

SENATE BILL No. 98

By Senators Baumgardner, Alley, Billinger, Bowers, Estes, Fitzgerald, Goddard, Kerschen, LaTurner, Lynn, Masterson, McGinn, Olson, Petersen, Pilcher-Cook, Pyle, Suellentrop, Tyson, Wagle and Wilborn

1-30

1 AN ACT concerning abortion; relating to the woman's-right-to-know act;
2 relating to certain physician information to be disclosed; amending
3 K.S.A. 2016 Supp. 65-6709 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 65-6709 is hereby amended to read as
7 follows: 65-6709. No abortion shall be performed or induced without the
8 voluntary and informed consent of the woman upon whom the abortion is
9 to be performed or induced. Except in the case of a medical emergency,
10 consent to an abortion is voluntary and informed only if:

11 (a) At least 24 hours before the abortion the physician who is to
12 perform the abortion or the referring physician has informed the woman in
13 writing, *which shall be provided on white paper in a printed format in*
14 *black ink with 12-point times new roman font, of:*

15 (1) ~~The name of~~ *following information concerning* the physician who
16 will perform the abortion;

17 (A) *The name of such physician;*

18 (B) *the year in which such physician received a medical doctor's*
19 *degree;*

20 (C) *the date on which such physician's employment commenced at*
21 *the facility where the abortion is to be performed;*

22 (D) *whether any disciplinary action has been taken against such*
23 *physician by the state board of healing arts by marking either a box*
24 *indicating "yes" or a box indicating "no" and if the box indicating "yes" is*
25 *marked, then provide the website addresses to the board documentation*
26 *for each disciplinary action;*

27 (E) *whether such physician has malpractice insurance by marking*
28 *either a box indicating "yes" or a box indicating "no";*

29 (F) *whether such physician has clinical privileges at any hospital*
30 *located within 30 miles of the facility where the abortion is to be*
31 *performed by marking either a box indicating "yes" or a box indicating*
32 *"no" and if the box indicating "yes" is marked, then provide the name of*
33 *each such hospital and the date such privileges were issued;*

34 (G) *the name of any hospital where such physician has lost clinical*

1 *privileges; and*

2 (H) *whether such physician is a resident of this state by marking*
3 *either a box indicating "yes" or a box indicating "no";*

4 (2) a description of the proposed abortion method;

5 (3) a description of risks related to the proposed abortion method,
6 including risk of premature birth in future pregnancies, risk of breast
7 cancer and risks to the woman's reproductive health and alternatives to the
8 abortion that a reasonable patient would consider material to the decision
9 of whether or not to undergo the abortion;

10 (4) the probable gestational age of the unborn child at the time the
11 abortion is to be performed and that Kansas law requires the following:
12 "No person shall perform or induce an abortion when the unborn child is
13 viable unless such person is a physician and has a documented referral
14 from another physician not financially associated with the physician
15 performing or inducing the abortion and both physicians determine that:
16 (1) The abortion is necessary to preserve the life of the pregnant woman;
17 or (2) a continuation of the pregnancy will cause a substantial and
18 irreversible physical impairment of a major bodily function of the pregnant
19 woman." If the child is born alive, the attending physician has the legal
20 obligation to take all reasonable steps necessary to maintain the life and
21 health of the child;

22 (5) the probable anatomical and physiological characteristics of the
23 unborn child at the time the abortion is to be performed;

24 (6) the contact information for counseling assistance for medically
25 challenging pregnancies, the contact information for perinatal hospice
26 services and a listing of websites for national perinatal assistance,
27 including information regarding which entities provide such services free
28 of charge;

29 (7) the medical risks associated with carrying an unborn child to
30 term; and

31 (8) any need for anti-Rh immune globulin therapy, if she is Rh
32 negative, the likely consequences of refusing such therapy and the cost of
33 the therapy.

