

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

CIVIL COURT DEPARTMENT

HODES & NAUSER, MDs, P.A., on behalf of itself, its patients, physicians, and staff; TRACI LYNN NAUSER, M.D.; and COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, on behalf of itself, its patients, physicians, and staff,

Plaintiffs,

v.

KRIS KOBACH, in his official capacity as Attorney General of the State of Kansas; STEPHEN M. HOWE, in his official capacity as District Attorney for Johnson County; MARC BENNETT, in his official capacity as District Attorney for Sedgwick County; MARK A. DUPREE SR., in his official capacity as District Attorney for Wyandotte County; State of Kansas *ex rel.* Kansas State Board of Healing Arts; and JANET STANEK, in her official capacity as Secretary of the Kansas Department of Health and Environment,

Defendants.

Case No. 23CV03140
Division No. 12
K.S.A. Chapter 60

BRIEF IN SUPPORT OF THE STATE DEFENDANTS' OMNIBUS MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS HODES & NAUSER, MDs, P.A., TRACI LYNN NAUSER, M.D., AND COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS

Dated: March 21, 2025

(Filing Contains Materials Subject to the Court's 7/22/2024 Protective Order)

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INTRODUCTION

For over a quarter-century, the Woman’s Right to Know Act has served a vital function in Kansas: ensuring that women facing one of life’s most consequential decisions have access to comprehensive information before proceeding with an abortion. The 1997 law was enacted and amended multiple times during the *Roe-Casey* era when abortion was a federally protected constitutional right. Yet Plaintiffs never challenged the Act’s main provisions during that time. This lawsuit represents an unprecedented attempt to dismantle longstanding informed consent protections that abortion providers themselves assert they have complied with for decades without incident. Plaintiffs have failed to produce *any* admissible evidence that the nearly 30-year-old law has prevented a *single* woman from getting an abortion or ever infringed a woman’s constitutional rights.

The undisputed facts demonstrate that Plaintiffs’ challenge fails for several reasons. *First*, Plaintiffs lack third-party standing to assert their patients’ constitutional rights, given the inherent conflict of interest between providers who have a financial interest in not providing women with information that may cause them to reconsider having an abortion and patients who benefit from robust informed consent protections. *Second*, Plaintiffs have produced no admissible evidence that these laws have infringed women’s right to autonomy—relying instead on inadmissible hearsay and speculation about potential harms that have not materialized in patient testimony during nearly thirty years of enforcement. *Third*, because the challenged laws regulate the conduct of abortion providers, not women, Plaintiffs’ equal protection claims fail. *Fourth*, the statutes at issue regulate professional medical conduct, not protected speech, and thus do not implicate Plaintiffs’ First Amendment rights. *Fifth*, H.B. 2264 is not unconstitutionally vague because it adequately apprises Plaintiffs of the information they must provide to their patients and the potential repercussions if they fail to do so. *Sixth*, Plaintiffs

stale challenge, coming nearly three decades after the WRTKA’s enactment and following Plaintiffs’ alleged continuous compliance during that time, undermines any claim to irreparable harm and is barred by laches. Any normal application of equitable principles prohibits Plaintiffs’ 30-years-too-late challenge to the Act.

The Woman’s Right to Know Act and H.B. 2749 enhance rather than restrict a woman’s decision-making capacity by ensuring access to information relevant to her right to continue her pregnancy or have an abortion. The Act does not obstruct abortion access but rather regulates how abortion providers fulfill their professional obligations to their patients. This Court should therefore grant summary judgment to State Defendants and uphold these reasonable, longstanding protections for women’s informed consent.

STATEMENT OF UNDISPUTED MATERIAL FACTS

I. Background

1. Plaintiffs seek to invalidate three Kansas laws (the “Statutes”):
 - a. The Woman’s Right to Know Act, K.S.A. §§ 65-6708-15 (“WRTKA”);
 - b. H.B. 2264, a 2021 amendment to the WRTKA, codified as K.S.A. § 65-6716;
and
 - c. H.B. 2749, a 2023 amendment to K.S.A. § 65-445.

Pls. Supp. Sec. Am. Pet ¶¶ 144-55.

2. The WRTKA was enacted in 1997.
3. Plaintiffs have been subject to the WRTKA and its amendments since each were enacted.
4. Plaintiffs claim they have complied with the Act from its enactment until the Court’s temporary injunction; Plaintiffs have never complied with H.B. 2264, which has not been enforced by State Defendants. Oct. 30, 2023 Order Temp. Inj. at 26, 89;

Exhibit 5, Dr. Traci L. Nauser 230(b)(6) Dep. Tr. 18:18-19:13; Exhibit 36, Emily Wales 230(b)(6) Dep. Tr. 263:6-264:4.

5. From 1997 until the filing of this action, Plaintiffs never challenged any of the main provisions of the WRTKA.

6. Plaintiffs have refused to produce any evidence of harm older than five years. *See* Pl. Opp'n State Defs. Mot. Compel Patient Complaints.

7. H.B. 2749 went into effect on July 1, 2024, but has not been enforced pursuant to the agreement of the parties, which has, in turn, paused the rulemaking process required by H.B. 2749. *See* July 29, 2024 Joint Stipulation.

8. Plaintiffs Hodes & Nauser, MDs, P.A. and Dr. Nauser challenge the Statutes on behalf of themselves and their patients. Pls. Supp. Sec. Am. Pet ¶¶ 11-12.

9. Plaintiff Comprehensive Health of Planned Parenthood Great Plains (“Planned Parenthood”) challenges the Statutes on behalf of itself, as well as its patients, physicians, and staff. Pls. Supp. Sec. Am. Pet ¶ 13.

10. None of Plaintiffs’ past, present, or future patients are parties to this lawsuit. *See generally* Pls. Supp. Sec. Am. Pet.

11. Plaintiffs have identified none of their past, present, or future patients as witnesses for trial. *See* Pls. Supp. Prelim. Witness and Exhibit List.

II. The Woman’s Right to Know Act

12. Plaintiffs have challenged eight sections of the WRTKA, K.S.A. § 65-6708–65-6716. Pls. Supp. Sec. Am. Pet ¶ 1.

13. **Citation section**: K.S.A. § 65-6708 contains the citation of the WRTKA.

14. K.S.A. § 65-6709 codifies certain informed consent requirements which are summarized here in the order in which a woman might encounter them:

- a. **Website requirement**: K.S.A. § 65-6709(l) requires that abortion providers include a link on their website to the Kansas “department of

health and environment's website that provides informed consent materials under the woman's-right-to-know act.”

- b. **Informed consent**: “[E]xcept in the case of a medical emergency,” §§ 65-6709(a)-(b), (d) state that “consent to an abortion” will only be considered “voluntary and informed” if the patient seeking an abortion is provided with certain printed information about the nature of abortion and abortion procedures, as well as the risks, benefits, and alternatives to abortion, as specified in K.S.A. §§ 65-6709(a)-(b), (d).
- c. **24-hour notice requirement**: Except in the case of a medical emergency, K.S.A. § 65-6709(b) and (d) require that patients receive the informed consent materials at least 24 hours before an abortion. K.S.A. § 65-6709 does not require patients to sign, initial, date, timestamp, or otherwise confirm receipt of the informed-consent requirement materials 24 hours prior to their appointment.
- d. **Pre-payment prohibition**: K.S.A. § 65-6709(g) prohibits a woman from being required to pre-pay for an abortion procedure prior to the expiration of the Act’s 24-hour period. It does not prohibit a woman from electing to pre-pay for her procedure.
- e. **Coercion notice**: K.S.A. § 65-6709(k) requires abortion providers to post signage stating it is illegal to coerce someone into obtaining an abortion.
- f. **Ultrasound and heart monitor**: K.S.A. § 65-6709(h)-(j) require that physicians who elect to use ultrasound or heart monitor equipment in connection with an abortion provide patients with an opportunity to view the ultrasound, receive a photo, and listen to the heartbeat at least thirty-minutes prior to the abortion and certify that they did so.
- g. **Physician-patient meeting**: K.S.A. § 65-6709(c) requires a physician performing an abortion to meet with the woman “to ensure that she has

an adequate opportunity to ask questions of and obtain information . . . concerning abortion.”

- h. **30-minute waiting period**: K.S.A. § 65-6709(c) requires 30 minutes to elapse between the physician meeting and the abortion.
- i. **Patient certification**: K.S.A. §§ 65-6709(e)-(f) requires that, before performing an abortion, the woman must certify that she received the informed consent information required by K.S.A. §§ 65-6709(a)-(b), (d) and had a meeting with the physician as required by K.S.A. § 65-6709(c).

15. **Material promulgation**: K.S.A. § 65-6710 requires the Kansas Department of Health and Environment (“KDHE”) to publish and distribute materials regarding pregnancy support services, fetal development, abortion risks, and the illegality of coercing a woman to obtain an abortion.

16. K.S.A. § 65-6710 imposes no requirements on abortion providers.

17. **Medical emergency**: If possible, K.S.A. § 65-6711 requires physicians performing an abortion in a medical emergency disclose the reasons why the physician believes an abortion is necessary to preserve the woman’s life or health.

18. **Unprofessional conduct designation**: K.S.A. § 65-6712 designates as unprofessional conduct a physician’s intentional, knowing, or reckless failure to provide a woman with the informed consent materials.

19. **Severability provision**: K.S.A. § 65-6714 states that the provisions of the Act are severable.

20. **Scope section**: K.S.A. § 65-6715 provides that the Act does not create a right to abortion or “make lawful an abortion that is currently unlawful.”

A. The WRTKA, and its 2009, 2011, and 2013 amendments

21. When it was enacted in 1997, the WRTKA contained versions of the informed consent requirement, the 24-hour notice requirement, the pre-payment prohibition,

the physician-patient meeting requirement, the certification requirement, the material promulgation requirement, the medical emergency requirement, the unprofessional conduct designation, and the severability provision. 1997 Kansas Laws Ch. 190 § 27 (S.B. 204).

22. In 2009, the legislature amended the WRTKA to add the ultrasound and heart monitor requirements, the 30-minute waiting period, and the coercion notice requirement. 2009 Kansas Laws Ch. 28 § 1 (S.B. 238), attached hereto as Exhibit A.

23. Until this lawsuit was filed in 2023, Plaintiffs had never challenged the 1997 Act or the 2009 amendment.

24. In 2011, the Kansas legislature amended the WRTKA to repeal K.S.A. § 65-6713; to change the word “fetus” to “unborn child” in the informed consent materials; and to add the statement that “the abortion will terminate the life of a whole, separate, unique, living human being.” 2011 Kansas Laws Ch. 44 § 6 (H.B. 2035), attached hereto as Exhibit B.

25. In 2013, the Kansas legislature amended the WRTKA to:

- a. require that the informed consent materials include information advising patients that “by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain”;
- b. require that the coercion notice include information about the father’s responsibility to provide for the unborn child and the availability of other financial resources available to support pregnant women;
- c. include a version of the website requirement;
- d. add substantial information regarding fetal development to the material promulgation requirement; and
- e. notify patients about the risk of premature births in future pregnancies and the risk of breast cancer.

2013 Kansas Laws Ch. 119 § 14 (H.B. 2253), attached hereto as Exhibit C.

B. Planned Parenthood’s challenge of the 2011/2013 amendments

26. On June 20, 2013, Planned Parenthood filed a lawsuit in the United States District Court for the District of Kansas to challenge portions of the 2011 and 2013 amendments, *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. et al., v. Kimberly Templeton, MD, President of the Kansas Board of Healing Arts, et al.*, Case No. 13-cv-02302-KHV-KGG. See Exhibit D, 2013 Complaint.

27. In its complaint, Planned Parenthood challenged the constitutionality of: (1) the 2013 version of the website requirement; (2) the 2013 addition of information regarding fetal pain to the informed consent requirement materials; and (3) the language added in 2011 that a woman’s “abortion will terminate the life of a whole, separate, unique, living human being.” Ex. D ¶¶ 2-5.

28. Planned Parenthood did not challenge the 2013 amendment’s identification of premature births in future pregnancies or breast cancer as potential risks of abortion or any other provision of the Act. See generally Ex. D.

29. Planned Parenthood represented that it and its physicians “compl[ie]d with all statutory requirements relating to informed consent for abortion, including that an abortion patient, at least 24 hours in advance of the procedure, be informed in writing that State-created materials are available in printed form and online that ‘describe the unborn child, list agencies with offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services,’ Kan. Stat. Ann. § 65- 6709(b)(2), and be given the State-created materials, see *id.* § 65-6709(d).” Ex. D ¶ 30.

30. Planned Parenthood moved to preliminarily enjoin Kansas from enforcing the challenged provisions of the 2013 amendment. Exhibit E, 2013 Mem. Law Supp. Prelim. Inj. at 1-2.

31. Planned Parenthood’s then-CEO, Peter Brownlie, and its then-medical director, Dr. Owen Moore, testified that Planned Parenthood “complied with all statutory requirements relating to informed consent for abortion, as set out in Kan. Stat. Ann. § 65-6709, and ensured that its physicians comply with those requirements as well.” Exhibit F, P. Brownlie 2013 Decl. ¶¶ 10, 28; Exhibit G, O. Moore 2013 Decl. ¶¶ 12, 20.

32. Planned Parenthood did not claim the 1997 provisions of the WRTKA, the 2009 amendment, or the 2011 amendment’s replacement of “fetus” with “unborn child” had caused it or its patients harm. *See generally* Exs. D-G.

33. Planned Parenthood specifically requested that the court “preserve the status quo” and only “prevent the immediate and irreparable injuries that will otherwise unfold upon the [2013 amendment] taking effect.” Ex. E at 1-2.

34. The court denied Planned Parenthood’s request for a preliminary injunction, finding, in part, that it “is an unresolved question of fact whether ‘objective scientific information shows that a fetus can feel pain at or before twenty weeks of postfertilization.’” *Comprehensive Health of Planned Parenthood of Kansas & Mid-Missouri, Inc. v. Templeton*, 954 F. Supp. 2d 1205, 1217 (D. Kan. 2013).

35. Planned Parenthood then dismissed its claims challenging the constitutionality of the fetal pain disclosure and “whole, separate, unique” human being language and represented that they would only “refile their withdrawn claims should the contents of the KDHE materials change in the future so as to no longer contain the same information as required to be provided by Plaintiffs pursuant to K.S.A. §§ 65-6709(b)(5) and (b)(6).” Exhibit H, Joint Stipulation of Dismissal at 3.

36. The contents of the WRTKA and the KDHE materials regarding fetal pain, the unborn child’s status as a “whole, separate, unique” human being, and embryonic and fetal development have not changed since 2013. *See* Pls. Br. Supp. Temp. Inj. at 4 (challenging “the 2013 edition of the Pamphlet”).

37. Planned Parenthood later settled with the State and dismissed its claims relating to the original website requirement. Exhibit I, 2014 Order of Dismissal. In 2014, the Kansas legislature amended the website requirement to remove the language contested by Planned Parenthood. 2014 Kansas Laws Ch. 87 § 6 (S.B. 54), attached hereto as Exhibit J.

38. Prior to this lawsuit, Plaintiffs had not challenged the 2014 amendment.

C. The 2017 amendment, H.B. 2264, and H.B. 2749

39. **Readability**: In 2017, the legislature amended the informed consent requirements to state that some of the mandated materials “be provided on white paper in a printed format in black ink with 12-point times new roman font.” 2017 Kansas Laws Ch. 88 § 1 (S.B. 83), attached hereto as Exhibit K.

40. **Physician information**: The 2017 amendment also required that abortion providers deliver additional information to patients about the physician performing the abortion procedure at least 24 hours before the abortion. Ex. K.

41. Prior to the filing of this lawsuit in 2023, Plaintiffs had not challenged the 2017 amendment.

42. **H.B. 2264**: In 2023, the legislature enacted H.B. 2264, which requires that abortion providers give their patients notice “[t]hat it may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind.” 2023 Kansas Laws Ch. 88 § 1 (H.B. 2264), attached hereto as Exhibit L. H.B. 2264 provides patients with a private right of action against their physician, if the physician fails to provide patient with the information required by H.B. 2264. *See* K.S.A. § 65-6716(h).

43. **H.B. 2749**: In 2024, the legislature passed H.B. 2749. H.B. 2749 requires abortion providers, except in the case of medical emergency, to ask a patient what is “the most important factor in such patient’s decision to seek an abortion” and report

the information to the Kansas Secretary of Health and Environment. 2024 Kansas Laws Ch. 89 § 1 (H.B. 2749), attached hereto as Exhibit M.

44. H.B. 2749 allows patients to decline to answer. Ex. M.

45. Plaintiffs have not produced evidence showing the Kansas legislature enacted the Statutes to perpetuate sex-based stereotypes or out of animus for women.

III. Abortion at Plaintiffs' facilities

46. After *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), Plaintiffs began seeing an "uptick" in abortion demand, primarily from women in Texas, Oklahoma, Missouri, and Arkansas. Ex. 36, Wales 230(b)(6) Tr. 253:11-22; Ex. 5, Nauser 230(b)(6) Tr. 80:1-81:18.

47. Many of the patients from these states cannot afford to travel to Kansas for an abortion. Planned Parenthood created a "patient navigator" program that connected such women with financial resources to pay for travel costs and the abortion procedure. Exhibit 39, [REDACTED] Dep. Tr. 20:24-21:10, 25:21-26:2.

48. "[O]n average" abortions for out-of-town patients are scheduled "a couple [of] weeks" in advance. Ex. 39, [REDACTED] Tr. 49:13-50:6.

49. Patient navigators have aided as many as 850 out-of-state patients per month to travel to Kansas for abortions. Ex. 39, [REDACTED] Tr. 92:15-94:18.

50. Planned Parenthood estimates that "between 50 and 75% of the[ir] patients are coming from out-of-state." Exhibit 35, Selina Sandoval 230(b)(6) Dep. Tr. 128:8-129:3.

51. [REDACTED]
[REDACTED] Exhibit N.

52. [REDACTED]
[REDACTED]. Ex. N.

53. Hodes & Nauser has experienced a similar change in the number of out-of-town patients it now sees. Ex. 5, Nauser 230(b)(6) Tr. 80:1-81:18.

