
2 protection act; providing legal protections for infants born alive;
3 requiring certain standards of care by healthcare providers for infants
4 who are born alive; providing criminal penalties and civil liability for
5 violations of the act; amending K.S.A. 65-445 and repealing the
6 existing section.
7

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

9 New Section 1. The provisions of sections 1 through 9, and
10 amendments thereto, shall be known and may be cited as the born-alive
11 infants protection act.

12 New Sec. 2. As used in sections 2 through 8, and amendments
13 thereto:

14 (a) "Abortion" means the same as defined in K.S.A. 65-6701, and
15 amendments thereto.

16 (b) "Born alive" means the complete expulsion or extraction of a
17 human being from its mother, at any stage of development, who, after such
18 expulsion or extraction, breathes or has a beating heart, pulsation of the
19 umbilical cord or definite movement of voluntary muscles, regardless of
20 whether the umbilical cord has been cut and regardless of whether the
21 expulsion or extraction occurs as a result of natural or induced labor,
22 cesarean section or induced abortion.

23 (c) "Healthcare provider" means a physician, licensed physician
24 assistant, licensed advanced practice registered nurse or person licensed,
25 registered, certified or otherwise authorized to practice by the behavioral
26 sciences regulatory board.

27 (d) "Medical care facility" means the same as defined in K.S.A. 65-
28 425, and amendments thereto.

29 New Sec. 3. Whenever the terms "child," "human being" or "person"
30 are used in K.S.A. 2022 Supp. 21-5401, 21-5402, 21-5403, 21-5404, 21-
31 5405, 21-5406 and 21-5413(a) and (b), and amendments thereto, such
32 terms shall include each member of the species homo sapiens who is born
33 alive.

34 New Sec. 4. (a) In the event an abortion or attempted abortion results
35 in a child being born alive, any healthcare provider present at the time the
36 child is born alive shall:

1 (1) Exercise the same degree of professional skill, care and diligence
2 to preserve the life and health of the child as a reasonably diligent and
3 conscientious healthcare provider would render to any other child born
4 alive at the same gestational age; and

5 (2) ensure that the child who is born alive is immediately transported
6 to a hospital.

7 (b) Any healthcare provider or any employee of a medical care
8 facility who has knowledge of a failure to comply with the requirements of
9 subsection (a) shall immediately report such failure to an appropriate law
10 enforcement agency.

11 New Sec. 5. (a) Any person who knowingly or recklessly violates
12 section 4, and amendments thereto, shall be guilty of a severity level 10,
13 nonperson felony.

14 (b) Any person who intentionally performs or attempts to perform an
15 overt act that kills a child who is born alive during an abortion or
16 attempted abortion shall be guilty of a severity level 1, person felony.

17 (c) The provisions of this section shall not apply to the woman upon
18 whom the abortion is performed or attempted.

19 New Sec. 6. (a) The woman upon whom the abortion or attempted
20 abortion was performed, the father of the child born alive and, if the
21 woman has not attained 18 years of age at the time the abortion or
22 attempted abortion is performed, the parents or custodial guardian of the
23 woman upon whom the abortion or attempted abortion was performed may
24 bring a civil action for any violation of section 4, and amendments thereto,
25 to obtain appropriate relief.

26 (b) Any person who is not the woman upon whom the abortion or
27 attempted abortion was performed shall be barred from bringing any
28 action under this section if the pregnancy resulted from such person's
29 criminal conduct.

30 (c) The prevailing party in any action brought under this section may
31 be awarded reasonable attorney fees, except that if the prevailing party is
32 the defendant, then the court shall find that the plaintiff's action was
33 frivolous and brought in bad faith before the court and may award attorney
34 fees to such defendant.

35 New Sec. 7. In any civil or criminal action brought pursuant to
36 section 5 or 6, and amendments thereto, upon a motion by either party or
37 sua sponte, the court shall determine whether the anonymity of any woman
38 upon whom an abortion or attempted abortion was performed shall be
39 preserved if such woman does not give consent to the public disclosure of
40 her name. If the court determines that such woman's anonymity should be
41 preserved, then the court shall issue appropriate orders to the parties,
42 witnesses and counsel and shall direct that the court records of the
43 proceedings be sealed and all individuals who are not a party to the action,

1 witnesses or counsel be excluded from the courtroom or hearing room to
2 the extent necessary to safeguard the woman's identity from public
3 disclosure. Each such order shall be accompanied by specific written
4 findings explaining why the anonymity of the woman should be preserved
5 from public disclosure, why the order is essential to that end, how the
6 order is narrowly tailored to serve that interest and why no reasonable less
7 restrictive alternative exists. This section shall not be construed to conceal
8 the identity of the plaintiff or of witnesses from the defendant.

9 New Sec. 8. (a) Each medical care facility in which an infant is born
10 alive subsequent to an abortion or attempted abortion performed on the
11 mother of the infant shall submit an annual report to the secretary of health
12 and environment on the number of such infants in such form and manner
13 as prescribed by the secretary. Such report shall include:

14 (1) The approximate gestational age of the infant who was born alive
15 expressed in one of the following increments:

16 (A) Less than nine weeks;

17 (B) nine to 10 weeks;

18 (C) 11 to 12 weeks;

19 (D) 13 to 15 weeks;

20 (E) 16 to 20 weeks;

21 (F) 21 to 24 weeks;

22 (G) 25 to 30 weeks;

23 (H) 31 to 36 weeks; or

24 (I) 37 weeks to term;

25 (2) any medical actions taken to preserve the life of the infant who
26 was born alive;

27 (3) the outcome for such infants, including survival, death and
28 location of death, such as a clinic, hospital or ambulance, if known; and

29 (4) the medical conditions of infants who were born alive, including
30 conditions developed prior to and after the attempted abortion.