34 (b) At least 24 hours before the abortion, the physician who is to
35 perform the abortion, the referring physician or a qualified person has
36 informed the woman in writing that:

37 (1) Medical assistance benefits may be available for prenatal care,
38 childbirth and neonatal care, and that more detailed information on the
39 availability of such assistance is contained in the printed materials given to
40 her and described in K.S.A. 65-6710, and amendments thereto;

41 (2) the informational materials in K.S.A. 65-6710, and amendments
42 thereto, are available in printed form and online, and describe the unborn
43 child, list agencies which offer alternatives to abortion with a special

1 section listing adoption services and list providers of free ultrasound
2 services;

3 (3) the father of the unborn child is liable to assist in the support of
4 her child, even in instances where he has offered to pay for the abortion
5 except that in the case of rape this information may be omitted;

6 (4) the woman is free to withhold or withdraw her consent to the
7 abortion at any time prior to invasion of the uterus without affecting her
8 right to future care or treatment and without the loss of any state or
9 federally-funded benefits to which she might otherwise be entitled;

10 (5) the abortion will terminate the life of a whole, separate, unique,
11 living human being; and

12 (6) by no later than 20 weeks from fertilization, the unborn child has
13 the physical structures necessary to experience pain. There is evidence that
14 by 20 weeks from fertilization unborn children seek to evade certain
15 stimuli in a manner that in an infant or an adult would be interpreted to be
16 a response to pain. Anesthesia is routinely administered to unborn children
17 who are 20 weeks from fertilization or older who undergo prenatal surgery.

18 (c) At least 30 minutes prior to the abortion procedure, prior to
19 physical preparation for the abortion and prior to the administration of
20 medication for the abortion, the woman shall meet privately with the
21 physician who is to perform the abortion and such person's staff to ensure
22 that she has an adequate opportunity to ask questions of and obtain
23 information from the physician concerning the abortion.

24 (d) At least 24 hours before the abortion, the woman is given a copy
25 of the informational materials described in K.S.A. 65-6710, and
26 amendments thereto. If the woman asks questions concerning any of the
27 information or materials, answers shall be provided to her in her own
28 language.

29 (e) The woman certifies in writing on a form provided by the
30 department, prior to the abortion, that the information required to be
31 provided under subsections (a), (b) and (d) has been provided and that she
32 has met with the physician who is to perform the abortion on an individual
33 basis as provided under subsection (c). All physicians who perform
34 abortions shall report the total number of certifications received monthly
35 to the department. The total number of certifications shall be reported by
36 the physician as part of the written report made by the physician to the
37 secretary of health and environment under K.S.A. 65-445, and
38 amendments thereto. The department shall make the number of
39 certifications received available on an annual basis.

40 (f) Prior to the performance of the abortion, the physician who is to
41 perform the abortion or the physician's agent receives a copy of the written
42 certification prescribed by subsection (e) of this section.

43 (g) The woman is not required to pay any amount for the abortion

1 procedure until the 24-hour waiting period has expired.

2 (h) A physician who will use ultrasound equipment preparatory to or
3 in the performance of the abortion, at least 30 minutes prior to the
4 performance of the abortion:

5 (1) Informs the woman that she has the right to view the ultrasound
6 image of her unborn child, at no additional expense to her;

7 (2) informs the woman that she has the right to receive a physical
8 picture of the ultrasound image, at no additional expense to her;

9 (3) offers the woman the opportunity to view the ultrasound image
10 and receive a physical picture of the ultrasound image;

11 (4) certifies in writing that the woman was offered the opportunity to
12 view the ultrasound image and receive a physical picture of the ultrasound
13 image at least 30 minutes prior to the performance of the abortion; and

14 (5) obtains the woman's signed acceptance or rejection of the
15 opportunity to view the ultrasound image and receive a physical picture of
16 the ultrasound image.

17 If the woman accepts the offer and requests to view the ultrasound
18 image, receive a physical picture of the ultrasound image or both, her
19 request shall be granted by the physician at no additional expense to the
20 woman. The physician's certification shall be time-stamped at the time the
21 opportunity to view the ultrasound image and receive a physical picture of
22 the ultrasound image was offered.

23 (i) A physician who will use heart monitor equipment preparatory to
24 or in the performance of the abortion, at least 30 minutes prior to the
25 performance of the abortion:

26 (1) Informs the woman that she has the right to listen to the heartbeat
27 of her unborn child, at no additional expense to her;

28 (2) offers the woman the opportunity to listen to the heartbeat of her
29 unborn child;

30 (3) certifies in writing that the woman was offered the opportunity to
31 listen to the heartbeat of her unborn child at least 30 minutes prior to the
32 performance of the abortion; and

33 (4) obtains the woman's signed acceptance or rejection of the
34 opportunity to listen to the heartbeat of her unborn child.

