

SENATE BILL No. 95

By Senators Love, Abrams, Arpke, Baumgardner, Bruce, Donovan, Fitzgerald, Holmes, Kerschen, Knox, LaTurner, Lynn, Masterson, McGinn, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Tyson, Wagle and Wilborn

1-28

1 AN ACT concerning abortion; creating the Kansas unborn child protection
2 from dismemberment abortion act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 9, and amendments
6 thereto, shall be known and may be cited as the Kansas unborn child
7 protection from dismemberment abortion act.

8 Sec. 2. As used in sections 1 through 9, and amendments thereto:

9 (a) "Abortion" means the use or prescription of any instrument,
10 medicine, drug or any other substance or device to terminate the
11 pregnancy of a woman known to be pregnant with an intention other than
12 to increase the probability of a live birth, to preserve the life or health of
13 the child after live birth, or to remove a dead unborn child who died as the
14 result of natural causes in utero, accidental trauma or a criminal assault on
15 the pregnant woman or her unborn child, and which causes the premature
16 termination of the pregnancy.

17 (b) (1) "Dismemberment abortion" means, with the purpose of
18 causing the death of an unborn child, knowingly dismembering a living
19 unborn child and extracting such unborn child one piece at a time from the
20 uterus through the use of clamps, grasping forceps, tongs, scissors or
21 similar instruments that, through the convergence of two rigid levers, slice,
22 crush or grasp a portion of the unborn child's body in order to cut or rip it
23 off.

24 (2) The term "dismemberment abortion" does not include an abortion
25 which uses suction to dismember the body of the unborn child by sucking
26 fetal parts into a collection container, *although it does include an*
27 *abortion in which a dismemberment abortion, as defined in subsection*
28 *(b)(1), is used to cause the death of an unborn child but suction is*
29 *subsequently used to extract fetal parts after the death of the unborn*
30 *child.*

31 (c) "Knowingly" shall have the same meaning attributed to such term
32 in K.S.A. 2014 Supp. 21-5202, and amendments thereto.

33 (d) "Medical emergency" means a condition that, in reasonable
34 medical judgment, so complicates the medical condition of the pregnant

1 woman as to necessitate the immediate abortion of her pregnancy to avert
2 the death of the woman or for which a delay necessary to comply with the
3 applicable statutory requirements will create serious risk of substantial and
4 irreversible physical impairment of a major bodily function. No condition
5 shall be deemed a medical emergency if based on a claim or diagnosis that
6 the woman will engage in conduct which would result in her death or in
7 substantial and irreversible physical impairment of a major bodily
8 function.

9 Sec. 3. (a) No person shall perform, or attempt to perform, a
10 dismemberment abortion on an unborn child unless: (1) The
11 dismemberment abortion is necessary to preserve the life of the pregnant
12 woman; or (2) a continuation of the pregnancy will cause a substantial and
13 irreversible physical impairment of a major bodily function of the pregnant
14 woman. No condition shall be deemed to exist if it is based on a claim or
15 diagnosis that the woman will engage in conduct that would result in her
16 death or in substantial and irreversible physical impairment of a major
17 bodily function.

18 (b) No woman upon whom an abortion is performed or attempted to
19 be performed shall be liable for performing or attempting to perform a
20 dismemberment abortion. No nurse, technician, secretary, receptionist or
21 other employee or agent who is not a physician, but who acts at the
22 direction of a physician, and no pharmacist or other individual who is not a
23 physician, but who fills a prescription or provides instruments or materials
24 used in an abortion at the direction of or to a physician shall be liable for
25 performing or attempting to perform a dismemberment abortion.

26 Sec. 4. The attorney general or any district or county attorney with
27 appropriate jurisdiction may bring a cause of action for injunctive relief
28 against a person who has performed or attempted to perform a
29 dismemberment abortion in violation of section 3, and amendments
30 thereto. Any injunctive relief ordered pursuant to an action filed under this
31 section shall prohibit the defendant from performing or attempting to
32 perform any dismemberment abortions in violation of section 3, and
33 amendments thereto.

