

HOUSE BILL No. 2187

By Committee on Federal and State Affairs

1-29

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.

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

29 (d) "Medical emergency" means a condition that, in reasonable
30 medical judgment, so complicates the medical condition of the pregnant
31 woman as to necessitate the immediate abortion of her pregnancy to avert
32 the death of the woman or for which a delay necessary to comply with the
33 applicable statutory requirements will create serious risk of substantial and
34 irreversible physical impairment of a major bodily function. No condition
35 shall be deemed a medical emergency if based on a claim or diagnosis that
36 the woman will engage in conduct which would result in her death or in

1 substantial and irreversible physical impairment of a major bodily
2 function.

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

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

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

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

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

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

37 (3) the parents or custodial guardians of the woman, if the woman has
38 not attained the age of 18 years at the time of the abortion or has died as a
39 result of the abortion.

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

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

43 (2) statutory damages equal to three times the cost of the

1 dismemberment abortion;

2 (3) injunctive relief; and

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

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

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

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

17 Sec. 6. Upon a first conviction of a violation of section 3, and
18 amendments thereto, a person shall be guilty of a class A person
19 misdemeanor. Upon a second or subsequent conviction of a violation of
20 section 3, and amendments thereto, a person shall be guilty of a severity
21 level 10, person felony.

22 Sec. 7. In every civil, criminal or administrative proceeding or action
23 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
24 65-6724 or section 3, and amendments thereto, the court shall rule whether
25 the anonymity of any woman upon whom an unlawful abortion has been
26 performed or attempted to be performed shall be preserved from public
27 disclosure if she does not give her consent to such disclosure. The court,
28 upon motion or sua sponte, shall make such a ruling and, upon
29 determining that such woman's anonymity should be preserved, shall issue
30 orders to the parties, witnesses and counsel and shall direct the sealing of
31 the record and exclusion of individuals from courtrooms or hearing rooms
32 to the extent necessary to safeguard her identity from public disclosure.
33 Each such order shall be accompanied by specific written findings
34 explaining why the anonymity of the woman should be preserved from
35 public disclosure, why the order is essential to that end, how the order is
36 narrowly tailored to serve that interest and why no reasonable less
37 restrictive alternative exists. In the absence of written consent of the
38 woman upon whom an unlawful abortion has been performed or attempted
39 to be performed, anyone other than a public official who brings an action
40 arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 2014 Supp.
41 65-6724 or section 3, and amendments thereto, shall do so under a
42 pseudonym. This section shall not be construed to conceal the identity of
43 the plaintiff or of witnesses from the defendant or from attorneys for the

1 defendant.

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

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

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