

HOUSE Substitute for SENATE BILL No. 389

By Committee on Federal and State Affairs

3-12

10 AN ACT concerning abortion; providing civil remedies, including in-
11 junctive relief; amending K.S.A. 65-445, 65-2836, 65-6703, 65-6704,
12 65-6705 and 65-6709 and K.S.A. 2007 Supp. 38-2223 and repealing
13 the existing sections; also repealing K.S.A. 65-6713.
14

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

16 Sec. 1. K.S.A. 2007 Supp. 38-2223 is hereby amended to read as
17 follows: 38-2223. (a) *Persons making reports.* (1) When any of the follow-
18 ing persons has reason to suspect that a child has been harmed as a result
19 of physical, mental or emotional abuse or neglect or sexual abuse, the
20 person shall report the matter promptly as provided in subsections (b)
21 and (c);

22 (A) The following persons, *or their agents acting in the scope of their*
23 *employment*, providing medical care or treatment: Persons licensed to
24 practice the healing arts, dentistry and optometry; persons engaged in
25 postgraduate training programs approved by the state board of healing
26 arts; licensed professional or practical nurses; and chief administrative
27 officers of medical care facilities;

28 (B) the following persons licensed by the state to provide mental
29 health services: Licensed psychologists, licensed masters level psycholo-
30 gists, licensed clinical psychotherapists, licensed social workers, licensed
31 marriage and family therapists, licensed clinical marriage and family ther-
32 apists, licensed professional counselors, licensed clinical professional
33 counselors and registered alcohol and drug abuse counselors;

34 (C) teachers, school administrators or other employees of an educa-
35 tional institution which the child is attending and persons licensed by the
36 secretary of health and environment to provide child care services or the
37 employees of persons so licensed at the place where the child care serv-
38 ices are being provided to the child; and

39 (D) firefighters, emergency medical services personnel, law enforce-
40 ment officers, juvenile intake and assessment workers, court services of-
41 ficers and community corrections officers, case managers appointed un-
42 der K.S.A. 23-1001 et seq., and amendments thereto, and mediators
43 appointed under K.S.A. 23-602, and amendments thereto.

- 1 (2) In addition to the reports required under subsection (a)(1), any
2 person who has reason to suspect that a child may be a child in need of
3 care may report the matter as provided in subsection (b) and (c).
- 4 (b) *Form of report.* (1) The report may be made orally and shall be
5 followed by a written report if requested. Every report shall contain, if
6 known: The names and addresses of the child and the child's parents or
7 other persons responsible for the child's care; the location of the child if
8 not at the child's residence; the child's gender, race and age; the reasons
9 why the reporter suspects the child may be a child in need of care; if
10 abuse or neglect or sexual abuse is suspected, the nature and extent of
11 the harm to the child, including any evidence of previous harm; and any
12 other information that the reporter believes might be helpful in estab-
13 lishing the cause of the harm and the identity of the persons responsible
14 for the harm.
- 15 (2) When reporting a suspicion that a child may be in need of care,
16 the reporter shall disclose protected health information freely and co-
17 operate fully with the secretary and law enforcement throughout the in-
18 vestigation and any subsequent legal process.
- 19 (c) *To whom made.* Reports made pursuant to this section shall be
20 made to the secretary, except as follows:
- 21 (1) When the department of social and rehabilitation services is not
22 open for business, reports shall be made to the appropriate law enforce-
23 ment agency. On the next day that the department is open for business,
24 the law enforcement agency shall report to the department any report
25 received and any investigation initiated pursuant to K.S.A. 2007 Supp.
26 38-2226, and amendments thereto. The reports may be made orally or,
27 on request of the secretary, in writing.
- 28 (2) Reports of child abuse or neglect occurring in an institution op-
29 erated by the secretary of social and rehabilitation services or the com-
30 missioner of juvenile justice shall be made to the attorney general. All
31 other reports of child abuse or neglect by persons employed by or of
32 children of persons employed by the department of social and rehabili-
33 tation services shall be made to the appropriate law enforcement agency.
- 34 (d) *Death of child.* Any person who is required by this section to
35 report a suspicion that a child is in need of care and who knows of infor-
36 mation relating to the death of a child shall immediately notify the coroner
37 as provided by K.S.A. 22a-242, and amendments thereto.
- 38 (e) *Violations.* (1) Willful and knowing failure to make a report re-
39 quired by this section is a class B misdemeanor. It is not a defense that
40 another mandatory reporter made a report.
- 41 (2) Intentionally preventing or interfering with the making of a report
42 required by this section is a class B misdemeanor.
- 43 (3) Any person who willfully and knowingly makes a false report pur-

1 suant to this section or makes a report that such person knows lacks
2 factual foundation is guilty of a class B misdemeanor.

3 (f) *Immunity from liability.* Anyone who, without malice, participates
4 in the making of a report to the secretary or a law enforcement agency
5 relating to a suspicion a child may be a child in need of care or who
6 participates in any activity or investigation relating to the report or who
7 participates in any judicial proceeding resulting from the report shall have
8 immunity from any civil liability that might otherwise be incurred or
9 imposed.

10 Sec. 2. K.S.A. 65-445 is hereby amended to read as follows: 65-445.

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

20 (b) Each report required by this section shall include the number of
21 pregnancies terminated during the period of time covered by the report,
22 the type of medical facility in which the pregnancy was terminated, in-
23 formation required to be reported under K.S.A. 65-6703, and amend-
24 ments thereto, if applicable to the pregnancy terminated, and such other
25 information as may be required by the secretary of health and environ-
26 ment, but the report shall not include the names of the persons whose
27 pregnancies were so terminated.