IV. Plaintiffs' relationship with their patients

54. Plaintiffs have not produced any evidence showing that they have a close relationship with their abortion patients.

55. Plaintiffs and their abortion patients typically meet for the first time at their pre-abortion meeting, which usually only lasts between 5-10 minutes. Ex. 35, Sandoval 230(b)(6) Tr. 230:24-234:3; Ex. 5, Nauser 230(b)(6) Tr. 186:22-187:3.

56. Plaintiffs have not produced any evidence that barriers exist to their abortion patients bringing a suit to challenge the WRTKA.

57. Plaintiffs' financial interest is performing more, not fewer, abortions. Ex. 36, Wales 230(b)(6) Tr. 155:10-20; Ex. 5, Nauser 230(b)(6) 351:9-352:16.

58. Plaintiffs' patients have decided not to get an abortion after receiving the informed consent materials, viewing their ultrasound, or participating in the 30-minute consent process. Ex. 5, Nauser 230(b)(6) Tr. 94:1-13, 207:14-24; Ex. 35, Sandoval 230(b)(6) Tr. 156:2-8.

59. Plaintiffs' patients' right to sue their abortion providers under the WRTKA conflict with Plaintiffs' asserted interests in avoiding liability.

60. The only abortion patients disclosed as witnesses in this case oppose Plaintiffs' attempts to invalidate the Statutes.

61. One patient [REDACTED]

[REDACTED] Exhibit 64, [REDACTED] Dep. Tr. 29:15-21, 40:15-47:10, 48:8-13, 74:21-75:8.

62. [REDACTED]

[REDACTED] Exhibit 67, [REDACTED] Dep. Tr. 42:5-68:12.

63. A Planned Parenthood affiliate [REDACTED]

[REDACTED] Exhibit 63,

[REDACTED] Dep. Tr. 63:12-64:13, 68:4-69:3, 80:12-24.

64. One of Planned Parenthood's patients complained that the [REDACTED]

[REDACTED] Exhibit O at 2.

65. A recent *New York Times* exposé documented that Planned Parenthood clinics "operat[ed] like 'a conveyor belt' for patients." Exhibit P.

V. Plaintiffs have no evidence of patient harm.

66. Plaintiffs are unaware of any instance where the WRTKA prevented a woman from obtaining an abortion. Ex. 36, Wales 230(b)(6) Tr. 145:5-14.

Citation section:

67. Plaintiffs do not allege that they or their patients have suffered harm from the Act's citation section. *See generally* Pls. Supp. Sec. Am. Pet.

Website requirement:

68. Plaintiffs have no admissible evidence of a single patient harmed by the website requirement. Ex. 36, Wales 230(b)(6) Tr. 222:1-18.

69. "[No]thing in the [WRTKA] says that [Plaintiffs] have to verbally say th[e] things [required by the website requirement]. They have to have that information disclosed," via Plaintiffs "giv[ing] [patients] access to" the KDHE website. Exs. 5-6, Nauser 230(b)(6) Tr. 128:17-129:16, 307:23-310:1, 383:12-17; Ex. 36, Wales 230(b)(6) Tr. 249:10-17 ("agree[ing]...that it was really the State of Kansas [making] th[e] disclosures," not Planned Parenthood).

70. To the extent Plaintiffs "believe[d] [a disclosure] was medically inappropriate, misleading, and ideologically motivated," they would "convey[] [their disagreement with the disclosure] to the patient." Ex. 6, Nauser 230(b)(6) Tr. 307:23-308:12

308:21-309:6, 382:12-19, 383:12-17, 388:5-12; Ex. 36, Wales 230(b)(6) Tr. 164:3-165:5, 249:10-17.

Informed consent:

71. “[No]thing in the [WRTKA] says that [Plaintiffs] have to verbally say th[e] things” in the informed consent requirement. The informed consent requirement only requires Plaintiffs to provide the state-written materials to their patients. Ex. 5, Nauser 230(b)(6) Tr. 128:17-129:16; Ex. 36, Wales 230(b)(6) Tr. 249:10-17 (“agree[ing]...that it was really the State of Kansas [making] th[e] disclosures,” not Planned Parenthood).

72. When Plaintiffs objected to the State’s disclosures, they could and did comply with the WRTKA by furnishing those disclosures along with statements of their disagreement. Ex. 6, Nauser 230(b)(6) Tr. 308:25-309:6, 389:5-13; Ex. 36, Wales 230(b)(6) Tr. 164:3-165:5, 249:10-17.

73. Providing information that may potentially be irrelevant to *some* patients is part of “standard consenting that you do before any procedure is done.” See Ex. 5, Nauser 230(b)(6) Tr. 214:6-16.

74. There is scientific support for the disclosures in the informed consent requirement. See State Defs. Expert Disclosures.

75. Plaintiffs voluntarily provide their patients with much of the information specified in the informed consent requirement, such as the description of the abortion method and the risks, benefits, and alternatives to abortion. See Ex. 5, Nauser 230(b)(6) Tr. 156:3-157:4, 182:8-22, 196:23-197:9, 213:6-214:16; Ex. 35, Sandoval 230(b)(6) Tr. 208:10-215:1. Plaintiffs have identified no patient-witness to support their hearsay statements of purported harm arising from the informed consent requirement. See Pls. Supp. Prelim. Witness and Exhibit List.

24-hour notice requirement:

76. Plaintiffs have objected to producing and have not produced the documents that would show how often patients schedule appointments within 25 hours of receiving the informed consent materials (while the WRTKA was not enjoined) and how many patients now schedule abortions within 24 hours after the Court's injunction. *See* Pls. Opp'n State Defs. Mot. Compel Medical Records.

77. Women typically schedule medication abortions [REDACTED] and procedural abortions [REDACTED]. *See* Exhibit Q; Ex. 35, Sandoval 230(b)(6) Tr. 97:14-17.

78. Plaintiffs provided their patients with electronic copies of the 24-hour consent form. This made it difficult for their patients to "figure out how to print it" 24-hours before their appointment. Ex. 39, [REDACTED] Tr. 57:21-58:16; Exhibit 40, [REDACTED] Dep. Tr. 48:23-49:17.

79. Planned Parenthood "regularly has physicians change or filter through [its] clinic[s]." Ex. 35, Sandoval 230(b)(6) Tr. 158:14-160:3.

80. Patients regularly arrived with a consent form that did not have their physician's information. Ex. 35, Sandoval 230(b)(6) Tr. 158:14-159:4, 159:23-160:3.

81. Planned Parenthood did not have any employee responsible for updating, storing, or circulating the consent forms when a new physician joined the practice until at least 2022. Ex. 37, Casey Tr. 63:2-64:11, 68:1-69:6, 70:6-74:8, 78:14-79:1.

82. Once Planned Parenthood developed a system to update, store, and circulate consent forms, the problem of incorrect forms largely ceased. *See* Ex. 39, [REDACTED] Tr. 65:3-70:10.

83. Plaintiffs turned patients away for failing to present a signed, dated, and time-stamped 24-hour consent certification when they arrived at the clinic for their abortion. *See* Ex. 37, Casey Tr. 101:2-18; Ex. 40, [REDACTED] Tr. 37:19-39:23.

Pre-payment prohibition:

84. Plaintiffs continue to comply with this requirement of the Act after the Court's temporary injunction. Ex. 36, Wales 230(b)(6) Tr. 232:3-6; Ex. 5, Nauser 230(b)(6) Tr. 38:2-10, 40:1-21, 51:17-52:3.

85. Plaintiffs have identified no patient-witness or documentation to support harm arising from this provision. *See* Pls. Supp. Prelim. Witness and Exhibit List.

Coercion notice:

86. Plaintiffs admit that posting signage in their clinics does not make them "a mouthpiece of the State," Ex. 36, Wales 230(b)(6) Tr. 366:1-18, and they have identified no patient-witness to testify to this alleged harm at trial. *See* Pls. Supp. Prelim. Witness and Exhibit List.

87. Plaintiffs still screen for coercion after the Court's temporary injunction. Ex. 35, Sandoval 230(b)(6) Tr. 174:23-176:8; Ex. 5, Nauser 230(b)(6) Tr. 119:14-120:25.

Ultrasound and heart monitor:

88. Plaintiffs do not use heart monitor equipment. Ex. 35, Sandoval Tr. 169:25-170:8; Ex. 5, Nauser 230(b)(6) Tr. 229:21-230:15.

89. After the Court's preliminary injunction, Plaintiffs continue to offer patients to "view the ultrasound...and they're offered to take a photo with them." Ex. 35, Sandoval 230(b)(6) Tr. 146:14-18, 161:13-16, 167:22-168:7, 169:3-19; Ex. 5, Nauser 230(b)(6) Tr. 160:19-161:11, 227:18-229:12.

90. Plaintiffs' only evidence of patient harm related to this requirement is based on the hearsay testimony of their physicians. *See* Ex. 36, Wales 230(b)(6) Tr. 239:21-240:4.

Physician-patient meeting:

91. Plaintiffs still require that patients meet with their physician before an abortion and provide the opportunity to ask questions because the right to ask

questions is “part of giving [women] autonomy.” Ex. 5, Nauser 230(b)(6) Tr. 223:3-6, 285:1-20; Ex. 35, Sandoval 230(b)(6) Tr. 287:5-23.

92. Plaintiffs have identified no patient-witness to testify to harm related to this requirement. *See* Pls. Supp. Prelim. Witness and Exhibit List.

30-minute waiting period:

93. The 30-minute waiting period overlaps with Plaintiffs’ internal standard of care, some of which, takes at least an hour to complete. *See* Ex. 35, Sadoval 230(b)(6) Tr. 204:2-17; Ex. 5, Nauser 230(b)(6) Tr. 93:17-25, 284:8-286:2; Exhibit R.

94. Plaintiffs have identified no patient-witness harmed by the 30-minute waiting period. Pls. Supp. Prelim. Witness and Exhibit List.

Patient certification:

95. Plaintiffs have not identified a patient witness to testify as to any harm arising from this requirement. *See* Ex. 36, Wales 230(b)(6) Tr. 223:3-224:14; Pls. Supp. Prelim. Witness and Exhibit List.

96. Plaintiffs have alleged that their patients have suffered harm because of their self-imposed certification requirement. *See* Paragraph 83, above.

Material promulgation:

97. Plaintiffs and their patients have suffered no harm from the material promulgation requirement, which only requires KDHE to promulgate certain materials. *See* Ex. 36, Wales 230(b)(6) Tr. 221:12-25; Ex. 5, Nauser 230(b)(6) Tr. 211:10-212:2, 213:6-20.

Medical emergency:

98. Plaintiffs and their patients have suffered no harm from the medical emergency requirement and have not alleged that it has infringed their or their patients’ rights. *See, e.g.*, Ex. 36, Wales 230(b)(6) Tr. 243:22-246:3.

Unprofessional conduct designation:

99. None of Plaintiffs’ physicians have “ever been found guilty of unprofessional conduct, under [K.S.A. § 65-6712], for violating the [WRTKA].” *See* Ex. 36, Wales 230(b)(6) Tr. 263:6-264:4; Ex. 5, Nauser 230(b)(6) Tr. 19:2-18.

Severability provision:

100. Plaintiffs do not allege that they or their patients have suffered harm from the severability section. *See generally* Pls. Supp. Sec. Am. Pet.

Scope section:

101. Plaintiffs do not allege that the scope section has caused them or their patients to suffer harm. *See generally* Pls. Supp. Sec. Am. Pet.

H.B. 2264:

102. Plaintiffs would not be speaking by sharing State-mandated information or posting State-mandated signage. Ex. 5, Nauser 230(b)(6) Tr. 128:17-129:16; Ex. 36, Wales 230(b)(6) Tr. 249:10-17.

103. The State Defendants have identified several experts who explain the scientific basis for H.B. 2264. *See* Exhibits 44-61, State Defs. Expert Disclosures.

H.B. 2749:

104. No rulemaking has taken place to implement H.B. 2749.

105. Plaintiffs “collect[] [] the information required by [H.B. 2749],” except for the reason the patient is seeking an abortion. Ex. 36, Wales 230(b)(6) Tr. 298:1-306:8.

106. Plaintiffs are “[un]aware of any patient who has said [collecting this information is] harmful.” Ex. 36, Wales 230(b)(6) Tr. 298:1-306:8.

LEGAL STANDARD

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” K.S.A. § 60-256(c). While the Court must resolve all facts and reasonable inferences in

favor of the non-moving party, the opponent must still present evidence establishing a material factual dispute. *Bracken v. Dixon Indus., Inc.*, 272 Kan. 1272, 1275, 38 P.3d 679, 682 (2002). Absent such evidence, the movant is entitled to judgment as a matter of law.

ARGUMENT

I. Plaintiffs' claims on behalf of their patients fail.

A. Plaintiffs lack third-party standing.

Simultaneous with this motion, State Defendants moved to dismiss this case because Plaintiffs cannot establish third-party standing for their autonomy and equal protection claims and because the women patients they claim to represent are indispensable to this lawsuit. That is also a reason for granting summary judgment on Plaintiffs' third-party theories: they lack the required "close relation" to their patients, there is no hindrance to their patients' ability to sue on their own, and their interests are in conflict with the interests of their patients.

i. Plaintiffs lack a close relationship with patients.

First, Plaintiffs do not have a "close relationship" with their abortion patients. Third-party standing requires an "*existing*. . . relationship," which is "quite distinct from a *hypothetical*" relationship. See *Kowalski v. Tesmer*, 543 U.S. 125, 131 (2004) (emphases in original). Unlike other doctor-patient relationships, abortion providers rarely have "a close relationship" with their patients; rather, "their relationship is generally brief and very limited." *June Med. Services L.L.C. v. Russon*, 591 U.S. 299, 403 (2020) (Alito, J., with Thomas & Gorsuch, J.J., dissenting). Plaintiffs' clinics often function as a [REDACTED] for patients, Fact No. 65, where patients are rushed impersonally through what may be the most consequential decision of their life. Fact Nos. 55, 61-65. This is not a "close relationship," and Plaintiffs have produced no contrary evidence. Fact No. 54.

ii. There are no insurmountable obstacles to patient suits.

Third-party standing also fails because “[t]here are no ‘insurmountable’ obstacles stopping women seeking abortions from asserting their own rights.” *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 631 (2016) (Thomas, J., dissenting). To the contrary, “interested women have challenged abortion regulations on their own behalf in case after case.” *June Med.*, 591 U.S. at 414 (Gorsuch, J., dissenting) (collecting cases). Justiciability of those cases poses no concern, for “if a woman seeking an abortion brings suit, her claim will survive the end of her pregnancy under the capable-of-repetition-yet-evading-review exception to mootness.” *June Med.*, 591 U.S. at 405 (Alito, J., dissenting). Nor is the potential loss of privacy a deterrent to suit, since women “can sue under a pseudonym” and avail themselves of “[o]ther precautions [that] may be taken during the course of litigation to avoid revealing their identities.” *Id.* Plaintiffs have no evidence their patients face any hindrances to suit. Fact No. 56.

iii. There is a “blatant conflict of interest” with patients.

Finally, not only do Plaintiffs fail to meet the elements of third-party standing, but their theory is also precluded because of the “blatant conflict of interest between an abortion provider and its patients” for laws “that protect their [patients’] health.” *June Med.*, 591 U.S. at 401 (Alito, J., dissenting). Third-party standing is not appropriate where the interests of the plaintiff and the third party whose rights it invokes “are not parallel and, indeed, are potentially in conflict.” *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 15 (2004). So “[w]hen an abortion regulation is enacted for the asserted purpose of protecting the health of women, an abortion provider seeking to strike down that law should not be able to rely on the constitutional rights of women.” *June Med.*, 591 U.S. at 402 (Alito, J., dissenting). That is readily apparent for Plaintiffs’ challenge of the WRTKA. For one, they

purport to invoke the rights of their patients to invalidate a law that gives those same patients the right to sue them. Fact No. 42. And, for another, they have a pecuniary interest in minimizing informed consent to maximize total patients seen, while each patient individually has an interest in ensuring they receive appropriate disclosure. Fact Nos. 57, 60-65. Just as in *June Medical* “it’s pretty hard to ignore the potential for conflict here,” 591 U.S. at 415 (Gorsuch, J., dissenting), and Plaintiffs have produced no evidence showing otherwise. And that conflict would violate due process by deciding the rights of Plaintiffs’ patients without joining them as parties or giving them adequate representation. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997).

B. Plaintiffs offer no evidence of infringement of autonomy.

The Supreme Court of Kansas has held that the State Constitution protects “a woman’s right to decide whether to continue a pregnancy.” *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 620, 440 P.3d 461, 471 (2019) (*Hodes I*). Every citizen of the State of Kansas “is considered to be master of his own body” and therefore may consent to or deny medical care. *Id.*, 309 Kan. at 643, 440 P.3d at 482. Every citizen of the State of Kansas similarly has the right “to make choices about how to conduct their own lives,” and, according to the Supreme Court of Kansas, no issue of self-determination is more fundamental to that right than “family formation[] and family life.” *Id.*, 309 Kan. at 483, 440 P.3d at 464

Plaintiffs ask the Court to narrowly construe the fundamental rights described in *Hodes I* as *only* a right to have an abortion. But that is not so. The right at issue is broader than that and encompasses the right to *continue* a pregnancy as well. The importance of properly construing the right to continue or terminate a pregnancy is that laws and policies that *support* or *enhance* a woman’s family-planning decision process advance a woman’s right to continue a pregnancy.

Informed consent that educates a pregnant woman about all her options (*e.g.*, abortion, parenting, and adoption) as well as the risks inherent in an abortion procedure ensures that a woman can exercise her right to personal autonomy in an informed manner.

The right of Kansas women to decide for themselves whether to continue or terminate their pregnancy is therefore violated not only by laws that deny “a pregnant woman the ability to determine whether to continue a pregnancy,” *id.*, 309 Kan. at 646, 440 P.3d at 484, but also by those that would require a woman to have an unwanted abortion. *Id.*, 309 Kan. at 644-45, 440 P.3d at 483 (the right to “bring up children” is a fundamental right); *see also id.*, 309 Kan. at 648, 440 P.3d at 485 (“[D]ecisions whether to accomplish . . . conception are among the most private and sensitive.”).