35 If the woman accepts the offer and requests to listen to the heartbeat of
36 her unborn child, her request shall be granted by the physician at no
37 additional expense to the woman. The physician's certification shall be
38 time-stamped at the time the opportunity to listen to the heartbeat of her
39 unborn child was offered.

40 (j) The physician's certification required by subsections (h) and (i)
41 together with the pregnant woman's signed acceptance or rejection of such
42 offer shall be placed in the woman's medical file in the physician's office
43 and kept for 10 years. However, in the case of a minor, the physician shall

1 keep a copy of the certification and the signed acceptance or rejection in
2 the minor's medical file for five years past the minor's majority, but in no
3 event less than 10 years.

4 (k) Any private office, freestanding surgical outpatient clinic or other
5 facility or clinic in which abortions are performed shall conspicuously post
6 a sign in a location so as to be clearly visible to patients. The sign required
7 pursuant to this subsection shall be printed with lettering that is legible and
8 shall be at least three quarters of an inch boldfaced type. The sign shall
9 include the address for the pregnancy resources website published and
10 maintained by the department of health and environment, and the
11 following text:

12 Notice: It is against the law for anyone, regardless of their relationship
13 to you, to force you to have an abortion. By law, we cannot perform an
14 abortion on you unless we have your freely given and voluntary consent. It
15 is against the law to perform an abortion on you against your will. You
16 have the right to contact any local or state law enforcement agency to
17 receive protection from any actual or threatened physical abuse or
18 violence. You have the right to change your mind at any time prior to the
19 actual abortion and request that the abortion procedure cease. It is
20 unlawful for anyone to make you have an abortion against your will, even
21 if you are a minor. The father of your child must provide support for the
22 child, even if he has offered to pay for an abortion. If you decide not to
23 have an abortion, you may qualify for financial help for pregnancy,
24 childbirth and newborn care. If you qualify, medicaid will pay or help pay
25 the cost of doctor, clinic, hospital and other related medical expenses,
26 including childbirth delivery services and care for your newborn baby.
27 Many agencies are willing to provide assistance so that you may carry
28 your child to term, and to assist you after your child's birth.

29 The provisions of this subsection shall not apply to any private office,
30 freestanding surgical outpatient clinic or other facility or clinic which
31 performs abortions only when necessary to prevent the death of the
32 pregnant woman.

33 (l) Any private office, freestanding surgical outpatient clinic or other
34 facility or clinic in which abortions are performed that has a website shall
35 publish an easily identifiable link on the homepage of such website that
36 directly links to the department of health and environment's website that
37 provides informed consent materials under the woman's-right-to-know act.
38 Such link shall read: "The Kansas Department of Health and Environment
39 maintains a website containing information about the development of the
40 unborn child, as well as video of sonogram images of the unborn child at
41 various stages of development. The Kansas Department of Health and
42 Environment's website can be reached by clicking here."

43 (m) For purposes of this section:

1 (1) The term "human being" means an individual living member of
2 the species of homo sapiens, including the unborn human being during the
3 entire embryonic and fetal ages from fertilization to full gestation.

4 (2) The term "medically challenging pregnancy" means a pregnancy
5 where the unborn child is diagnosed as having: (A) A severe anomaly; or
6 (B) an illness, disease or defect which is invariably fatal.

7 New Sec. 2. If any of the provisions of article 67 of chapter 65 of the
8 Kansas Statutes Annotated, and amendments thereto, are temporarily or
9 permanently enjoined or otherwise restricted and not given their full force
10 and effect by judicial order, all other provisions of article 67 of chapter 65
11 of the Kansas Statutes Annotated, and amendments thereto, not so
12 enjoined or otherwise restricted shall be enforced as though such enjoined
13 or otherwise restricted provisions had not been enacted, provided, that if
14 any such temporary or permanent injunction or other judicial order is
15 stayed, lifted, dissolved or otherwise ceases to have effect, then such
16 provisions shall have full force and effect.

17 Sec. 3. K.S.A. 2016 Supp. 65-6709 is hereby repealed.

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