28 (c) Information obtained by the secretary of health and environment
29 under this section shall be confidential and shall not be disclosed in a
30 manner that would reveal the identity of any person licensed to practice
31 medicine and surgery who submits a report to the secretary under this
32 section or the identity of any medical care facility which submits a report
33 to the secretary under this section, except that such information, including
34 information identifying such persons and facilities may be disclosed to
35 the state board of healing arts upon request of the board for disciplinary
36 action conducted by the board and may be disclosed to the attorney gen-
37 eral *or any district or county attorney in this state* upon a showing that
38 a reasonable cause exists to believe that a violation of this act has occurred.
39 Any information disclosed to the state board of healing arts ~~or~~ the attor-
40 ney general *or any district or county attorney* pursuant to this subsection
41 shall be used solely for the purposes of a disciplinary action or criminal
42 proceeding. Except as otherwise provided in this subsection, information
43 obtained by the secretary under this section may be used only for statis-

1 tical purposes and such information shall not be released in a manner
2 which would identify any county or other area of this state in which the
3 termination of the pregnancy occurred. A violation of this subsection (c)
4 is a class A nonperson misdemeanor.

5 (d) In addition to such criminal penalty under subsection (c), any
6 person licensed to practice medicine and surgery or medical care facility
7 whose identity is revealed in violation of this section may bring a civil
8 action against the responsible person or persons for any damages to the
9 person licensed to practice medicine and surgery or medical care facility
10 caused by such violation.

11 (e) For the purpose of maintaining confidentiality as provided by sub-
12 sections (c) and (d), reports of terminations of pregnancies required by
13 this section shall identify the person or facility submitting such reports
14 only by confidential code number assigned by the secretary of health and
15 environment to such person or facility and the department of health and
16 environment shall maintain such reports only by such number.

17 (f) *The annual public report on abortions performed in Kansas issued*
18 *by the secretary of health and environment shall contain the information*
19 *required to be reported by this section to the extent such information is*
20 *not deemed confidential by this section. If the secretary of health and*
21 *environment fails to issue the public report containing the information*
22 *required by this section, any group of 10 or more citizens of this state*
23 *may seek an injunction in a court of competent jurisdiction against the*
24 *secretary of health and environment requiring that a complete report*
25 *compliant with applicable law be issued within a period of time set by*
26 *court order. Failure to abide by such an injunction shall subject the sec-*
27 *retary to sanctions for civil contempt.*

28 (g) *The department of social and rehabilitation services shall prepare*
29 *and publish an annual report on the number of reports of child sexual*
30 *abuse received by the department from abortion providers. Such report*
31 *shall be categorized by the age of the victim and the month the report*
32 *was submitted to the department. The name of the victim and any other*
33 *identifying information shall be kept confidential by the department and*
34 *shall not be released as part of the public report.*

35 Sec. 3. K.S.A. 65-2836 is hereby amended to read as follows: 65-
36 2836. A licensee's license may be revoked, suspended or limited, or the
37 licensee may be publicly or privately censured, or an application for a
38 license or for reinstatement of a license may be denied upon a finding of
39 the existence of any of the following grounds:

40 (a) The licensee has committed fraud or misrepresentation in apply-
41 ing for or securing an original, renewal or reinstated license.

42 (b) The licensee has committed an act of unprofessional or dishon-
43 orable conduct or professional incompetency.

- 1 (c) The licensee has been convicted of a felony or class A misde-
2 meanor, whether or not related to the practice of the healing arts. The
3 board shall revoke a licensee's license following conviction of a felony
4 occurring after July 1, 2000, *or a misdemeanor under K.S.A. 65-6703, and*
5 *amendments thereto, after July 1, 2008*, unless a $\frac{2}{3}$ majority of the board
6 members present and voting determine by clear and convincing evidence
7 that such licensee will not pose a threat to the public in such person's
8 capacity as a licensee and that such person has been sufficiently rehabil-
9 itated to warrant the public trust. In the case of a person who has been
10 convicted of a felony and who applies for an original license or to reinstate
11 a canceled license, the application for a license shall be denied unless a
12 $\frac{2}{3}$ majority of the board members present and voting on such application
13 determine by clear and convincing evidence that such person will not
14 pose a threat to the public in such person's capacity as a licensee and that
15 such person has been sufficiently rehabilitated to warrant the public trust.
- 16 (d) The licensee has used fraudulent or false advertisements.
- 17 (e) The licensee is addicted to or has distributed intoxicating liquors
18 or drugs for any other than lawful purposes.
- 19 (f) The licensee has willfully or repeatedly violated this act, the phar-
20 macy act of the state of Kansas or the uniform controlled substances act,
21 or any rules and regulations adopted pursuant thereto, or any rules and
22 regulations of the secretary of health and environment which are relevant
23 to the practice of the healing arts.
- 24 (g) The licensee has unlawfully invaded the field of practice of any
25 branch of the healing arts in which the licensee is not licensed to practice.
- 26 (h) The licensee has engaged in the practice of the healing arts under
27 a false or assumed name, or the impersonation of another practitioner.
28 The provisions of this subsection relating to an assumed name shall not
29 apply to licensees practicing under a professional corporation or other
30 legal entity duly authorized to provide such professional services in the
31 state of Kansas.
- 32 (i) The licensee has the inability to practice the healing arts with rea-
33 sonable skill and safety to patients by reason of physical or mental illness,
34 or condition or use of alcohol, drugs or controlled substances. In deter-
35 mining whether or not such inability exists, the board, upon reasonable
36 suspicion of such inability, shall have authority to compel a licensee to
37 submit to mental or physical examination or drug screen, or any combi-
38 nation thereof, by such persons as the board may designate either in the
39 course of an investigation or a disciplinary proceeding. To determine
40 whether reasonable suspicion of such inability exists, the investigative
41 information shall be presented to the board as a whole, to a review com-
42 mittee of professional peers of the licensee established pursuant to K.S.A.
43 65-2840c, and amendments thereto, or to a committee consisting of the