A plaintiff challenging a state law as a violation of a woman’s right to terminate or continue a pregnancy bears the burden that the law at issue “actually infringes” that right. *Hodes & Nausser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1005, 551 P.3d 62, 71 (2024) (*Hodes III*). To do so, a plaintiff must adduce admissible evidence that the challenged laws “constrain[],” “interfere” with, or “restrict” a woman’s ability to terminate or continue her pregnancy. *Hodes I*, 309 Kan. at 646, 667, 440 P.3d at 484, 496. If the action only “*appears*” to impair autonomy, that is “not enough.” *Hodes III*, 318 Kan. at 1008, 551 P.3d at 73.

Here, Plaintiffs have not carried their initial burden of proving actual infringement. They have adduced no admissible evidence of *any* woman over a nearly thirty-year period who has been unable to receive an abortion because of the Statutes. Fact No. 66. In fact, Plaintiffs have adduced no admissible evidence of *any* woman over a nearly thirty-year period who has been harmed by the Statutes. This is because the WRTKA is the opposite of a restriction on women’s rights related to

family planning—it supports autonomy. And because it does not violate fundamental rights, it is subject to rational basis review.

i. The laws regulate abortion clinics, not abortion rights.

Many of the provisions challenged by Plaintiffs do not affect Plaintiffs' patients and cannot possibly infringe a right to abortion. Three of the WRTKA sections challenged by Plaintiffs do not impose any requirements on anyone, as they are purely technical. K.S.A. § 65-6708 contains the citation of the WRTKA, K.S.A. § 65-6714 contains a severability provision, and K.S.A. § 65-6715 clarifies that by regulating abortion providers, the WRTKA is not intended to create a right to abortion. Similarly, three provisions exclusively regulate the conduct of KDHE and physicians performing abortions: K.S.A. § 65-6710 requires KDHE to publish and distribute certain informational materials regarding, among other things, pregnancy support services, fetal development, abortion risks, the illegality of coercing a woman to receive an abortion; K.S.A. § 65-6711 requires that a physician performing an abortion because of a medical emergency must, if possible, disclose to the patient the reasons why the physician believes an abortion is necessary to preserve the life and health of the mother; K.S.A. § 65-6712 imposes a penalty on physicians who fail to comply with the WRTKA. None of the six foregoing sections challenged by Plaintiffs impose any requirements on women seeking an abortion or affect women's abortion rights. Plaintiffs have admitted that they are not aware of any of these sections having ever infringed their patients' right to an abortion. Fact Nos. 67, 97-101.

ii. Plaintiffs admit no harm from most WRTKA provisions.

Plaintiffs admit that they have adduced no evidence that their patients' rights to an abortion have been impaired by the majority of K.S.A. § 65-6709's provisions. Plaintiffs admit they are unaware of, or have no evidence in support of,

any infringement of their patients' rights to abortion arising from the private meeting requirement, the ultrasound and heart monitor requirement, the coercion notice requirement, the pre-payment prohibition, the website requirement, or the certification requirement. Fact Nos. 68-70, 84-92, 95-96.

Nor could they. Plaintiffs cannot deny that the decision to have an abortion or continue a pregnancy should be free from coercion, based upon informed judgment, after adequate time to consider the decision. That is presumably why, even after this Court's preliminary injunction, Plaintiffs still voluntarily adhere to the private meeting requirement, a version of the coercion notice requirement, the ultrasound and heart monitor requirement, and the pre-payment prohibition. Fact Nos. 84, 87-88, 91. Thus, the Court must apply the rational basis standard when assessing the constitutionality of these provisions. *See Hodes III*, 309 Kan. at 663, 440 P.3d at 493.

iii. WRTKA provisions do not infringe patients' rights.

Plaintiffs' witnesses claim to have evidence of "actual infringement" of their patients' right to have an abortion from only three provisions of the WRTKA: the informed consent requirement (K.S.A. §§ 65-6709(a)-(b), (d)); the 24-hour notice requirement (K.S.A. §§ 65-6709(a)-(b), (d)); and the 30-minute waiting period requirement (K.S.A. § 65-6709(c)). But none of Plaintiffs' witnesses identified a single instance that the WRTKA, generally, or the informed consent requirement, the 24-hour notice requirement, or the 30-minute waiting period, specifically, prevented a woman from obtaining an abortion. Fact No. 66. Plaintiffs instead claim that their patients' right to an abortion were deterred or chilled by these provisions. These claims fail because Plaintiffs lack admissible evidence to prove these harms—instead, the admissible evidence developed so far shows that Plaintiffs, not the WRTKA, caused the harm they allege their patients suffered.

iv. Inadmissible hearsay cannot defeat summary judgment.

Plaintiffs' witnesses testified about unidentified patients harmed by the WRTKA. *See, e.g.*, Ex. 39, [REDACTED] Tr. 58:17-61:18. But this testimony, which is offered for the truth of the matter asserted, is inadmissible hearsay. Plaintiffs' apparent strategy—to testify to the harm of others—violates a basic premise of our judicial system.

“Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay evidence” and generally “inadmissible.” K.S.A. § 60-460. “Hearsay testimony that would be inadmissible at trial cannot be used to defeat a motion for summary judgment[.]” *Aklagi v. Nationscredit Fin.*, 196 F. Supp. 2d 1186, 1191 n.4 (D. Kan. 2002); *see also Treff v. Galetka*, 74 F.3d 191, 196 (10th Cir. 1996). “It would make no sense to deny summary judgment and proceed to trial on the basis of evidence that could not be presented at trial.” *Schultz v. Schwartz*, 28 Kan. App. 2d 84, 89–90, 11 P.3d 530, 534 (2000) (affirming hearsay exclusion).

The hearsay proponent must show how the statement could be admissible at trial and “may not escape summary judgment in the mere hope that something will turn up at trial.” *Frye v. IBP, Inc.*, 15 F. Supp. 2d 1032, 1039 (D. Kan. 1998); *see also Brown v. Perez*, 835 F.3d 1223, 1232–33 (10th Cir. 2016) (refusing to consider hearsay evidence at summary judgment because proponent could not show that the statements “would be admissible at trial”).

Plaintiffs' patient complaints about the WRTKA—none of which even show a patient unable to obtain an abortion—are classic hearsay. Plaintiffs have not disclosed as a witness any patient whose rights have allegedly been infringed by the WRTKA. Fact Nos. 66-100. They have only offered testimony and emails from their own employees describing what these patients said. *See, e.g.*, Ex. 39, [REDACTED] Tr. 58:17-61:18. But those accounts are multiple hearsay—through the document, the

statement of Plaintiffs' employees, and the underlying statement of the patient. Similarly, in their petition and in the testimony of their expert witnesses, Plaintiffs argue that the information contained in the materials mandated by the informed consent requirement "potentially traumatiz[e]" their patients. *See* Pls. Supp. Sec. Am. Pet. ¶ 131; Exhibit 1, Nauser Rpt. ¶ 8; Exhibit 17, Wynia Rpt. ¶ 54. But Plaintiffs have not identified a single patient who the informed consent requirement harmed in this way. *See* Fact Nos. 66-101. Plaintiffs cannot prove patient "trauma" through speculation and their hearsay testimony. Unless Plaintiffs prove an exception, these statements are inadmissible and cannot defeat summary judgment.

v. Any harms from the 2017 amendment are self-inflicted.

Plaintiffs have alleged their patients have been harmed by two provisions of the 2017 amendment. Both instances of purported harm are self-inflicted.

First, Plaintiffs claim that the 2017 amendment to K.S.A. § 65-6709(a), requiring that some of the mandated materials "be provided on white paper in a printed format in black ink with 12-point times new roman font," has infringed their patients' rights. Fact No. 78. Plaintiffs typically provide their patients with the required materials electronically for the patients to print on their own. Fact No. 78. Plaintiffs claim that they have been told that some of their patients have complained that printing the materials was burdensome because they did not have ready access to a printer. Fact No. 78. Apart from being inadmissible hearsay, if this burden exists, it exists because Plaintiffs have placed it on their patients. K.S.A. § 65-6709(a) applies to abortion providers, not their patients, and instructs abortion providers to give the printed materials to their patients. Thus, to alleviate any burden imposed by the printing requirement, Plaintiffs could simply provide the printed materials to their patients by mail or in person. Because Plaintiffs

typically schedule their appointments days or weeks in advance, Fact No. 77, this process would not require their patients to wait longer.

Second, only Planned Parenthood alleges that its patients' abortion rights were impaired by the 2017 amendment's physician information requirement. Fact Nos. 79-80. But, once again, to the extent the abortion rights of Planned Parenthood's patients were impaired by this requirement, it is due to *Planned Parenthood's* shortcomings. Planned Parenthood regularly retains new abortion providers, whether via residency, fellowship, or telehealth. Fact No. 79. Accordingly, the 2017 Amendment requires Planned Parenthood to update their mandated consent materials whenever a new provider begins performing abortions at their facilities. Fact Nos. 80-81. Planned Parenthood's patients retrieved the mandated consent materials from various sources: from patient navigators, call-center employees, automated scheduling software, Planned Parenthood administrative staff, and even directly from Planned Parenthood's website. Fact Nos. 78-81. Yet from 2017 to 2022, Planned Parenthood did not have anyone specifically responsible for (1) updating the mandated materials before a new provider was scheduled to begin performing abortions, (2) ensuring that the most up-to-date form was stored in a single, accessible location, or (3) providing all distributors of the materials with updated copies of the forms as they became available. Fact No. 81. After Planned Parenthood implemented a system for ensuring the mandated materials were properly maintained, updated, and distributed, all alleged impairment of their patients' rights by the physician information requirement effectively ceased. Fact No. 82. Planned Parenthood's allegations of patient harm caused by the physician information requirement are also based on inadmissible hearsay and thus fail.

vi. No patient harm from the 30-minute waiting period.

Plaintiffs assert their patients' abortion rights have been infringed by the 2009 Amendment's addition of the 30-minute waiting period because it delays a patient's abortion procedure. Ex. 35, Sandoval 230(b)(6) Tr. 234:4-235:24; Ex. 5, Nauser 230(b)(6) Tr. 222:10-223:1. This argument fails as a matter of law and for lack of admissible evidence.

A medical waiting period does not amount to an infringement of a woman's right to continue or abort her pregnancy as a matter of law.¹ This is doubly true when the waiting period can be bypassed in the case of a medical emergency. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 885 (1992) (finding that a "waiting period is a reasonable measure to implement the State's interest in protecting the life of the unborn, a measure that does not amount to an undue burden."); *see also A Woman's Choice-E. Side Women's Clinic v. Newsom*, 305 F.3d 684, 690 (7th Cir. 2002) (upholding Indiana's waiting period law based on lack of evidence that the law impaired patients' abortion rights: "the record does not contain evidence needed for accurate assessment of that statute's effects"); *Barnes v. Moore*, 970 F.2d 12, 14 (5th Cir. 1992) (upholding Mississippi's waiting period due to inability to provide evidence of harm to patients).

Plaintiffs look past this caselaw by claiming the 30-minute waiting period often caused their patients to suffer mental anguish and emotional harm by delaying their abortion procedures. Ex. 35, Sandoval 230(b)(6) Tr. 234:4-235:24. As an initial matter, this claim is puzzling because in 2013 *Planned Parenthood*

¹ This rule is not limited to the abortion context; several courts have also found that waiting periods do not infringe upon the fundamental right to bear arms. *See, e.g., Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1132 (D. Colo. 2023), *appeal dismissed*, No. 23-1380, 2024 WL 5010820 (10th Cir. Aug. 23, 2024) (finding a mandatory three-day waiting period to obtain a firearm did not even implicate the Second Amendment's right to "keep" and "bear" arms because the Second Amendment right "did not mean to receive that item without delay.").

specifically requested the District of Kansas to “preserve the status quo” of the WRTKA, which included the 30-minute waiting period. Fact Nos. 22, 26-38. Further, the alleged harm identified by Plaintiffs related to the 30-minute waiting period is based solely on inadmissible hearsay. Because the 30-minute waiting period coincided with Plaintiffs’ other internal pre-abortion processes, Fact No. 93, any claimed infringement was due to Plaintiffs’ mismanagement, not the WRTKA.

vii. No patient harm from the 24-hour notice period.

Finally, Plaintiffs allege that WRTKA’s 24-hour notice period infringes their patients’ abortion rights.² Yet here, too, Plaintiffs’ claimed infringement is limited to a subset of the 24-hour notice requirement. Plaintiffs claim the 24-hour notice period requires them to turn away patients scheduled for an abortion who have failed to properly sign, date, or timestamp the consent forms before arriving for their appointment. Fact No. 83. According to Plaintiffs, without these annotations, they cannot verify that their patients received the printed materials mandated by the informed consent requirement at least 24 hours before their abortion procedure. Pls. Supp. Sec. Am. Pet. ¶ 79. But this alleged infringement fails because the WRTKA nowhere requires that a woman sign, date, or timestamp any of the materials mandated by the informed consent requirement at least 24 hours before her abortion procedure. *See generally* K.S.A. § 65-6709. Patients are instead required to verify their timely receipt of the printed materials during the certification process described in K.S.A. §§ 65-6709(e)-(f), which they can do at their appointment.

² Although the WRTKA at times refers to the 24-hour period as a “waiting period,” Plaintiffs testimony in this case has shown that such a description is a misnomer, for no waiting is typically required at all; Plaintiffs provide their patients with copies of the materials mandated by the informed consent requirement when they schedule their appointments, which is typically done several days in advance. Fact No. 77.

Furthermore, this harm, to the extent it exists and is imposed by the Act, is caused by Plaintiffs' insistence on providing the materials electronically, instead of in person or via mail. Fact No. 78. Electronic delivery prevents Plaintiffs from knowing when their patients receive printed copies of the materials. Fact No. 78. Accordingly, the only impediment Plaintiffs claim the WRTKA has imposed on its patients is self-imposed and has no basis in the text of WRTKA. This is in addition to the fact that Plaintiffs' only evidence of harm related to the 24-hour notice is dependent on inadmissible hearsay. *See* Fact No. 83.

Plaintiffs also claim that the 24-hour notice period "delays patients, who [w]ould otherwise schedule their appointments" within 24-hours. *See* Pls. Supp. Sec. Am. Pet. ¶ 53. Yet Plaintiffs have not produced any evidence to support this harm. They have provided no evidence showing how many patients scheduled appointments in the 25th hour, for example, or how many patients now schedule abortions less than 24 hours before the procedure now that the Court's injunction is in effect. Indeed, Plaintiffs have specifically objected to producing the only category of documents that would contain this information: their patient medical records. Fact No. 76. And Planned Parenthood admits that they typically schedule appointments "one to two weeks ahead of time." Fact No. 77. Hodes & Nauser schedule medication abortions "4-7 days out" and procedural abortions "1-2 weeks out." Fact No. 77. Accordingly, Plaintiffs' claim of hypothetical harm is baseless and contradicted by their own scheduling practices.

Because Plaintiffs cannot prove that their patients' abortion rights have been "actually infringed" or impaired by the WRTKA, their constitutional challenge is subject to rational basis review.

C. HB 2749 does not impair the right to an abortion.

The State Defendants have agreed not to enforce H.B. 2749 during the pendency of this litigation. Fact No. 7. Plaintiffs assert a facial challenge that H.B.2749 is unconstitutional in all possible applications. “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *State v. Watson*, 273 Kan. 426, 435, 44 P.3d 357, 364 (2002). “The fact that the ... Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.” *Id.* Facial “challenges are disfavored, because they may rest on speculation, may be contrary to the fundamental principle of judicial restraint, and may threaten to undermine the democratic process.” *State v. Bollinger*, 302 Kan. 309, 318-19, 352 P.3d 1003, 1010-11 (2015). Plaintiffs’ challenge to H.B. 2749 fails for three independent reasons.

i. Optional questions do not impair autonomy rights.

H.B. 2749’s optional question about a patient’s reason for seeking an abortion does not impair the patient’s autonomy. The Kansas Constitution protects personal autonomy, defined as “the ability to control one’s own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy.” *Hodes I*, 309 Kan. at 614, 440 P.3d at 466.

H.B. 2749 does not impair any woman from deciding “whether to continue a pregnancy.” *Id.* It simply ensures patients are asked why they sought an abortion, and it gives patients the option not to answer. H.B. 2749 § 1(c). Plaintiffs have no

evidence that this optional question would delay or prevent care or influence the patient's decision. In fact, H.B. 2749 contemplates that the patient has *already* made her decision, asking "which of the following reasons *was* the most important factor in such patient's decision." H.B. 2749 § 1(c) (emphasis added). All patients can ignore this question and proceed with their abortions unencumbered. H.B. 2749 § 1(c). Plaintiffs have no evidence showing that H.B. 2749 infringes autonomy. *See Hodes III*, 318 Kan. at 1008, 551 P.3d at 73.

ii. Plaintiffs voluntarily seek similar information.

Plaintiffs claim that H.B. 2749 should be deemed unconstitutional because it could "inflict psychological or emotional distress" upon Plaintiffs patients. Pls. Supp. Sec. Am. Pet. ¶ 134. This argument fails for a lack of evidence. Plaintiffs voluntarily collect most of the same information from their patients without any evidence of emotional harm or impairment of abortion rights. Fact Nos. 105-106. Plaintiffs' own conduct suggests that there are circumstances in which the information specified by H.B. 2749 could be collected without infringing upon their patients' abortion rights. And because collecting this information is rationally related to the State's legitimate interest in helping the State identify ways it can "promote[] or protect[] fetal life," Plaintiffs' facial challenge of H.B. 2749 on behalf of their patients must fail. *See Hodes I*, 309 Kan. at 678, 440 P.3d at 501.

iii. H.B. 2749 can be implemented in a constitutional manner.

Plaintiffs' challenges to H.B. 2749 fail because they cannot show there is no way to implement it constitutionally. H.B. 2749 instructs the Secretary of Health and Environment to "adopt rules and regulations to implement this section." H.B. 2749 § 1(i). But when Plaintiffs added their H.B. 2749 claims to this case, no such rules or regulations were in place. And they still have not been adopted today. Fact No. 7.