31 (b) The secretary may impose a civil fine in any amount not to exceed
32 \$500 on any medical care facility that fails to submit the required report
33 within 30 days after the date such report is due to be submitted to the
34 secretary. The secretary may impose an additional civil fine in an amount
35 not to exceed \$500 for each additional 30-day period that such medical
36 care facility fails to submit the required report. If a medical care facility
37 fails to submit a required report for more than one year following the date
38 that such report is due to be submitted to the secretary, or submits an
39 incomplete report during such time period and fails to correct the
40 deficiencies in such report, the secretary may bring a civil action for an
41 injunction to compel such medical care facility to submit the required
42 report.

43 New Sec. 9. If any provision, word, phrase or clause of sections 1

1 through 8, and amendments thereto, or the application thereof to any
2 person or circumstance is held invalid, such invalidity shall not affect the
3 provisions, words, phrases, clauses or applications of sections 1 through 8,
4 and amendments thereto, that can be given effect without the invalid
5 provision, word, phrase, clause or application and to this end, the
6 provisions, words, phrases and clauses of sections 1 through 8, and
7 amendments thereto, are declared severable.

8 Sec. 10. K.S.A. 65-445 is hereby amended to read as follows: 65-445.

9 (a) Every medical care facility shall keep written records of all pregnancies
10 ~~which~~ *that* are lawfully terminated within such medical care facility and
11 shall annually submit a written report thereon to the secretary of health and
12 environment in the manner and form prescribed by the secretary. Every
13 person licensed to practice medicine and surgery shall keep a record of all
14 pregnancies ~~which~~ *that* are lawfully terminated by such person in a
15 location other than a medical care facility and shall annually submit a
16 written report thereon to the secretary of health and environment in the
17 manner and form prescribed by the secretary.

18 (b) Each report required by this section shall include the number of
19 pregnancies terminated during the period of time covered by the report, the
20 type of medical facility in which the pregnancy was terminated,
21 information required to be reported under ~~subsections (b) and (c) of~~ K.S.A.
22 ~~65-6703(b) and (c), subsection (j) of~~ K.S.A. 65-6705(j), ~~subsection (e) of~~
23 ~~K.S.A. 65-6721(c) and~~ K.S.A. 65-6724, and amendments thereto, if
24 applicable to the pregnancy terminated, *information required to be*
25 *reported under section 8, and amendments thereto*, and such other
26 information as may be required by the secretary of health and
27 environment, but the report shall not include the names of the persons
28 whose pregnancies were so terminated *or upon whom an attempted*
29 *abortion was performed*. Each report required by ~~subsections (b) and (c) of~~
30 ~~K.S.A. 65-6703(b) and (c), subsection (j) of~~ K.S.A. 65-6705(j) and
31 ~~subsection (e) of~~ K.S.A. 65-6721(c), and amendments thereto, shall
32 specify the medical diagnosis and condition constituting a substantial and
33 irreversible impairment of a major bodily function or the medical
34 diagnosis and condition ~~which~~ *that* necessitated performance of an
35 abortion to preserve the life of the pregnant woman. Each report required
36 by K.S.A. 65-6703, and amendments thereto, shall include a sworn
37 statement by the physician performing the abortion and the referring
38 physician that such physicians are not legally or financially affiliated.

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

1 report to the secretary under this section, except that such information,
2 including information identifying such persons and facilities may be
3 disclosed to the state board of healing arts upon request of the board for
4 disciplinary action conducted by the board and may be disclosed to the
5 attorney general or any district or county attorney in this state upon a
6 showing that a reasonable cause exists to believe that a violation of this act
7 has occurred. Any information disclosed to the state board of healing arts,
8 the attorney general or any district or county attorney pursuant to this
9 subsection shall be used solely for the purposes of a disciplinary action or
10 criminal proceeding. Except as otherwise provided in this subsection,
11 information obtained by the secretary under this section may be used only
12 for statistical purposes and such information shall not be released in a
13 manner ~~which~~ *that* would identify any county or other area of this state in
14 which the termination of the pregnancy occurred. A violation of this
15 subsection (c) is a class A nonperson misdemeanor. *The provisions of this*
16 *subsection shall expire on July 1, 2028, unless the legislature reviews and*
17 *reenacts such provisions in accordance with K.S.A. 45-229, and*
18 *amendments thereto, prior to July 1, 2028.*

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

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

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

39 (g) The Kansas department for children and families shall prepare and
40 publish an annual report on the number of reports of child sexual abuse
41 received by the department from abortion providers. Such report shall be
42 categorized by the age of the victim and the month the report was
43 submitted to the department. The name of the victim and any other

1 identifying information shall be kept confidential by the department and
2 shall not be released as part of the public report.

3 Sec. 11. K.S.A. 65-445 is hereby repealed.

4 Sec. 12. This act shall take effect and be in force from and after its
5 publication in the statute book.