1 officers of the board elected pursuant to K.S.A. 65-2818, and amend-
2 ments thereto, and the executive director appointed pursuant to K.S.A.
3 65-2878, and amendments thereto, or to a presiding officer authorized
4 pursuant to K.S.A. 77-514, and amendments thereto. The determination
5 shall be made by a majority vote of the entity which reviewed the inves-
6 tigative information. Information submitted to the board as a whole or a
7 review committee of peers or a committee of the officers and executive
8 director of the board and all reports, findings and other records shall be
9 confidential and not subject to discovery by or release to any person or
10 entity. The licensee shall submit to the board a release of information
11 authorizing the board to obtain a report of such examination or drug
12 screen, or both. A person affected by this subsection shall be offered, at
13 reasonable intervals, an opportunity to demonstrate that such person can
14 resume the competent practice of the healing arts with reasonable skill
15 and safety to patients. For the purpose of this subsection, every person
16 licensed to practice the healing arts and who shall accept the privilege to
17 practice the healing arts in this state by so practicing or by the making
18 and filing of a renewal to practice the healing arts in this state shall be
19 deemed to have consented to submit to a mental or physical examination
20 or a drug screen, or any combination thereof, when directed in writing
21 by the board and further to have waived all objections to the admissibility
22 of the testimony, drug screen or examination report of the person con-
23 ducting such examination or drug screen, or both, at any proceeding or
24 hearing before the board on the ground that such testimony or exami-
25 nation or drug screen report constitutes a privileged communication. In
26 any proceeding by the board pursuant to the provisions of this subsection,
27 the record of such board proceedings involving the mental and physical
28 examination or drug screen, or any combination thereof, shall not be used
29 in any other administrative or judicial proceeding.

30 (j) The licensee has had a license to practice the healing arts revoked,
31 suspended or limited, has been censured or has had other disciplinary
32 action taken, or an application for a license denied, by the proper licensing
33 authority of another state, territory, District of Columbia, or other coun-
34 try, a certified copy of the record of the action of the other jurisdiction
35 being conclusive evidence thereof.

36 (k) The licensee has violated any lawful rule and regulation promul-
37 gated by the board or violated any lawful order or directive of the board
38 previously entered by the board.

39 (l) The licensee has failed to report or reveal the knowledge required
40 to be reported or revealed under K.S.A. 65-28,122, and amendments
41 thereto.

42 (m) The licensee, if licensed to practice medicine and surgery, has
43 failed to inform in writing a patient suffering from any form of abnor-

- 1 mality of the breast tissue for which surgery is a recommended form of
2 treatment, of alternative methods of treatment recognized by licensees
3 of the same profession in the same or similar communities as being ac-
4 ceptable under like conditions and circumstances.
- 5 (n) The licensee has cheated on or attempted to subvert the validity
6 of the examination for a license.
- 7 (o) The licensee has been found to be mentally ill, disabled, not guilty
8 by reason of insanity, not guilty because the licensee suffers from a mental
9 disease or defect or incompetent to stand trial by a court of competent
10 jurisdiction.
- 11 (p) The licensee has prescribed, sold, administered, distributed or
12 given a controlled substance to any person for other than medically ac-
13 cepted or lawful purposes.
- 14 (q) The licensee has violated a federal law or regulation relating to
15 controlled substances.
- 16 (r) The licensee has failed to furnish the board, or its investigators or
17 representatives, any information legally requested by the board.
- 18 (s) Sanctions or disciplinary actions have been taken against the li-
19 censee by a peer review committee, health care facility, a governmental
20 agency or department or a professional association or society for acts or
21 conduct similar to acts or conduct which would constitute grounds for
22 disciplinary action under this section.
- 23 (t) The licensee has failed to report to the board any adverse action
24 taken against the licensee by another state or licensing jurisdiction, a peer
25 review body, a health care facility, a professional association or society, a
26 governmental agency, by a law enforcement agency or a court for acts or
27 conduct similar to acts or conduct which would constitute grounds for
28 disciplinary action under this section.
- 29 (u) The licensee has surrendered a license or authorization to practice
30 the healing arts in another state or jurisdiction, has surrendered the au-
31 thority to utilize controlled substances issued by any state or federal
32 agency, has agreed to a limitation to or restriction of privileges at any
33 medical care facility or has surrendered the licensee's membership on any
34 professional staff or in any professional association or society while under
35 investigation for acts or conduct similar to acts or conduct which would
36 constitute grounds for disciplinary action under this section.
- 37 (v) The licensee has failed to report to the board surrender of the
38 licensee's license or authorization to practice the healing arts in another
39 state or jurisdiction or surrender of the licensee's membership on any
40 professional staff or in any professional association or society while under
41 investigation for acts or conduct similar to acts or conduct which would
42 constitute grounds for disciplinary action under this section.
- 43 (w) The licensee has an adverse judgment, award or settlement