The yet-to-be-adopted rules and regulations matter. H.B. 2749 says that “each patient shall be asked, prior to the termination of such patient’s pregnancy, which of the following reasons was the most important factor in such patient’s decision to seek an abortion,” and requires reporting of other demographic information. H.B. 2749 § 1(c)-(e). But the patient may decline to answer. *Id.* And the bill does not specify *who* must ask the questions or *how* they must be asked.

It is Plaintiffs’ burden to prove that there is *no* way to implement H.B. 2749 in a constitutional manner, which at this merits stage distinguishes this issue from when the parties’ last addressed it. Plaintiffs cannot do so. The implementing rules and regulations might not require Plaintiffs or their patients to say anything. Textually, Plaintiffs could simply hand the patient a one-page form provided by the Department that contains the pertinent questions and a note saying that the patient need not respond. Or the implementing rules could allow for a purely voluntary electronic form, neutralizing Plaintiffs’ concerns about alleged lost resources and patient stigmatization. But to this day, neither the parties nor the Court know if these processes suffice because the rulemaking process is not complete. This Court should decline Plaintiffs’ “invitation to issue an advisory opinion on these issues.” *State of Kansas v. Soto*, 299 Kan. 102, 29, 322 P.3d 344, 352 (2014). Because this issue is not ripe, the Court lacks subject-matter jurisdiction over this claim. *Kan. Nat’l Educ. Ass’n v. State*, 305 Kan. 739, 748, 387 P.3d 795, 802 (2017).

D. Regulation of sex-specific procedures is not sex discrimination.

No Kansas or federal court has ever found that a statute regulating abortion constitutes sex discrimination. Despite this lack of authority, Plaintiffs assert two equal protection claims on behalf of their patients that the Statutes violate Kansas’s Equal Protection Clause. First, Plaintiffs claim the Statutes discriminate against

their patients “based on their exercise of the fundamental right to abortion.” Pls. Supp. Sec. Am. Pet. ¶ 149. Second, Plaintiffs claim the WRTKA and H.B. 2749 “single out women and people capable of becoming pregnant, and it perpetuates sex-based stereotypes.” Pls. Supp. Sec. Am. Pet. ¶¶ 151-52. Both claims fail.

“[T]he textual grounding of equal protection guarantees contained in the Bill of Rights of the Kansas Constitution is rooted in the language of section 2.” *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168, 180 (2022). Equal protection analyses “measure the validity of classifications created by state laws.” *Matter of A.B.*, 313 Kan. 135, 145, 484 P.3d 226, 234 (2021). It is not enough that a law implicate a fundamental right for equal protection purposes; it is also necessary that the statute being challenged actually “create [a] classification.” *See id.* (“It follows, then, that if K.S.A. 2020 Supp. 21-5507 does not make that distinction, the equal protection claim premised on an age classification must fail.”). “The first step of an equal protection analysis,” therefore, “is to determine the nature of the legislative classifications and whether the classifications result in arguably indistinguishable classes of individuals being treated differently.” *Miami Cnty. Bd. of Comm’rs v. Kanza Rail-Trails Conservancy, Inc.*, 292 Kan. 285, 315, 255 P.3d 1186, 1207 (2011).

Here, the Statutes regulate the conduct of abortion providers, not abortion patients. Accordingly, Plaintiffs’ equal protection claims fail. *See id.*

In the alternative, Plaintiffs’ equal protection claims fail because men and women are not similarly situated when it comes to abortion. It can hardly be denied that only women become pregnant. “[T]he equal protection guarantees found in section 2 [of the Kansas Constitution] are coextensive with the equal protection guarantees afforded under the Fourteenth Amendment to the United States Constitution.” *Rivera*, 315 Kan. at 894, 512 P.3d at 180. “Therefore, Kansas courts [are] guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal

Constitution when [they] are called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights.” *Id.* “[M]en and women are not similarly situated when it comes [to] pregnancy and abortion. Only women are capable of pregnancy; thus, only women can have an abortion. This is not sex-based discrimination against women any more than a law regulating unlicensed vasectomies or prostate treatments would be discriminatory against men.” *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132, 1198 (Idaho 2023); *Caban v. Mohammed*, 441 U.S. 380, 398 (1979) (Stewart, J., dissenting) (“When men and women are not in fact similarly situated in the area covered by the legislation in question, the Equal Protection Clause is not violated.”). The only way around this basic rule is if a plaintiff can show that the statute is a “mere pretext[] designed to effect an invidious discrimination against members of one sex or the other.” *See Dobbs*, 597 U.S. at 236. But ensuring informed consent before an abortion does not constitute “invidious[] discriminatory animus” as a matter of law. *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 273-74 (1993).

Plaintiffs hope to prove the existence of “invidious[] discriminatory animus” by asserting that the Statutes were designed to “perpetuates sex-based stereotypes that motherhood is the appropriate role for women and that women need paternalistic State intervention to guide their decision to continue or terminate a pregnancy,” and “that women need to justify their decision to terminate a pregnancy.” Pls. Supp. Sec. Am. Pet. ¶¶ 148-52. But Plaintiffs have failed to put forth admissible evidence demonstrating these allegations. Fact No. 45. Because Plaintiffs have failed to develop admissible evidence demonstrating the existence of “invidiously discriminatory animus” against women, their equal protection claims are subject to rational basis review and the presumption that the Statutes are constitutional. *Barrett ex rel. Barrett v. Unified Sch. Dist. No. 259*, 272 Kan. 250, 256, 32 P.3d 1156, 1162 (2001).

As explained in Sections VII, below, the Statutes satisfy rational basis scrutiny. Therefore, State Defendants should be granted judgment as a matter of law on Plaintiffs' equal protection claims.

II. The challenged laws do not infringe Plaintiffs' freedom of speech.

A. Informed consent laws are standard policy in Kansas.

Informed consent laws are a staple of the medical regulatory landscape, especially in fields rife with potential ethical concerns, such as human research subjects, *see* K.S.A. § 65-4974, fetal tissue donation, *see* K.S.A. § 65-67a07, and the distribution of psychotropic drugs. *See* K.A.R. 28-39-231.³ Abortion is no different. Abortion procedures have long been the subject of informed consent laws. *See, e.g.,*

³ The Kansas legislature regularly legislates informed-consent requirements beyond those imposed at common-law. *See* K.S.A. § 65-1,157a (requiring informed consent from the parents prior to screening an newborn infant for hearing loss); K.S.A. § 39-7,121g (requiring a parent to receive "informed consent indicating the risks and benefits of using banked donor human breast milk" before the use of the same); K.S.A. § 65-1,249 (requiring a parent's informed consent before permitting the collection of an umbilical cord, umbilical cord blood, amniotic fluid and placenta tissue for medical research); K.A.R. 30-60-76 (requiring informed consent from human research subjects); K.A.R. 129-5-88(b)(5) (excluding family planning services and materials from Medicaid programs unless informed consent is first procured); K.A.R. 100-29-19 (requiring that a physical therapist procure written, informed consent before performing dry needling); K.A.R. 102-1-10a (declaring it unprofessional conduct for a psychologist to provide clinical psychological services without first obtaining the patient's informed consent); K.A.R. 100-22-8a (prohibiting the administration of certain fat-loss drugs without first obtaining the informed consent of the patient, in writing); K.A.R. 100-72-3 (declaring it professional misconduct for a naturopathy practitioner to provide certain forms of treatment without first receiving the informed consent of the patient); K.A.R. 102-3-12a (declaring it unprofessional conduct for a counselor to electronically record sessions with a client, permit third-party observations of counseling activities, or releasing information to third parties without first receiving the patient's informed consent); K.A.R. 28-51-1111 (creating a patient "bill of rights" for in-home health care services, which includes a right to receive informed consent before receiving a treatment); K.A.R. 30-63-23 (requiring providers of community services to obtain informed consent prior to using medications or similar interventions to treat mental illness).

Casey, 505 U.S. at 852. Almost half of the States and Guam have enacted informed consent laws for abortion, the majority of which also include a waiting or notice period comparable to that found in the WRTKA.⁴ Although these laws require that physicians provide their patients with certain state-mandated disclosures, they have long been deemed constitutional because they are recognized as laws regulating professional *conduct*, even though they may, at times, incidentally sweep in speech pertinent to the regulated conduct. *See Casey*, 505 U.S. at 884 (finding “no constitutional infirmity in the requirement that the physician provide the [informed consent] information mandated by the State”).

Section 11 of the Bill of Rights of the Kansas Constitution provides that “all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights.” This guarantee is “generally considered coextensive” with the First Amendment to the United States Constitution. *State v. Russell*, 227 Kan. 897, 899, 610 P.2d 1122, 1126 (1980). This guarantee thus does not shield Plaintiffs from statutes governing the practice of medicine.

Here, the Statutes do not regulate Plaintiffs’ speech based on content or viewpoint; rather they regulate Plaintiffs’ “professional conduct ... [which] incidentally involves speech.”⁵ *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 768 (2018) (*NIFLA*) (citing *Casey*, 505 U.S. at 884). The Statutes, like the laws in *Casey*, merely “regulate the conduct of [Plaintiffs’] profession.” *Capital*

⁴ *See* Ala. Code § 26-23A-4; Ariz. Rev. Stat. § 36-2153; Ark. Code Ann. § 20-16-1703; Fla. Stat. § 390.0111; Ga. Code § 31-9A-3; Guam Code tit. 10 § 3218.1; Idaho Code § 18-609; Ind. Code § 16-34-2-1.1; Iowa Code Ann. § 146A.1; Ky. Rev. Stat. § 311.725; La. Stat. § 40:1061.17; Miss. Code § 41-41-33; Neb. Rev. Stat. § 28-327; N.C. Gen. Stat. § 90-21.82; N.D. Cent. Code § 14-02.1-03; Okla. Stat. tit. 63, § 1-738.2; 28 Pa. Code § 29.37; S.C. Code § 44-41-330; S.D. Codified Laws § 34-23A-10.1; Tenn. Code § 39-15-202; Tex. Health & Safety Code §§ 171.011, 171.012; Utah Code § 76-7-305; W. Va. Code § 16-2I-2; Wis. Stat. § 253.10.

⁵ This is particularly true in this instance, where many of the Statutes’ provisions do not even implicate speech of any kind.

Associated Industries, Inc. v. Stein, 922 F.3d 198, 207-08 (4th Cir. 2019) (using, as a specific example, informed consent for abortion procedures).

Kansas regulates professional conduct under the State's legitimate authority. Kansas "has a right to regulate, through its agencies, the practice of medicine." *Corder v. Kansas Bd. of Healing Arts*, 256 Kan. 638, 654, 889 P.2d 1127, 1137 (1994). "[T]he practice of the healing arts is a privilege[.]" and the State "has [the] right to regulate, through its agencies, the practice of medicine and this authority is broad in scope." *Id.*, 256 Kan. at 654, 663, 889 P.2d at 1137, 1142. It also has the right to "require[] that medical professionals alert patients to laws that affect medical choices." *Doe v. Rokita*, 54 F.4th 518, 521 (7th Cir. 2022).

The Court in *NIFLA* acknowledged that "drawing the line between speech and conduct can be difficult," but held that laws that "facilitate informed consent to a medical procedure" are conduct-based because they regulate speech "only 'as part of the practice of medicine, subject to reasonable licensing and regulation by the State.'" *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 428 (6th Cir. 2019) (citing *NIFLA*, 585 U.S. at 769-770). Three requirements must be met for a regulation to constitute an informed-consent requirement, and thus part of the medical "conduct:" (1) the regulation must be "tied to a procedure;" (2) the procedure must be "sought, offered, or performed;" and (3) the regulation must carry information about the "risks or benefits of those procedures." *NIFLA*, 585 U.S. at 768-770.

Here, there is no issue of material fact that the provisions of the Act (1) are tied to a procedure (abortion) (2) that Plaintiffs offer or perform, and (3) provide information about the "risks and benefits" of abortion. Fact Nos. 1-20. Plaintiffs admit that the mandated disclosures do not involve "their speech" and even inform their patients where they disagree with specific disclosures. Fact Nos. 70, 72. The State has a rational basis for imposing its "truthful and not misleading" disclosures,

which “further[] the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Casey*, 505 U.S. at 882.

For these reasons, Plaintiffs’ free speech claims must fail.

B. Mandated disclosures do not violate Plaintiffs’ rights.

Plaintiffs have claimed that a subset of the disclosures mandated by the WRTKA infringe their patients’ abortion rights because the information is false, inaccurate, or misleading. Specifically, Plaintiffs claim the following disclosures mandated by the WRTKA are inaccurate or misleading:

- That there is a “risk of premature birth in future pregnancies” following an abortion;
- That there is a “risk of breast cancer” associated with abortions;
- That “by no later than 20 weeks from fertilization, the unborn child as the physical structures necessary to experience pain”;
- That “a fetal heartbeat is ... a key medical indicator that an unborn child is likely to achieve the capacity for live birth”;
- “43.4% of the statements about embryonic and fetal development” included in the information promulgated by KDHE pursuant to the Material Promulgation Requirement; and
- That “abortion terminates the life of a ‘whole separate, unique, living human being.’”

Pls. Supp. Sec. Am. Pet. ¶¶ 70-74, 133.

Mandated disclosures do not usually implicate the right to terminate a pregnancy. *See Casey*, 505 U.S. at 882 (recognizing that the “giving of truthful, nonmisleading information about the nature of the procedure, [and] the attendant health risks” did not constitute a burden on a woman’s abortion rights). For a

mandated disclosure to violate the right to an abortion, it is not enough that the statute conflict with the “official positions” of certain interest groups like “[the A[merican] C[ollege of] O[bstetrics and] G[ynecology] and the American Public health Association.” *Beshear*, 920 F.3d at 438 (6th Cir. 2019). For “[i]f the validity of an informed-consent law depended on whether doctors agreed with the law—or whether the law required disclosures that, with no law, the doctor would disclose anyway—there would be no need for the law to supplement custom,” and States would be required to “surrender [their] authority to regulate informed consent to private parties.” *Id.* at 439. Accordingly, “the constitutionality of an abortion regulation is based on ... whether the mandated disclosures are truthful, non-misleading, and relevant to the medical procedure [] and not necessarily whether the law is consistent with medical-profession custom or views of certain medical groups.” *Id.*

A mandated disclosure is not false, misleading, or irrelevant simply because it wades into a question of medical or scientific uncertainty: “state and federal legislatures [have] wide discretion to pass legislation in areas where there is medical and scientific uncertainty.” *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007). *See also Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997) (finding that “disagreements [among psychiatric professionals] ... do not tie the State’s hands in setting the bounds of its civil commitment laws,” because “it is precisely where such disagreement exists that legislatures have been afforded the widest latitude in drafting such statutes”). Based on this precedent, the Eighth Circuit found that an informed consent statute that required abortion providers to inform their patients that getting an abortion carried an “‘increased risk’ of suicide” was constitutional and rejected Planned Parenthood’s argument that the disclosure was false because it lacked “certainty of causation.” *Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds*, 686 F.3d 889, 900 (8th Cir. 2012). That decision applies here.

The question here is not whether Plaintiffs can present evidence contradicting the disclosures contained in the WRTKA, but whether the research is so conclusively resolved that any state-mandated disclosure to the contrary is demonstrably false and misleading. The State Defendants have identified numerous qualified experts who have issued reports and testified in support of the specific disclosures which Plaintiffs claim are medically inaccurate and misleading. Fact No. 74. Because Plaintiffs cannot prove that the WRTKA's disclosures are medically inaccurate under the relevant legal standards, they cannot prove that their patients' abortion rights have been infringed by the disclosures.

C. H.B. 2749 can be implemented without any speech by Plaintiffs.

Plaintiffs' free speech claims against H.B. 2749 fail for two additional reasons. *First*, as explained above, Plaintiffs' challenge to H.B. 2749 is not ripe as it could be implemented without requiring any speech by Plaintiffs. And because Plaintiffs bring a facial challenge to H.B. 2749, they "must establish that no set of circumstances exists under which the [bill] would be valid." *Watson*, 273 Kan. at 435, 44 P.3d at 364. Plaintiffs brought this challenge before any implementing regulations for H.B. 2749 were even drafted. But the implementing regulations could provide that KDHE, rather than any Plaintiff, asks the questions.

Consistent with Dr. Nauser's testimony, Plaintiffs could even deliver a KDHE questionnaire with the physician's own disclaimer: "This is material from KDHE that I'm required to give you." Fact No. 70. Dr. Nauser has given such a disclaimer for WRTKA disclosures in the past: "We do not believe this is medically accurate. This is from the State of Kansas." Fact No. 70. Dr. Nauser confirmed that the WRTKA disclosures were not her speech, but rather the State of Kansas's message. Fact No. 71 (agreeing that "it was the State of Kansas talking through those disclosures"). The questionnaire could thus be administered in such a way

that no reasonable person could find that the questions were coming from the physician, rather than from the State of Kansas.

Second, to the extent H.B. 2749 could regulate speech, it only regulates speech adjacent to professional conduct. “States may regulate professional conduct, even though that conduct incidentally involves speech.” *NIFLA*, 585 U.S. at 768. Even if the implementing regulations had some minimal effect on Plaintiffs’ speech, “the freedom of speech is not inevitably without limitation.” *In re Comfort*, 284 Kan. 183, 202, 159 P.3d 1011, 1025 (2007). Professionals “trade certain aspects of their free speech rights for their licenses to practice.” *Id.*

Physicians licensed to practice in Kansas, including Plaintiffs’ doctors, are required by law to report various information to state officials, including suspected cases of infectious diseases, K.A.R. 28-1-2, gunshot wounds, K.S.A. § 21-6319, child abuse, K.S.A. § 38-2223, and violations of the standard of care. K.S.A. § 65-4923. Reporting information to the State is simply part of a physician’s duties as a license-holder. The only obligation H.B. 2749 imposes on Plaintiffs is more reporting, as to which they raise no constitutional challenge. Plaintiffs have not adduced any facts showing how a professional’s collection and reporting of data turns into speech. The Court should therefore grant summary judgment on Plaintiffs’ free speech challenge to HB. 2749.

III. H.B. 2264 is not void for vagueness.

Plaintiffs challenge H.B. 2264 as void for vagueness in violation of the Due Process Clause of the Kansas Constitution. This claim fails as a matter of law.

