

HOUSE BILL No. 2515

By Committee on Federal and State Affairs

Requested by Representative Fairchild

1-17

1 AN ACT concerning health and healthcare; amending the born-alive
2 infants protection act; creating a civil cause of action against any
3 healthcare provider who injures a child during an attempted abortion;
4 amending K.S.A. 2023 Supp. 65-6754, 65-6756, 65-6757 and 65-6758
5 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 2023 Supp. 65-6754 is hereby amended to read as
9 follows: 65-6754. (a) In the event an abortion or attempted abortion results
10 in a child being born alive, any healthcare provider present at the time the
11 child is born alive shall:

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

16 (2) *accurately and completely record any ascertainable injuries to*
17 *the child caused by the attempted abortion; and*

18 (3) ensure that the child who is born alive is immediately transported
19 to a hospital *with a copy of the record required pursuant to paragraph (2).*

20 (b) *The record required by subsection (a) shall be incorporated into*
21 *the annual report required pursuant to K.S.A. 2023 Supp. 65-6758, and*
22 *amendments thereto.*

23 (c) Any healthcare provider or any employee of a medical care
24 facility who has knowledge of a failure to comply with the requirements of
25 subsection (a) shall immediately report such failure to an appropriate law
26 enforcement agency.

27 Sec. 2. K.S.A. 2023 Supp. 65-6756 is hereby amended to read as
28 follows: 65-6756. (a) (1) The woman upon whom the abortion or
29 attempted abortion was performed, the father of the child born alive and, if
30 the woman has not attained 18 years of age at the time the abortion or
31 attempted abortion is performed, the parents or custodial guardian of the
32 woman upon whom the abortion or attempted abortion was performed may
33 bring a civil action for any violation of K.S.A. 2023 Supp. 65-6754, and
34 amendments thereto, to obtain appropriate relief.

35 ~~(b)~~(2) Any person who is not the woman upon whom the abortion or

1 attempted abortion was performed shall be barred from bringing any
2 action under this ~~section~~ subsection if the pregnancy resulted from such
3 person's criminal conduct.

4 (e)(3) The prevailing party in any action brought under this ~~section~~
5 subsection may be awarded reasonable attorney fees, except that if the
6 prevailing party is the defendant, then the court shall find that the
7 plaintiff's action was frivolous and brought in bad faith before the court
8 and may award attorney fees to such defendant.

9 (b) (1) *An individual who was born alive and injured as a result of an*
10 *attempted abortion, or, if such individual has not attained 18 years of age,*
11 *the parents or custodial guardian of such individual, may bring a civil*
12 *cause of action against the healthcare provider who performed such*
13 *attempted abortion.*

14 (2) *An action against a healthcare provider pursuant to this*
15 *subsection may be commenced not more than three years after the date the*
16 *individual attains 18 years of age.*

17 (3) (A) *An individual who brings an action under this subsection may*
18 *seek actual damages, exemplary or punitive damages, injunctive relief and*
19 *other appropriate relief.*

20 (B) *In an action brought under this subsection, the court shall award*
21 *a prevailing plaintiff court costs, including reasonable attorney fees.*

22 (4) *An action brought under this subsection shall not be construed to*
23 *be a claim of wrongful life or wrongful birth pursuant to K.S.A. 2023*
24 *Supp. 60-1906, and amendments thereto.*

25 Sec. 3. K.S.A. 2023 Supp. 65-6757 is hereby amended to read as
26 follows: 65-6757. In any civil or criminal action brought pursuant to
27 K.S.A. 2023 Supp. 65-6755 or 65-6756, and amendments thereto, upon a
28 motion by either party or sua sponte, the court shall determine whether the
29 anonymity of any woman upon whom an abortion or attempted abortion
30 was performed *or any individual who was injured as a result of an*
31 *attempted abortion shall be preserved if such ~~woman~~ individual does not*
32 *give consent to the public disclosure of ~~her~~ such individual's name. If the*
33 *court determines that such ~~woman's~~ individual's anonymity should be*
34 *preserved, then the court shall issue appropriate orders to the parties,*
35 *witnesses and counsel and shall direct that the court records of the*
36 *proceedings be sealed and all individuals who are not a party to the action,*
37 *witnesses or counsel be excluded from the courtroom or hearing room to*
38 *the extent necessary to safeguard the ~~woman's~~ individual's identity from*
39 *public disclosure. Each such order shall be accompanied by specific*
40 *written findings explaining why the anonymity of the ~~woman~~ individual*
41 *should be preserved from public disclosure, why the order is essential to*
42 *that end, how the order is narrowly tailored to serve that interest and why*
43 *no reasonable less restrictive alternative exists. This section shall not be*

1 construed to conceal the identity of the plaintiff or of witnesses from the
2 defendant.

3 Sec. 4. K.S.A. 2023 Supp. 65-6758 is hereby amended to read as
4 follows: 65-6758. (a) Each medical care facility in which ~~an infant~~ *a child*
5 is born alive subsequent to an abortion or attempted abortion performed on
6 the mother of the ~~infant~~ *child* shall submit an annual report to the secretary
7 of health and environment on the number of such ~~infants~~ *children* in such
8 form and manner as prescribed by the secretary. Such report shall include:

9 (1) The approximate gestational age of the ~~infant~~ *child* who was born
10 alive expressed in one of the following increments:

11 (A) Less than nine weeks;

12 (B) nine to 10 weeks;

13 (C) 11 to 12 weeks;

14 (D) 13 to 15 weeks;

15 (E) 16 to 20 weeks;

16 (F) 21 to 24 weeks;

17 (G) 25 to 30 weeks;

18 (H) 31 to 36 weeks; or

19 (I) 37 weeks to term;

20 (2) any medical actions taken to preserve the life of the ~~infant~~ *child*
21 who was born alive;

22 (3) the outcome for such ~~infants~~ *children*, including survival, death
23 and location of death, such as a clinic, hospital or ambulance, if known;
24 and

25 (4) the medical conditions of ~~infants~~ *children* who were born alive,
26 including *injuries that resulted from the attempted abortion* and conditions
27 developed prior to and after the attempted abortion.

28 (b) The secretary may impose a civil fine in any amount not to exceed
29 \$500 on any medical care facility that fails to submit the required report
30 within 30 days after the date such report is due to be submitted to the
31 secretary. The secretary may impose an additional civil fine in an amount
32 not to exceed \$500 for each additional 30-day period that such medical
33 care facility fails to submit the required report. If a medical care facility
34 fails to submit a required report for more than one year following the date
35 that such report is due to be submitted to the secretary, or submits an
36 incomplete report during such time period and fails to correct the
37 deficiencies in such report, the secretary may bring a civil action for an
38 injunction to compel such medical care facility to submit the required
39 report.

40 Sec. 5. K.S.A. 2023 Supp. 65-6754, 65-6756, 65-6757 and 65-6758
41 are hereby repealed.

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