- 1 against the licensee resulting from a medical liability claim related to acts
2 or conduct similar to acts or conduct which would constitute grounds for
3 disciplinary action under this section.
- 4 (x) The licensee has failed to report to the board any adverse judg-
5 ment, settlement or award against the licensee resulting from a medical
6 malpractice liability claim related to acts or conduct similar to acts or
7 conduct which would constitute grounds for disciplinary action under this
8 section.
- 9 (y) The licensee has failed to maintain a policy of professional liability
10 insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments
11 thereto.
- 12 (z) The licensee has failed to pay the premium surcharges as required
13 by K.S.A. 40-3404, and amendments thereto.
- 14 (aa) The licensee has knowingly submitted any misleading, deceptive,
15 untrue or fraudulent representation on a claim form, bill or statement.
- 16 (bb) The licensee as the responsible physician for a physician assistant
17 has failed to adequately direct and supervise the physician assistant in
18 accordance with the physician assistant licensure act or rules and regu-
19 lations adopted under such act.
- 20 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406
21 as established by any of the following:
- 22 ~~(A)~~ (1) A copy of the record of criminal conviction or plea of guilty
23 for a felony in violation of K.S.A. 21-3406, and amendments thereto.
- 24 ~~(B)~~ (2) A copy of the record of a judgment of contempt of court for
25 violating an injunction issued under K.S.A. ~~2002-Supp.~~ 60-4404, and
26 amendments thereto.
- 27 ~~(C)~~ (3) A copy of the record of a judgment assessing damages under
28 K.S.A. ~~2002-Supp.~~ 60-4405, and amendments thereto.
- 29 Sec. 4. K.S.A. 65-6703 is hereby amended to read as follows: 65-
30 6703. (a) No person shall perform or induce an abortion when the fetus
31 is viable unless such person is a physician and has a documented referral
32 from another physician not legally or financially affiliated with the phy-
33 sician performing or inducing the abortion and both physicians determine
34 that: (1) The abortion is necessary to preserve the life of the pregnant
35 woman; or (2) a continuation of the pregnancy will cause a substantial
36 and irreversible impairment of a major bodily function of the pregnant
37 woman.
- 38 (b) *Except in the case of a medical emergency, a copy of the written*
39 *documented referral and of the abortion-performing physician's written*
40 *determination shall be provided to the pregnant woman no less than 30*
41 *minutes before the abortion is initiated. The written determination shall*
42 *be time-stamped at the time it is delivered to the pregnant woman.*
- 43 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to per-

1 forming an abortion upon a woman, the physician shall determine the
2 gestational age of the fetus according to accepted obstetrical and neonatal
3 practice and standards applied by physicians in the same or similar cir-
4 cumstances. If the physician determines the gestational age is less than
5 22 weeks, the physician shall document as part of the medical records of
6 the woman the basis for the determination.

7 (2) If the physician determines the gestational age of the fetus is 22
8 or more weeks, prior to performing an abortion upon the woman the
9 physician shall determine if the fetus is viable by using and exercising
10 that degree of care, skill and proficiency commonly exercised by the or-
11 dinary skillful, careful and prudent physician in the same or similar cir-
12 cumstances. In making this determination of viability, the physician shall
13 perform or cause to be performed such medical examinations and tests
14 as are necessary to make a finding of the gestational age of the fetus and
15 shall enter such findings and determinations of viability in the medical
16 record of the woman.

17 (3) If the physician determines the gestational age of a fetus is 22 or
18 more weeks, and determines that the fetus is not viable and performs an
19 abortion on the woman, the physician shall report such determinations
20 and the reasons for such determinations in writing to the medical care
21 facility in which the abortion is performed for inclusion in the report of
22 the medical care facility to the secretary of health and environment under
23 K.S.A. 65-445, and amendments thereto, or if the abortion is not per-
24 formed in a medical care facility, the physician shall report such deter-
25 minations and the reasons for such determinations in writing to the sec-
26 retary of health and environment as part of the written report made by
27 the physician to the secretary of health and environment under K.S.A.
28 65-445, and amendments thereto.

29 (4) If the physician who is to perform the abortion determines the
30 gestational age of a fetus is 22 or more weeks, and determines that the
31 fetus is viable, both physicians under subsection (a) determine in accord-
32 ance with the provisions of subsection (a) that an abortion is necessary to
33 preserve the life of the pregnant woman or that a continuation of the
34 pregnancy will cause a substantial and irreversible impairment of a major
35 bodily function of the pregnant woman and the physician performs an
36 abortion on the woman, the physician who performs the abortion shall
37 report such determinations, the reasons for such determinations ~~and~~ the
38 basis for the determination that an abortion is necessary to preserve the
39 life of the pregnant woman or that a continuation of the pregnancy will
40 cause a substantial and irreversible impairment of a major bodily function
41 of the pregnant woman *and the name of the referring physician required*
42 *by subsection (a)* in writing to the medical care facility in which the abor-
43 tion is performed for inclusion in the report of the medical care facility

1 to the secretary of health and environment under K.S.A. 65-445, and
2 amendments thereto, or if the abortion is not performed in a medical
3 care facility, the physician who performs the abortion shall report such
4 determinations, the reasons for such determinations ~~and~~, the basis for the
5 determination that an abortion is necessary to preserve the life of the
6 pregnant woman or that a continuation of the pregnancy will cause a
7 substantial and irreversible impairment of a major bodily function of the
8 pregnant woman *and the name of the referring physician required by*
9 *subsection (a)* in writing to the secretary of health and environment as
10 part of the written report made by the physician to the secretary of health
11 and environment under K.S.A. 65-445, and amendments thereto.