To determine if a statute is unconstitutionally vague, courts apply a two-step test. At step one, the Court asks whether “the statute . . . give[s] a person of ordinary intelligence a reasonable opportunity to know what conduct is [required].” *State v. Black 1999 Lexus ES300*, 45 Kan. App. 2d 168, 176, 244 P.3d 1274, 1280

(2011). At step two, the Court asks whether “the statute . . . prevent[s] arbitrary and discriminatory enforcement by providing explicit standards for its enforcement.” *Id.* “[T]he defect of an enactment’s vagueness can be ameliorated by a state court construction restricting the vague standards to constitutionally permissible bounds.” *In Int. of Brooks*, 228 Kan. 541, 545, 618 P.2d 814, 818 (1980). This is because under the doctrine of constitutional avoidance, courts must employ “a canon of statutory construction expressing a preference for construing a statute to avoid constitutional doubts if there is another reasonable way to do so” and must “refrain[] from deciding constitutional questions unless it is necessary to do so.” *Butler v. Shawnee Mission Sch. Dist. Bd. of Educ.*, 314 Kan. 553, 574, 502 P.3d 89, 102 (2022). When a statute is challenged as void for vagueness, the “statute’s constitutionality is presumed, and it is the court’s duty to uphold an attacked statute. If a reasonable way to construe the statute exists, th[e] court should construe it in that manner.” *Lexus ES300*, 45 Kan. App. 2d at 176, 244 P.3d at 1280 (internal citations omitted).

H.B. 2264 requires a physician performing medication abortion using mifepristone to “inform[] the woman, in writing ... and also either by telephone or in person, at least 24 hours prior to the medication abortion” that “information on reversing the effects of a medication abortion that uses mifepristone is available on the department of health and environment’s website ... *and other relevant telephone and internet resources* containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.” H.B. 2264 § 1(b)(1) (emphasis added). Plaintiffs only challenge the italicized language as unconstitutionally vague. Thus, even if Plaintiffs succeed on their vagueness claim, only that provision would be excised from the Amendment.

Plaintiffs argue that the phrase “*and other relevant telephone and internet resources*” is unconstitutionally vague because it “does not give fair warning

regarding its requirements and it does not adequately guard against arbitrary and unreasonable enforcement” in that the Amendment does not specify what “other relevant telephone and internet resources” they are required to provide to satisfy this requirement. Pls. Supp. Sec. Am. Pet. ¶ 154-55. The text refutes this argument. Plaintiffs’ allegation that *Plaintiffs* must “identify” the “information” and “relevant ... resources” is incorrect. H.B. 2264 specifically requires *KDHE* to identify and publish that information. *See* H.B. 2264 § 1(e) (“The website shall also include other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.”). Read as a whole, this language gives Plaintiffs “a reasonable opportunity to know” that they must provide their patients information necessary to access the *KDHE* website, as well as the other “telephone and internet resources” that will be identified by *KDHE* on its website when the Court’s temporary injunction is lifted, and the State is allowed to enforce the law. H.B. 2264 also clearly provides that if abortion providers fail to comply with its terms, they may be subject to civil action or criminal penalties, thereby “providing [Plaintiffs] [with] explicit standards for its enforcement.” *Lexus ES300*, 45 Kan. App. 2d at 176, 244 P.3d at 1280.⁶

⁶ It is not clear if Plaintiffs challenge H.B. 2264 on any grounds other than vagueness. If they are, such claims would fail. State-mandated informed consent disclosures like H.B. 2264 only infringe a patient’s abortion rights if the material is false, misleading, or totally irrelevant. *See* Section II(B), above. The question is not whether Plaintiffs can present evidence contradicting the disclosures contained in H.B. 2264 but whether the research is so conclusively resolved that any state-mandated disclosure to the contrary is demonstrably false and misleading. *See Rounds*, 686 F.3d at 900 (rejecting Planned Parenthood’s attempt to “impos[e] a new, stricter definition of medical risk ... simply because the medical procedure at issue [was] abortion.”). This is not the case here. The State Defendants’ experts have offered extensive testimony regarding the efficacy of the abortion bill reversal protocol (“APR”) disclosed in H.B. 2264. In response, Plaintiffs’ experts have simply argued that there is currently “insufficient evidence” to support the procedure. Pls.

IV. Plaintiffs are not entitled to an overbroad injunction.

Even if Plaintiffs had not failed to show harm to a single clinic or patient, such a limited showing would not be sufficient to grant them the relief that they seek: an injunction preventing Defendants from enforcing the WRTKA and H.B. 2749 against *all* clinics on behalf of *all* women in Kansas. *See* Pls. Supp. Sec. Am. Pet. at 46. That broad relief can only result from a facial challenge—“an attack on a statute itself as opposed to a particular application.” *Los Angeles v. Patel*, 576 U.S. 409, 415 (2015). A facial challenge is “the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *Watson*, 273 Kan. at 435, 44 P.3d at 364. If Plaintiffs cannot show that the statutes are unconstitutional in all of their applications, they cannot obtain an overbroad injunction to the same effect.

“An injunction is an equitable remedy governed by the principles of equity.” *State ex rel. v. Stovall v. Martinez*, 27 Kan. App. 2d 9, 12, 996 P.2d 371, 375 (2000). Although “the line between facial and as-applied relief is [] fluid,” *United States v. Supreme Court of New Mexico*, 839 F.3d 888, 908 (10th Cir. 2016), injunctive relief “must be tailored to remedy the specific harm alleged.” *Hecox v. Little*, 104 F.4th 1061, 1089–90 (9th Cir. 2024). Such relief “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 765 (1994). Courts should not “provide relief to nonparties when a narrower remedy will fully protect the litigants.” *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 478 (1995); *see also Trump v. Hawaii*, 585 U.S. 667, 718 (2018) (Thomas, J., concurring) (“[A]s a general rule, American courts of equity did not provide relief beyond the parties to the case.”); *Labrador v.*

Supp. Sec. Am. Pet. ¶ 103. The law does not require that APR’s efficacy be conclusively resolved to be deemed constitutional. *Rounds*, 686 F.3d at 900.

Poe by & through Poe, 144 S. Ct. 921 (2024) (vacating lower court’s injunction of Idaho abortion law to the extent the injunction applied to non-parties).

Plaintiffs only have evidence regarding the effect of the challenged statutes on their own clinics and patients. They have no evidence that other abortion providers or patients in Kansas would be affected in a similar way, so they cannot establish that “no set of circumstances exists” under which the Statutes would be valid. *Watson*, 273 Kan. at 435, 44 P.3d at 364. Nor would a universal injunction against all applications of the WRTKA and H.B. 2749 be “necessary” to provide Plaintiffs with “complete relief.” *Madsen*, 512 U.S. at 765 (citation omitted). At best, their alleged harms are limited to their own clinics and patients. The Court should limit injunctive relief accordingly.

V. Plaintiffs’ claims are barred by the equitable doctrine of laches.

Laches is an equitable defense that precludes claims that a party has unreasonably delayed in asserting, to the prejudice of the opposing party. *Matter of Marriage of Doud & Modrcin*, 59 Kan. App. 2d 244, 253, 480 P.3d 800, 807 (2020). “Equity aids the vigilant, not those who slumber on their rights.” *N.P. Dodge Corp. v. Calderwood*, 151 Kan. 978, 101 P.2d 883, 885 (1940). The doctrine of laches consists of two elements: (1) unreasonable delay by the party against whom the defense is asserted and (2) prejudice to the party asserting the defense. *State ex rel. SRS v. Cleland*, 42 Kan. App. 2d 482, 493, 213 P.3d 1091, 1098 (2009).

A. Plaintiffs unreasonably delayed in bringing their challenge.

The WRTKA was enacted in 1997, and Plaintiffs have operated under its provisions continuously for more than 25 years. Fact Nos. 1-11. The statute was amended multiple times—in 2009, 2011, 2013, 2014, and 2017—yet Plaintiffs never challenged the core provisions of the Act until this lawsuit. Fact Nos. 21-41. This delay is particularly troubling because Plaintiffs have demonstrated their

willingness to challenge Kansas abortion law, including specific aspects of the WRTKA, when they disagreed with them. Not only has Hodes & Nauser challenged three other Kansas abortion laws, but, in 2013, Planned Parenthood filed a lawsuit challenging three specific WRTKA provisions added by recent amendments. Fact Nos. 26-38. But, notably, Planned Parenthood did not challenge the fundamental informed consent framework that had been in place since 1997. Fact Nos. 26-38. In fact, Planned Parenthood specifically represented to the court that it “compl[ie]d with all statutory requirements relating to informed consent for abortion” that were not the subject of that challenge. Fact No. 29. Plaintiffs requested that the court “preserve the status quo” with respect to the rest of the WRTKA. Fact No. 33. In the nearly three decades that Plaintiffs waited to challenge the WRTKA, the statutory regime became deeply embedded in Kansas’s healthcare framework.

Plaintiffs cannot credibly claim that the law has suddenly become unconstitutional after nearly 30 years of operation. Their current challenge appears to be an opportunistic attempt to capitalize on recent decisions rather than a response to any actual change in the law’s effect. If the WRTKA truly violated the fundamental rights of women seeking abortions, Plaintiffs’ delay in challenging it would itself constitute a severe disservice to those patients.

B. The State would be prejudiced by a belated challenge.

Kansas would suffer significant prejudice if Plaintiffs were permitted to challenge the WRTKA at this late date. The State has relied on the validity of the WRTKA for decades, developing administrative infrastructure, training healthcare professionals, and allocating resources based on the statute’s requirements. Since the WRTKA’s enactment, the Kansas Department of Health and Environment has expended substantial resources to promulgate and distribute the educational materials required by the statute. *See* Fact No. 15. Invalidating these longstanding

provisions now would disrupt settled expectations and waste the considerable resources the State has invested.

Moreover, the passage of time has made it more difficult for the State to defend the WRTKA's provisions. Many of the legislators who voted for the original statute and its amendments are no longer in office. Documents reflecting the legislature's deliberations and the factual basis for its policy choices are impossible to locate after so many years. Plaintiffs refuse to produce any evidence of harm older than five years. Fact No. 6. The State's ability to present evidence regarding the law's original purpose and desired effects was compromised by Plaintiffs' delay.

The prejudice to the State is magnified by Plaintiffs' prior representations concerning the WRTKA. As noted above, Plaintiffs previously acknowledged compliance with the WRTKA's core provisions and even advocated for preserving the status quo with respect to those requirements. Fact No. 33. The State was entitled to rely on these representations in maintaining the WRTKA's framework. To allow Plaintiffs to now reverse course and challenge provisions they have long accepted would unfairly prejudice the State.

Courts have applied laches to constitutional challenges in similar circumstances. In *Perry v. Judd*, 471 F. App'x 219, 224 (4th Cir. 2012), the court applied laches to bar a constitutional challenge to Virginia's ballot access requirements, noting that the plaintiffs "displayed an unreasonable and inexcusable lack of diligence" in challenging the various provisions of Virginia's statutory ballot access scheme, which resulted in undue prejudice to the defendants. Similarly, in *Arizona Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922-23 (D. Ariz. 2016), the court applied laches to bar a constitutional challenge to Arizona's ballot access laws where the plaintiffs delayed two years in bringing their claim. Here, Plaintiffs' delay of nearly 30 years is far more egregious, and Plaintiffs have introduced no

evidence showing an absence of prejudice to the State. The Court should grant summary judgment to State Defendants on this independent ground.

VI. Plaintiffs’ decades-long delay negates irreparable harm.

Plaintiffs also cannot establish the irreparable harm necessary to justify the extraordinary remedy of a permanent injunction. To obtain a permanent injunction, Plaintiffs must demonstrate “irreparable harm unless the injunction is issued.”

Prairie Band Potawatomi Nation v. Wagon, 476 F.3d 818, 822 (10th Cir. 2007).

Plaintiffs’ extended delay in challenging the WRTKA undermines their claim of irreparable harm. Courts consistently hold that “delay in seeking preliminary relief cuts against finding irreparable injury.” *Kan. Health Care Ass’n, Inc. v. Kan. Dep’t of Soc. & Rehab. Servs.*, 31 F.3d 1536, 1543-44 (10th Cir. 1994). An “extraordinary delay in seeking” injunctive relief demonstrates a lack of urgency and, thus, a lack of irreparable harm. *Wireless Agents, L.L.C. v. T-Mobile USA, Inc.*, 2006 WL 1540587, at *3-5 (N.D. Tex. June 6, 2006).

Plaintiffs allege they have complied with the WRTKA since 1997. Fact No. 4. If the WRTKA truly caused irreparable harm to Plaintiffs or their patients, Plaintiffs would not have waited nearly 30 years to challenge it. Nor would Plaintiffs continue to adhere to many of the WRTKA’s provisions—such as the private meeting requirement, a version of the coercion notice requirement, the ultrasound requirement, and the pre-payment prohibition— after this Court granted a temporary injunction. Fact Nos. 84, 87, 89, 91. Plaintiffs’ voluntary compliance shows these provisions are not harmful, let alone irreparably so.

VII. The WRTKA is rationally related to legitimate state interests.

When a statute neither implicates nor infringes a fundamental right, courts apply the highly deferential rational basis standard. Under this “very lenient standard,” a court must uphold a statute if it perceives any state of facts rationally

related to a legitimate government interest. *State v. Genson*, 59 Kan. App. 2d 190, 212, 481 P.3d 137, 154 (2020), *aff'd*, 316 Kan. 130, 513 P.3d 1192 (2022). The government “has no obligation to produce evidence or empirical data,” and the challenger must “negative every conceivable basis” to uphold the statute. *Id.*

The Kansas Supreme Court has recognized that interests in “promoting or protecting fetal life and patient safety” may be compelling. *Hodes I*, 309 Kan. at 678. States also have legitimate interests in ensuring informed consent and providing information that might make childbirth “more attractive than it might otherwise appear.” *Casey*, 505 U.S. at 967 (Blackmun, J., concurring). Each WRTKA provision is rationally related to such interests, which defeat Plaintiffs’ claims:

1. **Format requirements** (12-point Times New Roman font on white paper) ensure legibility and comprehension of critical information.
2. **Physician disclosure requirements** enable patients to evaluate provider qualifications and experience.
3. **Procedure and risk disclosures** ensure patients understand “the nature of the procedure” and associated health risks. *Casey*, 505 U.S. at 882.
4. **Fetal development information** advances the State’s interest in “respect for and preservation of prenatal life.” *Dobbs*, 597 U.S. at 301.
5. **Resource disclosures** inform women of “assistance that might make the alternative of normal childbirth more attractive.” *Casey*, 505 U.S. at 967.
6. **Maternal health risk information** apprises women of “health risks of ... childbirth.” *Id.* at 882.
7. **Consent withdrawal notices** protect “the vulnerable from coercion and abuse.” *Washington v. Glucksberg*, 521 U.S. 702, 747 (1997) (Stevens, J., concurring).

8. **24-hour notice and 30-minute waiting periods** are “reasonable measure[s] to implement the State’s interest in protecting the life of the unborn.” *Casey*, 505 U.S. at 885.
9. **Pre-payment prohibition** ensures women are not financially committed before the waiting period expires, protecting “the vulnerable from coercion and abuse.” *Glucksberg*, 521 U.S. at 747 (Stevens, J., concurring).
10. **Ultrasound and heart monitor requirements** allow patients to view ultrasound images and hear fetal heartbeats, furthering the State’s interest in “respect for and preservation of prenatal life.” *Dobbs*, 597 U.S. at 301.
11. **Coercion notice requirement** mandates posting of notices that coerced abortions are illegal, directly protecting “the vulnerable from coercion and abuse.” *Glucksberg*, 521 U.S. at 747 (Stevens, J., concurring).
12. **Website requirement** ensures online access to informed consent materials, supporting the State’s interest in fully informed decision-making.
13. **Material promulgation requirement** directs KDHE to publish and distribute informational materials, ensuring widespread availability of information necessary for informed decisions.
14. **Medical emergency requirement** ensures that, even in emergencies, physicians disclose reasons for necessary abortions when possible, supporting informed decision-making.
15. **Unprofessional conduct designation** enforces compliance with the WRTKA, furthering the State’s interest in “the preservation of the integrity of the medical profession.” *Dobbs*, 597 U.S. at 301.

Because each provision is rationally related to legitimate state interests, the State Defendants are entitled to judgment as a matter of law.

CONCLUSION

This Court should grant summary judgment to State Defendants.

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CERTIFICATE OF SERVICE

I certify that on this 21st day of March, 2025, the above and foregoing were electronically filed with the Clerk of the Court using the Court's Electronic Filing System, which will send notice of electronic filing to all counsel of record.

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EXHIBIT A

HOUSE Substitute for SENATE BILL No. 238

AN ACT concerning abortion; regarding the woman's right-to-know act; amending K.S.A. 65-6709 and 65-6710 and repealing the existing sections.

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

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

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

(1) The name of the physician who will perform the abortion;
(2) a description of the proposed abortion method;
(3) a description of risks related to the proposed abortion method, including risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the fetus at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) ~~the fetus is affected by a severe or life-threatening deformity or abnormality that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.~~" If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

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

(6) ~~the contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services;~~

~~(6)~~ (7) the medical risks associated with carrying a fetus to term; and
~~(7)~~ (8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

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

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

(2) ~~the printed informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the fetus and, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;~~

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

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

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

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

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent.

It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease.

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

(1) For purposes of this section, the term “medically challenging pregnancy” means a pregnancy where the fetus is diagnosed as having: (1) A severe anomaly; or (2) an illness, disease or defect which is invariably fatal.

Sec. 2. K.S.A. 65-6710 is hereby amended to read as follows: 65-6710. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible ~~printed~~ *informational* materials:

(1) Geographically indexed *printed* materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, *a list of providers of free ultrasound services and adoption agencies*. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

“Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources available to post-partum mothers. The law requires that your physician or the physician’s agent provide the enclosed information.”

(2) *Printed* materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of a fetus at two-week gestational increments, and any relevant information on the possibility of the fetus’ survival. Any such pictures or drawings shall contain the dimensions of the fetus and shall be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the fetus at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying a fetus to term.

(3) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 65-6709, and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman’s-right-to-know act.