34 Sec. 5. (a) A cause of action for civil damages against a person who
35 has performed a dismemberment abortion in violation of section 3, and
36 amendments thereto, may be maintained by the following persons, unless,
37 in a case where the plaintiff is not the woman upon whom the abortion was
38 performed, the pregnancy resulted from the plaintiff's criminal conduct:

39 (1) A woman upon whom a dismemberment abortion has been
40 performed in violation of section 3, and amendments thereto;

41 (2) the father of the unborn child, if married to the woman at the time
42 the dismemberment abortion was performed; or

43 (3) the parents or custodial guardians of the woman, if the woman has

1 not attained the age of 18 years at the time of the abortion or has died as a
2 result of the abortion.

3 (b) Damages awarded in such an action shall include:

4 (1) Money damages for all injuries, psychological and physical,
5 occasioned by the dismemberment abortion;

6 (2) statutory damages equal to three times the cost of the
7 dismemberment abortion;

8 (3) injunctive relief; and

9 (4) reasonable attorney fees awarded in accordance with subsection
10 (d).

11 (d) (1) If judgment is rendered in favor of the plaintiff in an action
12 brought under section 4, and amendments thereto, or this section, the court
13 shall award reasonable attorney fees to the plaintiff in addition to any other
14 relief that is awarded.

15 (2) If judgment is rendered in favor of the defendant in an action
16 brought under section 4, and amendments thereto, or this section, and the
17 court finds that the plaintiff's action was frivolous and brought in bad faith,
18 the court shall award reasonable attorney fees to the defendant in addition
19 to any other relief that is awarded.

20 (3) No attorney fees shall be assessed against the woman upon whom
21 a dismemberment abortion was performed or attempted to be performed
22 except in accordance with paragraph (2).

23 Sec. 6. Upon a first conviction of a violation of section 3, and
24 amendments thereto, a person shall be guilty of a class A person
25 misdemeanor. Upon a second or subsequent conviction of a violation of
26 section 3, and amendments thereto, a person shall be guilty of a severity
27 level 10, person felony.

28 Sec. 7. In every civil, criminal or administrative proceeding or action
29 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
30 65-6724 or section 3, and amendments thereto, the court shall rule whether
31 the anonymity of any woman upon whom an unlawful abortion has been
32 performed or attempted to be performed shall be preserved from public
33 disclosure if she does not give her consent to such disclosure. The court,
34 upon motion or sua sponte, shall make such a ruling and, upon
35 determining that such woman's anonymity should be preserved, shall issue
36 orders to the parties, witnesses and counsel and shall direct the sealing of
37 the record and exclusion of individuals from courtrooms or hearing rooms
38 to the extent necessary to safeguard her identity from public disclosure.
39 Each such order shall be accompanied by specific written findings
40 explaining why the anonymity of the woman should be preserved from
41 public disclosure, why the order is essential to that end, how the order is
42 narrowly tailored to serve that interest and why no reasonable less
43 restrictive alternative exists. In the absence of written consent of the

1 woman upon whom an unlawful abortion has been performed or attempted
2 to be performed, anyone other than a public official who brings an action
3 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
4 65-6724 or section 3, and amendments thereto, shall do so under a
5 pseudonym. This section shall not be construed to conceal the identity of
6 the plaintiff or of witnesses from the defendant or from attorneys for the
7 defendant.

8 Sec. 8. Nothing in sections 1 through 9, and amendments thereto,
9 shall be construed as creating or recognizing a right to abortion, nor a right
10 to a particular method of abortion.

11 Sec. 9. If any provision or clause of this act or application thereof to
12 any person or circumstances is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect
14 without the invalid provision or application, and to this end the provisions
15 of this act are declared to be severable.

16 Sec. 10. This act shall take effect and be in force from and after its
17 publication in the statute book.