12 (5) The physician shall retain the medical records required to be kept
13 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than
14 ~~five~~ 10 years and shall retain a copy of the written reports required under
15 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10
16 years.

17 ~~(c)~~ (d) A woman upon whom an abortion is performed shall not be
18 prosecuted under this section for a conspiracy to violate this section pur-
19 suant to K.S.A. 21-3302, and amendments thereto.

20 ~~(d)~~ (e) Nothing in this section shall be construed to create a right to
21 an abortion. Notwithstanding any provision of this section, a person shall
22 not perform an abortion that is prohibited by law.

23 ~~(e)~~ (f) As used in this section, “viable” means that stage of fetal de-
24 velopment when it is the physician’s judgment according to accepted ob-
25 stetrical or neonatal standards of care and practice applied by physicians
26 in the same or similar circumstances that there is a reasonable probability
27 that the life of the child can be continued indefinitely outside the mother’s
28 womb with natural or artificial life-supportive measures.

29 ~~(f)~~ (g) If any provision of this section is held to be invalid or uncon-
30 stitutional, it shall be conclusively presumed that the legislature would
31 have enacted the remainder of this section without such invalid or un-
32 constitutional provision.

33 ~~(g)~~ (h) Upon a first conviction of a violation of this section, a person
34 shall be guilty of a class A nonperson misdemeanor. Upon a second or
35 subsequent conviction of a violation of this section, a person shall be guilty
36 of a severity level 10, nonperson felony.

37 (i) *A cause of action for injunctive relief may be maintained against*
38 *any person who is reasonably believed to be doing or threatens or is about*
39 *to do, or is procuring or suffering to be done, some act in violation of this*
40 *section. Such cause of action may be brought by any person who is:*

41 (1) *A woman upon whom an abortion, unlawful under this section,*
42 *has been performed, is about to be performed or attempted to be per-*
43 *formed by the defendant;*

1 (2) a spouse, sibling, parent or grandparent of a woman upon whom
2 an abortion, unlawful under this section, has been performed, is about to
3 be performed or attempted to be performed by the defendant;

4 (3) a parent or legal guardian of a minor upon whom an abortion,
5 unlawful under this section, has been performed, is about to be performed
6 or attempted to be performed by the defendant; or

7 (4) a public official with appropriate jurisdiction to prosecute or en-
8 force the laws of this state.

9 (j) (1) A woman upon whom an abortion is performed in violation of
10 this section, the father, if married to the woman at the time she receives
11 the abortion procedure, and the parents or custodial guardian of the
12 woman, if the woman has not attained the age of 18 years at the time of
13 the abortion, may in a civil action obtain appropriate relief, unless, in a
14 case where the plaintiff is not the woman upon whom the abortion was
15 performed, the pregnancy resulted from the plaintiff's criminal conduct.

16 (2) Such relief shall include:

17 (A) Money damages for all injuries, psychological and physical, oc-
18 casioned by the violation of this section;

19 (B) statutory damages equal to three times the cost of the abortion;
20 and

21 (C) reasonable attorney fees.

22 (k) The prosecution of violations of this section may be brought by
23 the attorney general, by the district attorney or county attorney for the
24 county where the violation occurred or **[by] the district attorney or county**
25 **attorney for ~~the county of residence of the woman upon whom the abor-~~**
26 **~~tion was performed [any county where acts or effects constituting or~~**
27 **~~requisite to the consummation of the offense occurred].~~**

28 Sec. 5. K.S.A. 65-6704 is hereby amended to read as follows: 65-
29 6704. (a) Before the performance of an abortion upon a minor, a coun-
30 selor shall provide pregnancy information and counseling in a manner
31 that can be understood by the minor and allows opportunity for the mi-
32 nor's questions to be addressed. A parent or guardian, or a person 21 or
33 more years of age who is not associated with the abortion provider and
34 who has a personal interest in the minor's well-being, shall accompany
35 the minor and be involved in the minor's decision-making process re-
36 garding whether to have an abortion. *Such person accompanying the mi-*
37 *nor shall present proof of identification and declare in writing under pen-*
38 *alty of perjury such person's relationship to the minor and to the known*
39 *or probable father of the fetus. The minor shall present proof of identifi-*
40 *cation and verification of the minor's state of residence.* Such information
41 and counseling shall include:

42 (1) The alternatives available to the minor, including abortion, adop-
43 tion and other alternatives to abortion;