(4) *A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images, using the best available ultrasound technology, of a fetus at two week gestational increments.*

(b) The *print* materials required under this section shall be printed in a typeface large enough to be clearly legible. The *informational video* shall be published in digital video disc format. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

Sec. 3. K.S.A. 65-6709 and 65-6710 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

EXHIBIT B

HOUSE BILL No. 2035

AN ACT concerning abortion; regarding certain prohibitions on late-term and partial birth abortion; amending K.S.A. 65-445, 65-6701, 65-6703, 65-6705 and 65-6721 and K.S.A. 2010 Supp. 38-2223, 65-6709 and 65-6710 and repealing the existing sections; also repealing K.S.A. 65-6713.

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

Section 1. K.S.A. 2010 Supp. 38-2223 is hereby amended to read as follows: 38-2223. (a) *Persons making reports.* (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);

(A) The following persons providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief administrative officers of medical care facilities;

(B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

(C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; ~~and~~

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers appointed under K.S.A. 23-1001 et seq., and amendments thereto, and mediators appointed under K.S.A. 23-602, and amendments thereto; *and*

(E) *any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.*

(2) In addition to the reports required under subsection (a)(1), any person who has reason to suspect that a child may be a child in need of care may report the matter as provided in subsection (b) and (c).

(b) *Form of report.* (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

(2) When reporting a suspicion that a child may be in need of care, the reporter shall disclose protected health information freely and cooperate fully with the secretary and law enforcement throughout the investigation and any subsequent legal process.

(c) *To whom made.* Reports made pursuant to this section shall be made to the secretary, except as follows:

(1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to K.S.A. 2010 Supp. 38-2226, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.

(2) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(d) *Death of child.* Any person who is required by this section to report

a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) *Violations.* (1) Willful and knowing failure to make a report required by this section is a class B misdemeanor. It is not a defense that another mandatory reporter made a report.

(2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.

(3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.

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

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

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

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under *subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721*, and amendments thereto, if applicable to the pregnancy terminated, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated. *Each report required by subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721, and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition which necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.*

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general *or any district or county attorney in this state* upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts, ~~or~~ the attorney general *or any district or county attorney* pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any per-

son licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

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

(f) *The annual public report on abortions performed in Kansas issued by the secretary of health and environment shall contain the information required to be reported by this section to the extent such information is not deemed confidential pursuant to this section. The secretary of health and environment shall adopt rules and regulations to implement this section. Such rules and regulations shall prescribe, in detail, the information required to be kept by the physicians and hospitals and the information required in the reports which must be submitted to the secretary.*

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

Sec. 3. K.S.A. 65-6701 is hereby amended to read as follows: 65-6701. As used in this act:

(a) ~~“Abortion” means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or (2) disposition of the product of fertilization prior to implantation.~~ *the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.*

(b) “Counselor” means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master’s or doctor’s degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) a licensed physician assistant; or (9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) “Department” means the department of health and environment.

(d) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(e) “Medical emergency” means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(f) “Minor” means a person less than 18 years of age.

(g) “Physician” means a person licensed to practice medicine and surgery in this state.

(h) “Pregnant” or “pregnancy” means that female reproductive condition of having ~~a fetus~~ *an unborn child* in the mother’s body.

(i) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

(j) “Unemancipated minor” means any minor who has never been: (1)

Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(k) ~~“Viable” means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means.~~ *that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.*

Sec. 4. K.S.A. 65-6703 is hereby amended to read as follows: 65-6703.

(a) No person shall perform or induce an abortion when the ~~fetus unborn child~~ is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians ~~determine~~ *provide a written determination, based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that:* (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician's written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. Such determination shall specify:

(1) If the unborn child was determined to be nonviable and the medical basis of such determination;

(2) if the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or

(3) if a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would constitute a substantial and irreversible impairment of a major bodily function of the pregnant woman.

~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the ~~fetus unborn child~~ according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination. *The medical basis for the determination of the gestational age of the unborn child shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.*

(2) If the physician determines the gestational age of the ~~fetus unborn child~~ is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the ~~fetus unborn child~~ is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the ~~fetus unborn child~~ and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of a ~~fetus~~ *an unborn child* is 22 or more weeks, and determines that the ~~fetus~~ *unborn child* is not viable and performs an abortion on the woman, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a ~~fetus~~ *an unborn child* is 22 or more weeks, and determines that the ~~fetus~~ *unborn child* is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, *the medical basis* and the reasons for such determinations ~~and the basis~~, *including the specific medical diagnosis* for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, *the medical basis* and the reasons for such determinations ~~and the basis~~, *including the specific medical diagnosis* for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

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

(d) *The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:*

(1) *A detailed list of the information that must be kept by a physician under paragraphs (1) and (2) of subsection (c);*

(2) *the contents of the written reports required under paragraphs (3) and (4) of subsection (c); and*

(3) *detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.*

~~(e)~~ (e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

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

(g) (1) *A woman upon whom an abortion is performed in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the*

woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

(C) reasonable attorney fees.

(h) The prosecution of violations of this section may be brought by the attorney general or by the district attorney or county attorney for the county where any violation of this section is alleged to have occurred.

(i) Nothing in this section shall be construed to restrict the authority of the board of healing arts to engage in a disciplinary action.

~~(e) As used in this section, "viable" means that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.~~

~~(f)~~ (j) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

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

Sec. 5. K.S.A. 65-6705 is hereby amended to read as follows: 65-6705.

~~(a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of K.S.A. 65-6704, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704 shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the application. Except in the case of a medical emergency or as otherwise provided in this section, no person shall perform an abortion upon an unemancipated minor, unless the person first obtains the notarized written consent of the minor and both parents or the legal guardian of the minor.~~

~~(1) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.~~

~~(2) If the minor's parents are married and one parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.~~

~~(3) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father, stepfather or legal guardian, then the written consent of the minor's mother shall be sufficient. Notice of such circumstances shall be reported to the proper authorities as provided in K.S.A. 2010 Supp. 38-2223, and amendments thereto.~~

(b) After receiving counseling as provided by subsection (a) of K.S.A. 65-6704, and amendments thereto, the minor may object to the written consent requirement set forth in subsection (a). If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the written consent requirement. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704, and amendments thereto, shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the petition. The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

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

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

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

(1) Granting the minor's application for waiver of ~~notice consent~~ pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without ~~notice to a person~~ *the consent of the individuals* specified in subsection (a);

(2) granting the minor's application for waiver of *consent* if the court finds that the minor is immature but that ~~notification of a person~~ *consent of the individuals* specified in subsection (a) would not be in the minor's best interest; or

(3) denying the application if the court finds that the minor is immature and that waiver of ~~notification of a person~~ *the consent of the individuals* specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No ~~notice consent~~ shall be required under this section if:

~~(A) The pregnant minor declares that the father of the fetus is one of the persons to whom notice may be given under this section;~~

~~(B) in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion; or~~

~~(C) the person or persons who are entitled to notice have signed a written, notarized waiver of notice which is placed in the minor's medical record.~~

(2) ~~A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the exception of subsection (j)(1)(B) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.~~

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the

court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

(m) Prior to conducting proceedings under this section, the court may require the minor to participate in an evaluation session with a psychiatrist, licensed psychologist or licensed clinical social worker. Such evaluation session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and materials referred to in K.S.A. 65-6708 et seq., and amendments thereto, in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure or extortion by any other persons. The results of such evaluation shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to or at the proceedings initiated pursuant to this section.

(n) In determining if a minor is mature and well-enough informed to make the abortion decision without parental consent, the court shall take into account the minor's experience level, perspective and judgment. In assessing the minor's experience level, the court shall consider, along with any other relevant factors, the minor's age, experience working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the minor's perspective, the court shall consider, along with any other relevant factors, what steps the minor has taken to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the minor's judgment, the court shall consider, along with any other relevant factors, her conduct since learning of her pregnancy and her intellectual ability to understand her options and to make informed decisions.

(o) The judicial record of any court proceedings initiated pursuant to this section shall upon final determination by the court be compiled by the court. One copy of the judicial record shall be given to the minor or an adult chosen by the minor to bring the initial petition under this section. A second copy of the judicial record shall be sent by the court to the abortion provider who performed or will perform the abortion for inclusion in the minor's medical records and shall be maintained by the abortion provider for at least 10 years.

(p) The chief judge of each judicial district shall send annual reports to the department of health and environment disclosing in a nonidentifying manner:

(1) The number of minors seeking a bypass of the parental consent requirements through court proceedings under this section;

(2) the number of petitions granted;

(3) the reasons for granting such petitions;

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

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

(6) the gestational age of the unborn child if the petition is granted.

(o) (1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

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

(D) reasonable attorney fees.

(q) In the course of a judicial hearing to waive parental consent, if the court has reason to suspect that a minor has been injured as a result of

physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection (c) of K.S.A. 2010 Supp. 38-2223, and amendments thereto. In the course of reporting suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.

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

Sec. 6. K.S.A. 2010 Supp. 65-6709 is hereby amended to read as follows: 65-6709. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

- (1) The name of the physician who will perform the abortion;
- (2) a description of the proposed abortion method;
- (3) a description of risks related to the proposed abortion method, including risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
- (4) the probable gestational age of the ~~fetus~~ *unborn child* at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the ~~fetus~~ *unborn child* is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) ~~that~~ a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
- (5) the probable anatomical and physiological characteristics of the ~~fetus~~ *unborn child* at the time the abortion is to be performed;
- (6) the contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services;
- (7) the medical risks associated with carrying a ~~fetus~~ *an unborn child* to term; and
- (8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

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

- (1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;
- (2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the ~~fetus~~ *unborn child*, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;
- (3) the father of the ~~fetus~~ *unborn child* is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted; ~~and~~
- (4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled; *and*
- (5) *the abortion will terminate the life of a whole, separate, unique, living human being.*

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

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

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) For purposes of this section:

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

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

Sec. 7. K.S.A. 2010 Supp. 65-6710 is hereby amended to read as follows: 65-6710. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible informational materials:

(1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, a list of providers of free ultrasound services and adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free ~~24-hour-a-day~~ 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

“Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources available to post-partum mothers. The law requires that your physician or the physician’s agent provide the enclosed information.”

(2) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of a fetus an unborn child at two-week gestational increments, and any relevant information on the possibility of the fetus unborn child’s survival. Any such pictures or drawings shall contain the dimensions of the fetus unborn child and shall be realistic. *The material shall include the statement that abortion terminates the life of a whole, separate, unique, living human being.* The materials shall be objective, nonjudgmental and designed to convey only accu-

rate scientific information about the ~~fetus~~ *unborn child* at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying a ~~fetus~~ *an unborn child* to term.

(3) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 65-6709, and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman's-right-to-know act.

(4) A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images, using the best available ultrasound technology, of a ~~fetus~~ *an unborn child* at two week gestational increments.

(b) The print materials required under this section shall be printed in a typeface large enough to be clearly legible. The informational video shall be published in digital video disc format. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

Sec. 8. K.S.A. 65-6721 is hereby amended to read as follows: 65-6721.

(a) No person shall perform or induce a partial birth abortion on a ~~viable fetus an unborn child~~ unless ~~such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the pregnant woman.~~ *such person is a physician and has a documented referral from another physician who is licensed to practice in this state, and who is not legally or financially affiliated with the physician performing or inducing the abortion and both physicians provide a written determination, based upon a medical judgment that would be made by a reasonably prudent physician, knowledgeable in the field and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that the partial birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.*

(b) As used in this section:

(1) ~~“partial birth abortion” means an abortion procedure which includes the deliberate and intentional evacuation of all or a part of the intracranial contents of a viable fetus prior to removal of such otherwise intact fetus from the body of the pregnant woman.~~

(2) ~~“Partial birth abortion” shall not include the: (A) Suction curettage abortion procedure; (B) suction aspiration abortion procedure; or (C) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the pregnant woman.~~ *in which the person performing the abortion deliberately and intentionally vaginally delivers a living unborn child until, in the case of a head-first presentation, the entire head of the unborn child is outside the body of the mother, or, in the case of a breech presentation, any part of the trunk of the unborn child past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living unborn child, and performs the overt act, other than completion of delivery, that kills the partially delivered living unborn child.*

(c) (1) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination, *the medical basis, including the specific medical diagnosis and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report* ~~the reasons for~~ *such determination, the*

medical basis, including the specific medical diagnosis, and the reasons for such determination in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than ~~five~~ 10 years.

(2) The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:

(A) A detailed list of the contents of the written reports required under paragraph (1) of this subsection; and

(B) detailed information that must be provided by a physician to insure that the specific medical basis and clinical diagnosis regarding the woman is reported.

(d) (1) The father, if married to the woman at the time of the abortion, and, if the woman has not attained the age of 18 years at the time of the abortion, the parents or custodial guardian of the woman, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

(C) reasonable attorney fees.

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

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

~~(f)~~ (g) Upon conviction of a violation of this section, a person shall be guilty of a severity level ~~40~~ 8 person felony.

Sec. 9. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and 65-6721 and K.S.A. 2010 Supp. 38-2223, 65-6709 and 65-6710 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

EXHIBIT C

HOUSE BILL No. 2253

AN ACT concerning abortion; relating to the funding of abortion services; relating to prenatally and postnatally diagnosed conditions; relating to restrictions on late-term abortions; relating to the woman's-right-to-know act; amending K.S.A. 2012 Supp. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 76-3308, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 and repealing the existing sections.

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

New Section 1. As used in sections 1 through 8, and amendments thereto:

(a) "Abortion" has the same meaning as such term is defined in K.S.A. 65-6701, and amendments thereto.

(b) "Health benefit plan" means any hospital or medical expense policy, health, hospital or medical services corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by any employer or any certificate issued under any such policy, contract or plan.

(c) "Health care entity" means an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization or any other health care facility or organization.

(d) "School district" means any public school district organized under the laws of this state.

(e) "State agency" has the same meaning as such term is defined in K.S.A. 75-3701, and amendments thereto.

New Sec. 2. (a) The legislature hereby finds and declares the following:

(1) The life of each human being begins at fertilization;

(2) unborn children have interests in life, health and well-being that should be protected; and

(3) the parents of unborn children have protectable interests in the life, health and well-being of the unborn children of such parents.

(b) On and after July 1, 2013, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States supreme court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes Annotated.

(c) As used in this section:

(1) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(2) "Unborn children" or "unborn child" shall include all unborn children or the offspring of human beings from the moment of fertilization until birth at every stage of biological development.

(d) Nothing in this section shall be construed as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

New Sec. 3. Except to the extent required by federal law:

(a) No moneys appropriated from the state general fund or from any special revenue fund shall be expended for any abortion;

(b) no tax credit shall be allowed against any income tax, premium or privilege tax liability and no exemption shall be granted from sales or compensating use tax for that portion of such amounts paid or incurred for an abortion, or that portion of such amounts paid or incurred for a health benefit plan, including premium assistance, for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto;

(c) in the case of any tax-preferred trust or account, the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary; and

(d) no health care services provided by any state agency, or any employee of a state agency while acting within the scope of such employee's employment, shall include abortion, nor shall money appropriated from the state general fund or from any special revenue fund be used to pay for the lease or operation of any facility in which abortions are performed.

New Sec. 4. No school district, employee or agent thereof, or educational service provider contracting with such school district shall provide abortion services. No school district shall permit any person or entity

to offer, sponsor or otherwise furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases if such person or entity is an abortion services provider, or an employee, agent or volunteer of an abortion services provider.

New Sec. 5. Nothing in sections 1 through 8, and amendments thereto, shall repeal, amend or have any effect on any other state law to the extent such law imposes any limitation on the use of funds for abortion, more restrictive than the limitations set forth in sections 1 through 8, and amendments thereto.

New Sec. 6. Nothing in sections 1 through 8, and amendments thereto, shall be construed:

(a) To require any state agency or municipality to provide or pay for any abortion; or

(b) as creating or recognizing a right to an abortion.

New Sec. 7. No state agency shall discriminate against any individual or institutional health care entity on the basis that such health care entity does not provide, pay for or refer for abortions.

New Sec. 8. The limitations set forth in sections 1 through 8, and amendments thereto, shall not apply to an abortion which is necessary to preserve the life of the pregnant woman.

New Sec. 9. (a) The secretary of the department of health and environment may authorize and oversee certain activities, including the awarding of grants, contracts or cooperative agreements to eligible entities to:

(1) Collect, synthesize and disseminate current evidence-based information relating to Down syndrome or other prenatally or postnatally diagnosed conditions; and

(2) coordinate the provision of, and access to, new or existing supportive services for women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child, including, but not limited to:

(A) The establishment of a resource telephone hotline or website accessible to women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child;

(B) the development of outreach programs to new and expecting parents to provide them with up-to-date information on the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes;

(C) the development of local peer support programs to effectively serve women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child;

(D) the establishment of a network of local registries of families willing to adopt newborns with Down syndrome or other prenatally or postnatally diagnosed conditions, and links to adoption agencies willing to place babies with Down syndrome or other prenatally or postnatally diagnosed conditions with families willing to adopt; and

(E) the establishment of awareness and education programs for health care providers who provide, interpret or inform parents of the results of prenatal tests for Down syndrome or other prenatally or postnatally diagnosed conditions to patients.

(b) A grantee under this section shall make the following available to health care providers of parents who receive a prenatal or postnatal diagnosis for their child:

(1) Up-to-date, evidence-based, written information concerning the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes;

(2) contact information regarding support services, including information hotlines and websites specific to Down syndrome or other prenatally or postnatally diagnosed conditions, resource centers or clearinghouses, local peer support groups and other education and support programs.

(c) Information provided under this subsection shall be culturally and linguistically appropriate as needed by women and the spouses of such women who receive a positive diagnosis for Down syndrome or other

prenatally or postnatally diagnosed conditions for their child, and approved by the secretary.

(d) In distributing funds under this section, the secretary shall place an emphasis on funding partnerships between health care professional groups and disability advocacy organizations.

(e) On or before January 12, 2015, the secretary shall prepare and submit a report to the governor and the legislature on the grants, contracts and cooperative agreements made under this section and the effectiveness of the programs supported by such grants, contracts and cooperative agreements.

(f) As used in this section:

(1) “Down syndrome” means a chromosomal disorder caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21.