- 1 (2) an explanation that the minor may change a decision to have an
2 abortion at any time before the abortion is performed or may decide to
3 have an abortion at any time while an abortion may be legally performed;
- 4 (3) make available to the minor information on agencies available to
5 assist the minor and agencies from which birth control information is
6 available;
- 7 (4) discussion of the possibility of involving the minor's parent or
8 parents, other adult family members or guardian in the minor's decision-
9 making; and
- 10 (5) information regarding the provisions of K.S.A. 65-6705, *and*
11 *amendments thereto*, and the minor's rights under such provisions.
- 12 (b) After the performance of an abortion on a minor, a counselor shall
13 provide counseling to assist the minor in adjusting to any post-abortion
14 problems that the minor may have.
- 15 (c) After the counselor provides information and counseling to a mi-
16 nor as required by this section, the counselor shall have the minor sign
17 and date a statement setting forth the requirements of subsections (a)
18 and (b) and declaring that the minor has received information and coun-
19 seling in accordance with those requirements.
- 20 (d) The counselor shall also sign and date the statement and shall
21 include the counselor's business address and business telephone number.
22 The counselor shall keep a copy for the minor's medical record and shall
23 give the form to the minor or, if the minor requests and if the counselor
24 is not the attending physician, transmit the statement to the minor's at-
25 tending physician. Such medical record shall be maintained ~~as otherwise~~
26 ~~provided by law~~ *for not less than 10 years*.
- 27 (e) The provision by a counselor of written materials which contain
28 information and counseling meeting the requirements of subsections (a)
29 and (b) and which is signed by the minor shall be presumed to be evidence
30 of compliance with the requirements of this section.
- 31 (f) The requirements of subsection (a) shall not apply when, in the
32 best medical judgment of the attending physician based on the facts of
33 the case, an emergency exists that threatens the health, safety or well-
34 being of the minor as to require an abortion. A physician who does not
35 comply with the requirements of this section by reason of this exception
36 shall state in the medical record of the abortion the medical indications
37 on which the physician's judgment was based.
- 38 (g) *As used in this section proof of identification means a government-*
39 *issued photo identification card, including, but not limited to, a driver's*
40 *license or similar state-issued or federal government-issued identification*
41 *card. In the case of a minor, proof of identification includes, but is not*
42 *limited to, an official school-issued picture identification card.*
- 43 (h) *The declaration of relationship to the minor and to the known or*

1 *probable father required by subsection (a) may be made in a form and*
2 *manner proscribed by the department of health and environment. The*
3 *secretary of the department may adopt rules and regulations necessary to*
4 *carry out the provisions of this section.*

5 Sec. 6. K.S.A. 65-6705 is hereby amended to read as follows: 65-
6 6705. (a) Before a person performs an abortion upon an unemancipated
7 minor, the person or the person's agent must give actual notice of the
8 intent to perform such abortion to one of the minor's *custodial* parents
9 or the minor's legal guardian or must have written documentation that
10 such notice has been given unless, after receiving counseling as provided
11 by subsection (a) of K.S.A. 65-6704, *and amendments thereto*, the minor
12 objects to such notice being given. If the minor so objects, the minor ~~may~~
13 *shall, prior to performance of an abortion*, petition, on her own behalf or
14 by an adult of her choice, the district court of any county of this state for
15 a waiver of the notice requirement of this subsection. If the minor so
16 desires, the counselor who counseled the minor as required by K.S.A. 65-
17 6704, *and amendments thereto*, shall notify the court and the court shall
18 ensure that the minor or the adult petitioning on the minor's behalf is
19 given assistance in preparing and filing the application. *Neither the coun-*
20 *selor nor any person employed by an abortion clinic shall accompany or*
21 *assist the minor in the court proceedings.*

22 (b) The minor may participate in proceedings in the court on the
23 minor's own behalf or through the adult petitioning on the minor's behalf.
24 The court shall provide a court-appointed counsel to represent the minor
25 at no cost to the minor.

26 (c) Court proceedings under this section shall be anonymous and the
27 court shall ensure that the minor's identity is kept confidential. The court
28 shall order that a confidential record of the evidence in the proceeding
29 be maintained. All persons shall be excluded from hearings under this
30 section except the minor, her attorney and such other persons whose
31 presence is specifically requested by the applicant or her attorney.

32 (d) Notice shall be waived if the court finds by a preponderance of
33 the evidence that either: (1) The minor is mature and well-informed
34 enough to make the abortion decision on her own; or (2) notification of
35 a person specified in subsection (a) would not be in the best interest of
36 the minor.

37 (e) A court that conducts proceedings under this section shall issue
38 written and specific factual findings and legal conclusions supporting its
39 decision as follows:

40 (1) Granting the minor's application for waiver of notice pursuant to
41 this section, if the court finds that the minor is mature and well-enough
42 informed to make the abortion decision without notice to a person spec-
43 ified in subsection (a);