(2) “Eligible entity” means the state, or any political subdivision thereof, or any other entity with appropriate expertise in prenatally and postnatally diagnosed conditions, as determined by the secretary.

(3) “Health care provider” shall have the same meaning as that term is defined in K.S.A. 40-3401, and amendments thereto.

(4) “Postnatally diagnosed condition” means any health condition identified during the 12-month period beginning at birth.

(5) “Prenatally diagnosed condition” means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.

(6) “Prenatal test” means diagnostic or screening tests offered to pregnant women seeking routine prenatal care that are administered on a required or recommended basis by a health care provider based on medical history, family background, ethnic background, previous test results or other risk factors.

(7) “Secretary” means the secretary of the department of health and environment.

New Sec. 10. (a) No person shall perform or induce an abortion or attempt to perform or induce an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the unborn child.

(b) (1) A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion, in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

(C) injunctive relief; and

(D) reasonable attorney fees.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 2012 Supp. 21-5302, and amendments thereto.

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

(e) Upon a first conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

(f) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(g) For purposes of this section, the term “abortion” has the same meaning as such term is defined in K.S.A. 65-6701, and amendments thereto.

Sec. 11. K.S.A. 2012 Supp. 40-2246 is hereby amended to read as

follows: 40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239, and amendments thereto, to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees, *except that for taxable years commencing after December 31, 2013, no credit shall be allowed pursuant to this section for that portion of any amounts paid by an employer for healthcare expenditures, a health benefit plan, as defined in section 1, and amendments thereto, or amounts contributed to health savings accounts for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 40-2,190, and amendments thereto.*

(b) (1) For employers that have established a small employer health benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(2) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes shall be refunded to the taxpayer.

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.

(f) This section shall apply to all taxable years commencing after December 31, 1999.

(g) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

Sec. 12. K.S.A. 2012 Supp. 65-6701 is hereby amended to read as follows: 65-6701. As used in ~~this act~~ *K.S.A. 65-6701 through 65-6721, and amendments thereto:*

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

(b) “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.

(c) “Counselor” means a person who is: (1) Licensed to practice medicine and surgery; (2) ~~licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master’s or doctor’s degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master’s level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors;~~ (4) a licensed physician assistant; or ~~(9)~~ (5) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

~~(e)~~(d) “Department” means the department of health and environment.

(e) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

~~(d)~~(f) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

~~(e)~~(g) “Medical emergency” means ~~that a condition which, on the basis of the physician’s good faith clinical judgment, that, in reasonable medical judgment, so complicates the medical condition of a the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert her the death of the woman or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.~~

~~(f)~~(h) “Minor” means a person less than 18 years of age.

~~(g)~~(i) “Physician” means a person licensed to practice medicine and surgery in this state.

~~(h)~~(j) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

~~(i)~~(k) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, ~~registered licensed professional counselor, licensed marriage and family therapist, licensed master’s level psychologist, licensed clinical psychotherapist,~~ registered nurse or physician.

~~(j)~~(l) “Unemancipated minor” means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor’s parents.

~~(k)~~(m) “Viable” means that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures.

Sec. 13. K.S.A. 2012 Supp. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce, or attempt to perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing, or attempting to perform or induce the abortion and both physicians provide a written determination, based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to

the conditions involved, that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman. *No condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.*

(b) Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician's written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. Such determination shall specify:

(1) If the unborn child was determined to be nonviable and the medical basis of such determination;

(2) if the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or

(3) if a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would constitute a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman.

(c) (1) Except in the case of a medical emergency, prior to performing *or inducing, or attempting to perform or induce* an abortion upon a woman, the physician shall determine the gestational age of the unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination. The medical basis for the determination of the gestational age of the unborn child shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(2) If the physician determines the gestational age of the unborn child is 22 or more weeks, prior to performing *or inducing, or attempting to perform or induce* an abortion upon the woman the physician shall determine if the unborn child is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the unborn child and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of an unborn child is 22 or more weeks, and determines that the unborn child is not viable and performs an abortion on the woman, the physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of an unborn child is 22 or more weeks, and determines that the unborn child is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a

continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

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

(d) The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:

(1) A detailed list of the information that must be kept by a physician under paragraphs (1) and (2) of subsection (c);

(2) the contents of the written reports required under paragraphs (3) and (4) of subsection (c); and

(3) detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman.

(e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 2012 Supp. 21-5302, and amendments thereto.

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

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

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

(C) reasonable attorney fees.

(h) The prosecution of violations of this section may be brought by the attorney general or by the district attorney or county attorney for the county where any violation of this section is alleged to have occurred.

(i) Nothing in this section shall be construed to restrict the authority of the board of healing arts to engage in a disciplinary action.

(j) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have

enacted the remainder of this section without such invalid or unconstitutional provision.

(k) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson felony.

Sec. 14. K.S.A. 2012 Supp. 65-6709 is hereby amended to read as follows: 65-6709. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

- (1) The name of the physician who will perform the abortion;
- (2) a description of the proposed abortion method;
- (3) a description of risks related to the proposed abortion method, including *risk of premature birth in future pregnancies, risk of breast cancer and risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;*
- (4) the probable gestational age of the unborn child at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible *physical* impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
- (5) the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
- (6) the contact information for ~~free~~ counseling assistance for medically challenging pregnancies ~~and~~, the contact information for ~~free~~ perinatal hospice services *and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;*
- (7) the medical risks associated with carrying an unborn child to term; and
- (8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

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

- (1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;
- (2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;
- (3) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted;
- (4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled; ~~and~~
- (5) the abortion will terminate the life of a whole, separate, unique, living human being; *and*
- (6) *by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence*

that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the woman accepts the offer and requests to listen to the heartbeat of her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be

time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.

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

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

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

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

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

~~(m)~~ For purposes of this section:

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

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

Sec. 15. K.S.A. 2012 Supp. 65-6710 is hereby amended to read as follows: 65-6710. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible informational materials:

(1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, a list of providers of free ultrasound services and adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the

telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, *and* that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

“Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on ~~abortion services~~, alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician or the physician’s agent provide the enclosed information.”

(2) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of an unborn child at two-week gestational increments, and any relevant information on the possibility of the unborn child’s survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic. The material shall include the ~~statement~~ following statements: (A) *That by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain;* (B) *that there is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain;* (C) *that anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery;* (D) *that less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity, and a fetal heartbeat is, therefore, a key medical indicator that an unborn child is likely to achieve the capacity for live birth;* and (E) *that abortion terminates the life of a whole, separate, unique, living human being.* The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, *including risk of premature birth in future pregnancies, risk of breast cancer, risks to the woman’s reproductive health* and the medical risks associated with carrying an unborn child to term.

(3) *The printed materials shall, at a minimum, contain the following text:*

Your doctor is required to tell you about the nature of the physical and emotional risks of both the abortion procedure and carrying a child to term. The doctor must tell you how long you have been pregnant and must give you a chance to ask questions and discuss your decision about the pregnancy carefully and privately in your own language.

In order to determine the gestational age of the unborn child, the doctor may use ultrasound equipment preparatory to the performance of an abortion. You have the right to view the ultrasound image of the unborn child at no additional expense, and you have the right to receive a picture of the unborn child.

A directory of services is also available. By calling or visiting the agencies and offices in the directory you can find out about alternatives to abortion, assistance to make an adoption plan for your baby or locate public and private agencies that offer medical and financial help during pregnancy, during childbirth and while you are raising your child.

Furthermore, you should know that: (A) It is unlawful for any individual to coerce you to undergo an abortion. Coercion is the use of express

or implied threats of violence or intimidation to compel a person to act against such person's will; (B) abortion terminates the life of a whole, separate, unique, living human being; (C) any physician who fails to provide informed consent prior to performing an abortion may be guilty of unprofessional conduct and liable for damages; (D) you are not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired; (E) the father of your child is legally responsible to assist in the support of the child, even in instances where the father has offered to pay for an abortion; and (F) the law permits adoptive parents to pay the costs of prenatal care, childbirth and neonatal care.

Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek assistance from such agencies in order to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician, or the physician's agent, provide this information.

Pregnancy begins at fertilization with the union of a man's sperm and a woman's egg to form a single-cell embryo. This brand new being contains the original copy of a new individual's complete genetic code. Gender, eye color and other traits are determined at fertilization.

Most significant developmental milestones occur long before birth during the first eight weeks following fertilization when most body parts and all body systems appear and begin to function. The main divisions of the body, such as the head, chest, abdomen, pelvis, arms and legs are established by about four weeks after fertilization. Eight weeks after fertilization, except for the small size, the developing human's overall appearance and many internal structures closely resemble the newborn.

Pregnancy is not just a time for growing all the parts of the body. It is also a time of preparation for survival after birth. Starting more than 30 weeks before birth, many common daily activities seen in children and adults begin in the womb. These activities include, but are not limited to, hiccups, touching the face, breathing motions, urination, right- or left-handedness, thumb-sucking, swallowing, yawning, jaw movement, reflexes, REM sleep, hearing, taste and sensation.

Unless otherwise noted, all prenatal ages in the rest of these materials are referenced from the start of the last normal menstrual period. This age is two weeks greater than the age since fertilization.

By five weeks, development of the brain, the spinal cord and the heart is well underway. The heart begins beating at five weeks and one day, and is visible by ultrasound almost immediately. By six weeks, the heart is pumping the unborn child's own blood to such unborn child's brain and body. All four chambers of the heart are present, and more than one million heartbeats have occurred. The head, chest and abdominal cavities have formed and the beginnings of the arms and legs are easily seen. At 6½ weeks, rapid brain development continues with the appearance of the cerebral hemispheres. At 7½ weeks, the unborn child reflexively turns away in response to light touch on the face. The fingers also begin to form on the hand.

By 8½ weeks, the bones of the jaw and collarbone begin to harden. Brainwaves have been measured and recorded by this point in gestation. By nine weeks, the hands move, the neck turns and hiccups begin. Girls also now have ovaries and boys have testes. The unborn child's heart is nearly fully formed, and the heart rate peaks at about 170 beats per minute and will gradually slow down until birth. Electrical recordings of the heart at 9½ weeks are very similar to the EKG tracing of the unborn child.

By 10 weeks, intermittent breathing motions begin, and the kidneys begin to produce and release urine. All the fingers and toes are free and fully formed, and several hundred muscles are now present. The hands and feet move frequently, and most unborn children show the first signs of right- or left-handedness. Pain receptors in the skin, the sensory nerves connecting them to the spinal cord, and the nerve tracts in the spinal cord that will carry pain impulses to the brain are all present by this time. Experts estimate the 10-week unborn child possesses approximately 90% of the 4,500 body parts found in adults. This means approximately 4,000 permanent body parts are present just eight weeks after fertilization.

By 11 weeks, the head moves forward and back, the jaw actively opens

and closes and the unborn child periodically sighs and stretches. The face, palms of the hands and soles of the feet are sensitive to light touch. The unborn child begins thumb-sucking and swallowing amniotic fluid. The uterus is now present, and girls' ovaries now contain reproductive cells that will give rise to eggs later in life.

At 12 weeks, fingerprints start forming, while fingernails and toenails begin to grow. The bones are hardening in many locations. The heartbeat can be detected with a hand-held doppler fetal monitor, or external heart rate monitor. By 13 weeks the lips and nose are fully formed and the unborn child can make complex facial expressions.

At 14 weeks, taste buds are present all over the mouth and tongue. The unborn child now produces a wide variety of hormones. Also, the arms reach final proportion to body size. By 15 weeks, the entire unborn child, except for parts of the scalp, responds to light touch, and tooth development is underway.

At 16 weeks, a pregnant woman may begin to feel the unborn child move. The unborn child also begins making several digestive enzymes. Around 17 weeks, blood cell formation moves to its permanent location inside the bone marrow, and the unborn child begins storing energy in the form of body fat.

By 18 weeks, the formation of the breathing passages, called the bronchial tree, is complete. The unborn child will release stress hormones in response to being poked with a needle. By 19 weeks, the unborn child's heart has beaten more than 20 million times.

By 20 weeks, nearly all organs and structures of the unborn child have been formed. The larynx, or voice box, moves in a way similar to movement seen during crying after birth. The skin has developed sweat glands and is covered by a greasy white substance called vernix, which protects the skin from the long exposure to amniotic fluid. At 21 weeks, breathing patterns, body movements and the heart rate begin to follow daily cycles called circadian rhythms.

By 22 weeks, the cochlea, the organ of hearing, reaches adult size, and the unborn child begins hearing and responding to various sounds. All the skin layers and structures are now complete. The unborn child reacts to stimuli that would be recognized as painful if applied to an adult human. By 22 weeks, some infants can live outside the womb with specialized medical care, and survival rates have been reported as high as 40% in some medical centers. Between 20 and 23 weeks, rapid eye movements begin, which are similar to the REM sleep pattern seen when children and adults have dreams.

By 24 weeks, more than 30 million heartbeats have occurred. Survival rates for infants born at 24 weeks have been reported as high as 81%. By 25 weeks, breathing motions may occur up to 44 times per minute.

By 26 weeks, sudden, loud noises trigger a blink-startle response in the unborn child and may increase body movement, the heart rate and swallowing. The lungs begin to produce a substance necessary for breathing after birth. The survival rate of infants born at 26 weeks has been reported as high as 95%.

By 28 weeks, the sense of smell is functioning and the eyes produce tears. Nearly all infants born between this point and full term survive. By 29 weeks, pupils of the eyes react to light. By 31 weeks, the heart has beat more than 40 million times, and wrinkles in the skin disappear as more fat deposits are formed.

By 32 weeks, breathing movements occur up to 40% of the time. By 34 weeks true alveoli, or air "pocket" cells, begin developing in the lungs. At 36 weeks, scalp hair is silky and lies against the head. By 37 weeks, the unborn child has a firm hand grip, and the heart has beat more than 50 million times. The unborn child initiates labor, ideally around 40 weeks, leading to childbirth.

By state law, no person shall perform or induce an abortion when the unborn child is viable or pain-capable unless such person is a physician and has a documented referral. The physician who performs or induces an abortion when the unborn child is viable must have a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion. Both physicians must determine that the abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical bodily function

of the pregnant woman. If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

What about adoption? Women or couples facing an untimely pregnancy who choose not to take on the full responsibilities of parenthood have another option, which is adoption. Counseling and support services are a key part of adoption and are available from a variety of adoption agencies and parent support groups across the state. A list of adoption agencies is available. There are several ways to make a plan for adoption, including through a child placement agency or through a private attorney. Although fully anonymous adoptions are available, some degree of openness in adoption is more common, such as permitting the birth mother to choose the adoptive parents. A father only has the right to consent to an adoption or refuse consent and raise the child if he provides support for the mother during the last six months of the pregnancy.

The father of a child has a legal responsibility to provide for the support, educational, medical and other needs of the child. In Kansas, that responsibility includes child support payments to the child's mother or legal guardian. A child has rights of inheritance from the father and may be eligible through him for benefits such as life insurance, social security, pension, veteran's or disability benefits. Further, the child benefits from knowing the father's medical history and any potential health problems that can be passed genetically. A father's and mother's rights are equal regarding access, care and custody.

Paternity can be established in Kansas by two methods: (A) The father and mother, at the time of birth, can sign forms provided by the hospital acknowledging paternity and the father's name is added to the birth certificate; or (B) a legal action can be brought in a court of law to determine paternity and establish a child support order. Issues of paternity affect your legal rights and the rights of the child.

The decision regarding your pregnancy is one of the most important decisions you will ever make. There are lists of state, county and local health and social service agencies and organizations available to assist you. You are encouraged to contact these groups if you need more information so you can make an informed decision.

(4) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 65-6709, and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman's-right-to-know act.

~~(4)~~(5) A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images, using the best available ultrasound technology, of an unborn child at two week gestational increments.

(b) The print materials required under this section shall be printed in a typeface large enough to be clearly legible. The informational video ~~shall~~ *may* be published in digital video disc format *or in the latest video technology available*. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

Sec. 16. K.S.A. 2012 Supp. 76-3308 is hereby amended to read as follows: 76-3308. (a) The authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation, the following powers to:

- (1) Have the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;
- (2) have perpetual existence and succession;
- (3) adopt, have and use a seal and to alter the same at its pleasure;
- (4) sue and be sued in its own name;
- (5) make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions including, without limitation, to make and execute contracts with hospitals or other health care businesses to operate and manage any

or all of the hospital facilities or operations and to incur liabilities and secure the obligations of any entity or individual;

(6) borrow money and to issue bonds evidencing the same and pledge all or any part of the authority's assets therefor;

(7) purchase, lease, trade, exchange or otherwise acquire, maintain, hold, improve, mortgage, sell, lease and dispose of personal property, whether tangible or intangible, and any interest therein; and to purchase, lease, trade, exchange or otherwise acquire real property or any interest therein, and to maintain, hold, improve, mortgage, lease and otherwise transfer such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;

(8) incur or assume indebtedness to, and enter into contracts with the Kansas development finance authority, which is authorized to borrow money and provide financing for the authority;

(9) develop policies and procedures generally applicable to the procurement of goods, services and construction, based upon sound business practices;

(10) contract for and to accept any gifts, grants and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;

(11) acquire space, equipment, services, supplies and insurance necessary to carry out the purposes of this act;

(12) deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;

(13) procure such insurance, participate in such insurance plans or provide such self insurance or both as it deems necessary or convenient to carry out the purposes and provisions of this act; the purchase of insurance, participation in an insurance plan or creation of a self-insurance fund by the authority shall not be deemed as a waiver or relinquishment of any sovereign immunity to which the authority or its officers, directors, employees or agents are otherwise entitled;

(14) appoint, supervise and set the salary and compensation of a president of the authority who shall be appointed by and serve at the pleasure of the board;

(15) fix, revise, charge and collect rates, rentals, fees and other charges for the services or facilities furnished by or on behalf of the authority, and to establish policies and procedures regarding any such service rendered for the use, occupancy or operation of any such facility; such charges and policies and procedures not to be subject to supervision or regulation by any commission, board, bureau or agency of the state; and

(16) do any and all things necessary or convenient to carry out the authority's purposes and exercise the powers given in this act.

(b) The authority may create, own in whole or in part, or otherwise acquire or dispose of any entity organized for a purpose related to or in support of the mission of the authority.