- 1 (2) granting the minor’s application for waiver if the court finds that
2 the minor is immature but that notification of a person specified in sub-
3 section (a) would not be in the minor’s best interest; or
- 4 (3) denying the application if the court finds that the minor is im-
5 mature and that waiver of notification of a person specified in subsection
6 (a) would not be in the minor’s best interest.
- 7 (f) The court shall give proceedings under this section such prece-
8 dence over other pending matters as necessary to ensure that the court
9 may reach a decision promptly. The court shall issue a written order which
10 shall be issued immediately to the minor, or her attorney or other indi-
11 vidual designated by the minor to receive the order. If the court fails to
12 rule within 48 hours, excluding Saturdays and Sundays, of the time of the
13 filing of the minor’s application, the application shall be deemed granted.
- 14 (g) An expedited anonymous appeal shall be available to any minor.
15 The record on appeal shall be completed and the appeal shall be per-
16 fected within five days from the filing of the notice to appeal.
- 17 (h) The supreme court shall promulgate any rules it finds are nec-
18 essary to ensure that proceedings under this act are handled in an expe-
19 ditious and anonymous manner.
- 20 (i) No fees shall be required of any minor who avails herself of the
21 procedures provided by this section.
- 22 (j) (1) No notice shall be required under this section if:
- 23 (A) The pregnant minor declares that the father of the fetus is one
24 of the persons to whom notice may be given under this section, *and the*
25 *minor is granted a waiver of notice by a court of competent jurisdiction*
26 *in accordance with the provisions of this section. Notice of that declaration*
27 *shall be reported to the proper authorities as provided in K.S.A. 38-2223,*
28 *and amendments thereto; or*
- 29 (B) ~~in the best medical judgment of the attending physician based on~~
30 ~~the facts of the case, an emergency exists that threatens the health, safety~~
31 ~~or well-being of the minor as to require an abortion; or~~
- 32 ~~(C) the person or persons who are entitled to notice have signed a~~
33 ~~written, notarized waiver of notice which is placed in the minor’s medical~~
34 ~~record a medical emergency exists for the pregnant minor as defined in~~
35 ~~K.S.A. 65-6701, and amendments thereto.~~
- 36 (2) A physician who does not comply with the provisions of this sec-
37 tion by reason of the exception of subsection (j)(1)(A) must inform the
38 minor that the physician is required by law to report the sexual abuse to
39 the department of social and rehabilitation services. A physician who does
40 not comply with the requirements of this section by reason of the excep-
41 tion of subsection (j)(1)(B) shall state in the medical record of the abortion
42 the medical indications on which the physician’s judgment was based.
- 43 (k) Any person who intentionally performs an abortion with knowl-

1 edge that, or with reckless disregard as to whether, the person upon
2 whom the abortion is to be performed is an unemancipated minor, and
3 who intentionally and knowingly fails to conform to any requirement of
4 this section, is guilty of a class A person misdemeanor.

5 (l) Except as necessary for the conduct of a proceeding pursuant to
6 this section, it is a class B person misdemeanor for any individual or entity
7 to willfully or knowingly: (1) Disclose the identity of a minor petitioning
8 the court pursuant to this section or to disclose any court record relating
9 to such proceeding; or (2) permit or encourage disclosure of such minor's
10 identity or such record.

11 (m) *The judicial record of any court proceedings initiated pursuant*
12 *to this section shall upon final determination by the court be compiled by*
13 *the court. One copy of the judicial record shall be given to the minor or*
14 *an adult chosen by the minor to bring the initial petition under this sec-*
15 *tion. A second copy of the judicial record shall be sent by the court to the*
16 *abortion provider who performed or will perform the abortion for inclu-*
17 *sion in the medical records of the minor. The judicial record shall remain*
18 *in the minor's medical records and shall be maintained by the abortion*
19 *provider for at least 10 years.*

20 (n) *The chief judge of each judicial district shall send annual reports*
21 *to the department of health and environment disclosing in a nonidenti-*
22 *fying manner:*

23 (1) *The number of minors seeking a bypass of parental notification*
24 *through court proceedings under this section;*

25 (2) *the number of petitions granted;*

26 (3) *the reasons for granting such petitions;*

27 (4) *any subsequent actions taken to protect the minor from domestic*
28 *or predator abuse;*

29 (5) *each minor's state of residence, age and disability status; and*

30 (6) *the gestational age of the fetus if the petition is granted.*

31 (o) (1) *A parent or legal guardian of the minor may pursue civil rem-*
32 *edies against individuals, including the physician and abortion clinic staff,*
33 *who violate the rights of parents or the minor as set forth in this section.*

34 (2) *Such relief shall include:*

35 (A) *Money damages for all injuries, psychological and physical, oc-*
36 *casioned by the violation of this section;*

37 (B) *the cost of any subsequent medical treatment such minor might*
38 *require because of the abortion performed without parental notice or*
39 *knowledge, or without a court order, in violation of this section;*

40 (C) *statutory damages equal to three times the cost of the abortion;*
41 *and*

42 (D) *reasonable attorney fees.*

43 (p) *In the course of a judicial hearing to waive parental notice, if the*

1 *court has reason to suspect that a minor has been injured as a result of*
2 *physical, mental or emotional abuse or neglect or sexual abuse, the court*
3 *shall report the matter promptly as provided in subsection (c) of K.S.A.*
4 *2007 Supp. 38-2223, and amendments thereto. In the course of reporting*
5 *suspected child abuse or neglect to the appropriate state authorities, noth-*
6 *ing in this section shall abridge or otherwise modify the anonymity or*
7 *confidentiality provisions of the judicial waiver proceeding as specified in*
8 *this section.*

9 Sec. 7. K.S.A. 65-6709 is hereby amended to read as follows: 65-
10 6709. No abortion shall be performed or induced without the voluntary
11 and informed consent of the woman upon whom the abortion is to be
12 performed or induced. Except in the case of a medical emergency, con-
13 sent to an abortion is voluntary and informed only if:

14 (a) At least 24 hours before the abortion the physician who is to per-
15 form the abortion or the referring physician has informed the woman in
16 writing of:

17 (1) The name of the physician who will perform the abortion;

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

19 (3) a description of risks related to the proposed abortion method,
20 including risks to the woman's reproductive health and alternatives to the
21 abortion that a reasonable patient would consider material to the decision
22 of whether or not to undergo the abortion;

23 (4) the probable gestational age of the fetus at the time the abortion
24 is to be performed and that Kansas law requires the following: "No person
25 shall perform or induce an abortion when the fetus is viable unless such
26 person is a physician and has a documented referral from another phy-
27 sician not financially associated with the physician performing or inducing
28 the abortion and both physicians determine that: (1) The abortion is nec-
29 essary to preserve the life of the pregnant woman; or (2) ~~the fetus is~~
30 ~~affected by a severe or life-threatening deformity or abnormality.~~

31 *that a continuation of the pregnancy will cause a substantial and irreversible*
32 *impairment of a major bodily function of the pregnant woman." If the*
33 *child is born alive, the attending physician has the legal obligation to take*
34 *all reasonable steps necessary to maintain the life and health of the child;*

35 (5) the probable anatomical and physiological characteristics of the
36 fetus at the time the abortion is to be performed;

37 (6) *the contact information for free counseling assistance for medi-*
38 *cally challenging pregnancies and free perinatal hospice service to provide*
39 *maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia*
40 *specialists, clergy, social workers and speciality nurses;*

41 ~~(6)~~ (7) the medical risks associated with carrying a fetus to term; and

42 ~~(7)~~ (8) any need for anti-Rh immune globulin therapy, if she is Rh
43 negative, the likely consequences of refusing such therapy and the cost

1 of the therapy.

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

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

9 (2) the printed materials in K.S.A. 65-6710, and amendments thereto,
10 describe the fetus and list agencies which offer alternatives to abortion
11 with a special section listing adoption services;

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

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

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

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

29 (e) The woman certifies in writing on a form provided by the de-
30 partment, prior to the abortion, that the information required to be pro-
31 vided 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 abor-
34 tions shall report the total number of certifications received monthly to
35 the department. The department shall make the number of certifications
36 received available on an annual basis.

37 (f) Prior to the performance of the abortion, the physician who is to
38 perform the abortion or the physician's agent receives a copy of the writ-
39 ten certification prescribed by subsection (e) of this section.

40 (g) The woman is not required to pay any amount for the abortion
41 procedure until the 24-hour waiting period has expired.

42 (h) *A physician who will use ultrasound equipment in the perform-*
43 *ance of the abortion shall inform the woman that she has the right to view*

1 *the ultrasound image of her unborn child at least 30 minutes prior to the*
2 *performance of the abortion, shall offer her the opportunity to do so, shall*
3 *certify in writing that the pregnant woman was offered the opportunity*
4 *to view the ultrasound image at least 30 minutes prior to the performance*
5 *of the abortion and shall obtain the pregnant woman's signed acceptance*
6 *or rejection of the opportunity to view the image. If the woman accepts*
7 *the offer and requests to view the ultrasound she shall be allowed to view*
8 *it. The physician's certification shall be time-stamped at the time the op-*
9 *portunity to view the ultrasound image was offered.*

10 (i) *A physician who will use heart monitor equipment in the perform-*
11 *ance of the abortion shall inform the woman that she has the right to*
12 *listen to the heartbeat of her unborn child at least 30 minutes prior to the*
13 *performance of the abortion, shall offer her the opportunity to do so, shall*
14 *certify in writing that the pregnant woman was offered the opportunity*
15 *to listen to the heartbeat of her unborn child at least 30 minutes prior to*
16 *the performance of the abortion and shall obtain the pregnant woman's*
17 *signed acceptance or rejection of the opportunity to listen to the heartbeat*
18 *of the unborn child. If the woman accepts the offer and requests to listen*
19 *to the heartbeat of the unborn child she shall be allowed to listen to it.*
20 *The physician's certification shall be time-stamped at the time the oppor-*
21 *tunity to listen to the heartbeat of the unborn child was offered.*

22 (j) *The physician's certification required by subsections (h) and (i)*
23 *together with the pregnant woman's signed acceptance or rejection of such*
24 *offer shall be placed in the woman's medical file in the physician's office*
25 *and kept for 10 years. However, in the case of a minor, the physician shall*
26 *keep a copy of the certification and the signed acceptance or rejection in*
27 *the minor's medical file for five years past the minor's majority, but in no*
28 *event less than 10 years.*

29 (k) *Any private office, freestanding surgical outpatient clinic or other*
30 *facility or clinic in which abortions are performed shall conspicuously*
31 *post a sign in a location so as to be clearly visible to patients. The sign*
32 *required pursuant to this subsection shall be printed with lettering that*
33 *is legible and shall be at least three quarters of an inch boldfaced type*
34 *which reads:*

35 *Notice: It is against the law for anyone, regardless of their relationship to*
36 *you, to force you to have an abortion. By law, we cannot perform an*
37 *abortion on you unless we have your freely given and voluntary consent.*
38 *It is against the law to perform an abortion on you against your will. You*
39 *have the right to contact any local or state law enforcement agency to*
40 *receive protection from any actual or threatened physical abuse or vio-*
41 *lence. You have the right to change your mind at any time prior to the*
42 *actual abortion and request that the abortion procedure cease.*

43 *The provisions of this subsection shall not apply to any private office,*

1 *freestanding surgical outpatient clinic or other facility or clinic which*
2 *performs abortions only when necessary to prevent the death of the preg-*
3 *nant woman.*

4 Sec. 8. K.S.A. 65-445, 65-2836, 65-6703, 65-6704, 65-6705, 65-6709
5 and 65-6713 and K.S.A. 2007 Supp. 38-2223 are hereby repealed.

6 Sec. 9. This act shall take effect and be in force from and after its
7 publication in the statute book.