(c) The authority may participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act.

(d) The authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests and gifts and bequests in trust which entity or entities shall not engage in trust business.

(e) In carrying out any activities authorized by this act, the authority may provide appropriate assistance, including the making of loans and providing time of employees, to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by the authority.

(f) Effective with the transfer date, all moneys of the authority shall be deposited in one or more banks or trust companies in one or more special accounts. All banks and trust companies are authorized to give security for such deposits if required by the authority. The moneys in such accounts shall be paid out on a warrant or other orders of the trea-

surer of the authority or any such other person or persons as the authority may authorize to execute such warrants or orders.

(g) Notwithstanding any provision of law to the contrary, the authority, effective with the transfer date, may invest the authority's operating funds in any obligations or securities as authorized by the board. The board shall adopt written investment guidelines.

(h) The authority is authorized to negotiate contracts with one or more qualified parties to provide collection services. The selection of a collection services provider shall be based on responses to a request for proposals from qualified professional firms and shall be administered in accordance with policies adopted by the board.

(i) Notwithstanding any provision of law to the contrary, no abortion shall be performed, except in the event of a medical emergency, in any medical facility, hospital or clinic owned, leased or operated by the authority. The provisions of this subsection are not applicable to any member of the physician faculty of the university of Kansas school of medicine *when such abortion is performed outside the scope of such member's employment* on property not owned, leased or operated by the authority. As used in this subsection, "medical emergency" means ~~a pregnant woman's medical condition that, on the basis of a physician's good faith clinical judgment, necessitates an immediate abortion to avert the woman's death or to avert a serious risk of substantial and irreversible impairment of a major bodily function~~ *a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death.*

Sec. 17. K.S.A. 2012 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments thereto.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,204, and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203, and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2012 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2012 Supp. 74-50,154, and amendments thereto.

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2012 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-32,248 or 79-32,251 through 79-32,254, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.

(xvii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,256, and amendments thereto.

(xviii) For taxable years commencing after December 31, 2006, the amount of any ad valorem or property taxes and assessments paid to a state other than Kansas or local government located in a state other than Kansas by a taxpayer who resides in a state other than Kansas, when the law of such state does not allow a resident of Kansas who earns income in such other state to claim a deduction for ad valorem or property taxes or assessments paid to a political subdivision of the state of Kansas in determining taxable income for income tax purposes in such other state,

to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.

(xix) For all taxable years beginning after December 31, 2012, the amount of any: (1) Loss from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) farm loss as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent deducted or subtracted in determining the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011, and as revised thereafter by the internal revenue service.

(xx) For all taxable years beginning after December 31, 2012, the amount of any deduction for self-employment taxes under section 164(f) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxi) For all taxable years beginning after December 31, 2012, the amount of any deduction for pension, profit sharing, and annuity plans of self-employed individuals under section 62(a)(6) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxii) For all taxable years beginning after December 31, 2012, the amount of any deduction for health insurance under section 162(l) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxiii) For all taxable years beginning after December 31, 2012, the amount of any deduction for domestic production activities under section 199 of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxiv) *For taxable years commencing after December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid for medical care of the taxpayer or the taxpayer's spouse or dependents when such expenses were paid or incurred for an abortion, or for a health benefit plan, as defined in section 1, and amendments thereto, for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto, to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.*

(xxv) *For taxable years commencing after December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid by a taxpayer for health care when such expenses were paid or incurred for abortion coverage, a health benefit plan, as defined in section 1, and amendments thereto, when such expenses were paid or incurred for abortion coverage or amounts contributed to health savings accounts for such taxpayer's employees for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto, to the extent that such taxes and assessments are claimed as a deduction for federal income tax purposes.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted

gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. §§ 228b (a) and 228c (a)(1) et seq.

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. § 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. § 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249, and amendments thereto.

(xiii) For taxable years beginning after December 31, 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under K.S.A. 2012 Supp. 74-50,201 et seq., and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation. For all taxable years beginning after December 31, 2012, the amount of modification under this subsection shall exclude the portion of income or loss reported on schedule E and included on line 17 of the taxpayer's form 1040 federal individual income tax return.

(xv) For all taxable years beginning after December 31, 2006, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a

family postsecondary education savings account established under the Kansas postsecondary education savings program or a qualified tuition program established and maintained by another state or agency or instrumentality thereof pursuant to section 529 of the internal revenue code of 1986, as amended, for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2012 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(xvi) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are or were members of the armed forces of the United States, including service in the Kansas army and air national guard, as a recruitment, sign up or retention bonus received by such taxpayer as an incentive to join, enlist or remain in the armed services of the United States, including service in the Kansas army and air national guard, and amounts received for repayment of educational or student loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

(xvii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 Session Laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

(xviii) For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.

(xix) Amounts received by retired employees of Washburn university as retirement and pension benefits under the university's retirement plan.

(xx) For all taxable years beginning after December 31, 2012, the amount of any: (1) Net profit from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) net income from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) net farm profit as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent included in the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011 and as revised thereafter by the internal revenue service.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 18. K.S.A. 2012 Supp. 79-32,138 is hereby amended to read as

follows: 79-32,138. (a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section.

(b) There shall be added to federal taxable income: (i) The same modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, except subsections (b)(xix), (b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii).

(ii) The amount of all depreciation deductions claimed for any property upon which the deduction allowed by K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is claimed.

(iii) The amount of any charitable contribution deduction claimed for any contribution or gift to or for the use of any racially segregated educational institution.

(iv) *For taxable years commencing December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid by a taxpayer for health care when such expenses were paid or incurred for abortion coverage, a health benefit plan, as defined in section 1, and amendments thereto, when such expenses were paid or incurred for abortion coverage or amounts contributed to health savings accounts for such taxpayer's employees for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto.*

(c) There shall be subtracted from federal taxable income: (i) The same modifications as are set forth in subsection (c) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, except subsection (c)(xx).

(ii) The federal income tax liability for any taxable year commencing prior to December 31, 1971, for which a Kansas return was filed after reduction for all credits thereon, except credits for payments on estimates of federal income tax, credits for gasoline and lubricating oil tax, and for foreign tax credits if, on the Kansas income tax return for such prior year, the federal income tax deduction was computed on the basis of the federal income tax paid in such prior year, rather than as accrued. Notwithstanding the foregoing, the deduction for federal income tax liability for any year shall not exceed that portion of the total federal income tax liability for such year which bears the same ratio to the total federal income tax liability for such year as the Kansas taxable income, as computed before any deductions for federal income taxes and after application of subsections (d) and (e) of this section as existing for such year, bears to the federal taxable income for the same year.

(iii) An amount for the amortization deduction allowed pursuant to K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

(iv) For all taxable years commencing after December 31, 1987, the amount included in federal taxable income pursuant to the provisions of section 78 of the internal revenue code.

(v) For all taxable years commencing after December 31, 1987, 80% of dividends from corporations incorporated outside of the United States or the District of Columbia which are included in federal taxable income.

(d) If any corporation derives all of its income from sources within Kansas in any taxable year commencing after December 31, 1979, its Kansas taxable income shall be the sum resulting after application of subsections (a) through (c) hereof. Otherwise, such corporation's Kansas taxable income in any such taxable year, after excluding any refunds of federal income tax and before the deduction of federal income taxes provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund of federal income tax as determined under paragraph (iv) of subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduction for federal income taxes as provided by subsection (c)(ii) shall be such corporation's Kansas taxable income.

(e) A corporation may make an election with respect to its first taxable year commencing after December 31, 1982, whereby no addition modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138, and amendments thereto, and subtraction modifications as provided for in subsection (c)(iii) of K.S.A. 79-32,138, and amendments thereto, as those

subsections existed prior to their amendment by this act, shall be required to be made for such taxable year.

Sec. 19. K.S.A. 2012 Supp. 79-32,182b is hereby amended to read as follows: 79-32,182b. (a) For all taxable years commencing after December 31, 2000, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures in research and development activities conducted within this state in an amount equal to 61/2% of the amount by which the amount expended for such activities in the taxable year of the taxpayer exceeds the taxpayer's average of the actual expenditures for such purposes made in such taxable year and the next preceding two taxable years.

(b) In any one taxable year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall not exceed 25% of the total amount of such credit plus any applicable carry forward amount. The amount by which that portion of the credit allowed by subsections (a) and (b) to be claimed in any one taxable year exceeds the taxpayer's tax liability in such year may be carried forward until the total amount of the credit is used.

(c) As used in this section, the term "expenditures in research and development activities" means expenditures made for such purposes, other than expenditures of moneys made available to the taxpayer pursuant to federal or state law, which are treated as expenses allowable for deduction under the provisions of the federal internal revenue code of 1986, ~~and amendments thereto~~ *as amended, except that for taxable years commencing after December 31, 2013, expenditures in research and development activities shall not include any expenditures for the performance of any abortion, as defined in K.S.A. 65-6701, and amendments thereto.*

(d) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

Sec. 20. K.S.A. 2012 Supp. 79-32,195 is hereby amended to read as follows: 79-32,195. As used in this act, the following words and phrases shall have the meanings ascribed to them herein: (a) "Business firm" means any business entity authorized to do business in the state of Kansas which is subject to the state income tax imposed by the provisions of the Kansas income tax act, any individual subject to the state income tax imposed by the provisions of the Kansas income tax act, any national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*, or any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto;

(b) "Community services" means:

(1) The conduct of activities which meet a demonstrated community need and which are designed to achieve improved educational and social services for Kansas children and their families, and which are coordinated with communities including, but not limited to, social and human services organizations that address the causes of poverty through programs and services that assist low income persons in the areas of employment, food, housing, emergency assistance and health care;

(2) crime prevention; and

(3) health care services.

(c) "Crime prevention" means any nongovernmental activity which aids in the prevention of crime.

(d) "Community service organization" means any organization performing community services in Kansas and which:

(1) Has obtained a ruling from the internal revenue service of the United States department of the treasury that such organization is exempt from income taxation under the provisions of section 501(c)(3) of the federal internal revenue code; or

(2) is incorporated in the state of Kansas or another state as a non-stock, nonprofit corporation; or

(3) has been designated as a community development corporation by

the United States government under the provisions of title VII of the economic opportunity act of 1964; or

(4) is chartered by the United States congress.

(e) “Contributions” shall mean and include the donation of cash, services or property other than used clothing in an amount or value of \$250 or more. Stocks and bonds contributed shall be valued at the stock market price on the date of transfer. Services contributed shall be valued at the standard billing rate for not-for-profit clients. Personal property items contributed shall be valued at the lesser of its fair market value or cost to the donor and may be inclusive of costs incurred in making the contribution, but shall not include sales tax. Contributions of real estate are allowable for credit only when title thereto is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(f) “Health care services” shall include, but not be limited to, the following: Services provided by local health departments, city, county or district hospitals, city or county nursing homes, or other residential institutions, preventive health care services offered by a community service organization including immunizations, prenatal care, the postponement of entry into nursing homes by home health care services, and community based services for persons with a disability, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, services provided by rural health clinics, integration of health care services, home health services and services provided by rural health networks, *except that for taxable years commencing after December 31, 2013, health care services shall not include any service involving the performance of any abortion, as defined in K.S.A. 65-6701, and amendments thereto.*

(g) “Rural community” means any city having a population of fewer than 15,000 located in a county that is not part of a standard metropolitan statistical area as defined by the United States department of commerce or its successor agency. However, any such city located in a county defined as a standard metropolitan statistical area shall be deemed a rural community if a substantial number of persons in such county derive their income from agriculture and, in any county where there is only one city within the county which has a population of more than 15,000 and which classifies as a standard metropolitan statistical area, all other cities in that county having a population of less than 15,000 shall be deemed a rural community.

Sec. 21. K.S.A. 2012 Supp. 79-32,261 is hereby amended to read as follows: 79-32,261. (a) On and after July 1, 2008, any taxpayer who contributes in the manner prescribed by this section to a community college located in Kansas for capital improvements, to a technical college for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto.* The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 for any contributions made during the entire tax year. The amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college or a technical college located in Kansas for such purposes. The amount of the credit allowed by this section shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. If the amount of the credit allowed by this section for a taxpayer who contributes to a community college or a technical college exceeds the taxpayer’s income tax liability imposed by the Kansas income tax act, such excess amount shall be refunded to the taxpayer. If the amount of the tax credit for a taxpayer who contributes to a postsecondary educational institution exceeds the taxpayer’s income tax liability for the taxable year, the amount which exceeds the tax liability

may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the taxable year in which the contribution is made. Prior to the issuance of any tax credits pursuant to this section, the structure of the process in which contributions received by a community college, a technical college or a postsecondary educational institution qualify as tax credits allowed and issued pursuant to this section shall be developed by a community college, a technical college and a postsecondary educational institution in consultation with the secretary of revenue and the foundation or endowment association of any such community college, technical college or postsecondary educational institution in a manner that complies with requirements specified in the federal internal revenue code of 1986, as amended, so that contributions qualify as charitable contributions allowable as deductions from federal adjusted gross income.

(b) (1) Upon receipt of any such contributions to a community college made pursuant to the provisions of this section, the treasurer of the community college shall deposit such contributions to the credit of the capital outlay fund of such community college established as provided by K.S.A. 71-501a, and amendments thereto. Expenditures from such fund shall be made for the purposes described in subsection (a) of K.S.A. 71-501, and amendments thereto, except that expenditures shall not be made from such fund for new construction or the acquisition of real property for use as building sites or for educational programs.

(2) Upon receipt of any such contributions to a technical college made pursuant to the provisions of this section, such contributions shall be deposited to the credit of a deferred maintenance fund or a technology and equipment fund established by the technical college which received the contribution. Expenditures from such fund shall be made only for the purpose as provided in this subsection.

(3) Upon receipt of any such contributions to a postsecondary educational institution made pursuant to the provisions of this section, such contributions shall be deposited to the credit of the appropriate deferred maintenance support fund of the postsecondary educational institution which received the contribution. Expenditures from such fund shall be made only for the purposes designated for such fund pursuant to law.

(c) (1) In no event shall the total amount of credits allowed under this section for taxpayers who contribute to any one such community college or technical college exceed the following amounts: For the tax year 2008, an amount not to exceed \$78,125; for the tax year 2009, an amount not to exceed \$156,250; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$208,233.33.

(2) In no event shall the total of credits allowed under this section for taxpayers who contribute to postsecondary educational institutions exceed the following amounts: For the tax year 2008, an amount not to exceed \$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$15,000,000. Except as otherwise provided, the allocation of such tax credits for each individual state educational institution shall be determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each postsecondary educational institution, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one postsecondary educational institution unless all such postsecondary educational institutions approve an allocation to any one such postsecondary educational institution which exceeds 40% of the total of such credits allowed under this section.

(d) As used in this section: (1) "Community college" means a community college established under the provisions of the community college act;

(2) "deferred maintenance" means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or

other federal or state law, *except that for taxable years commencing after December 31, 2013, deferred maintenance shall not include any maintenance, repair, reconstruction or rehabilitation of any building in which any abortion, as defined in K.S.A. 65-6701, and amendments thereto, is performed;*

(3) “postsecondary educational institution” means the university of Kansas, Kansas state university of agriculture and applied science, Wichita state university, Emporia state university, Pittsburg state university, Fort Hays state university and Washburn university of Topeka; and

(4) “technical college” means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and amendments thereto.

(e) Any taxpayer not subject to Kansas income, privilege or premiums tax who contributes to a community college, technical college or postsecondary educational institution, hereinafter designated the transferor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to this section. The sale price of a tax credit shall be at least 50% of the full value of the credit. Such credit shall be deemed to be allowed and earned by any such taxpayer which is only disqualified therefrom by reason of not being subject to such Kansas taxes. The taxpayer acquiring earned credits, hereinafter designated the transferee, may use the amount of the acquired credits to offset up to 100% of the taxpayer’s income, privilege or premiums tax liability for the taxable year in which such acquisition was made. Such credits may be sold or transferred only one time and, if sold or transferred, shall be transferred in the tax year such credit is earned or the two successive tax years. A transferred credit shall be claimed in the year purchased. The transferor shall enter into a written agreement with the transferee establishing the terms and conditions of the sale or transfer and shall perfect such transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer, subject to the review and approval or denial of such transfer by the secretary of revenue. The transferor and transferee shall provide any information pertaining to the sale or transfer as may be required by the secretary of revenue to administer and carry out the provisions of this section. The amount received by the transferor of such tax credit shall be taxable as income of the transferor, and the excess of the value of such credit over the amount paid by the transferee for such credit shall be taxable as income of the transferee.

(f) The secretary of revenue shall submit an annual report to the legislature to assist the legislature in the evaluation of the utilization of any credits claimed pursuant to this act, including information specific as to each community college, technical college or postsecondary educational institution. Such report shall be due on or before the first day of the legislative session following the tax year in which the credits were claimed.

(g) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section.

Sec. 22. K.S.A. 2012 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301, and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817, and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02, and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and gross receipts from regulated sports contests taxed pursuant to the Kansas professional regulated sports act, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank

and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business; or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, a public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted for state use and ownership, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school, educational institution or a state correctional institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418, and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted for state use and ownership shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school, educational institution or department of corrections concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and main-

taining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school, educational institution or the contractor contracting with the department of corrections for a correctional institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft sold to persons using directly or through an authorized agent such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft for use outside of the United States and sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603, and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of drugs used in the performance or induction of an abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of oxygen delivery equipment, kidney dialysis equipment, enteral feeding systems, prosthetic devices and mobility enhancing equipment prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry, and in addition to such sales, all sales of hearing aids, as defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and repair and replacement parts therefor, including batteries, by a person licensed in the practice of dispensing and fitting hearing aids pursuant to the provisions of K.S.A. 74-5808, and amendments thereto. For the purposes of this subsection: (1) "Mobility enhancing equipment" means equipment including repair and replacement parts to

same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) “prosthetic device” means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;

(s) except as provided in K.S.A. 2012 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 et seq., and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 et seq., 19-3522 et seq., or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term “farm machinery and equipment or aquaculture machinery and equipment” shall include a work-site utility vehicle, as defined in K.S.A. 8-126, and amendments thereto, and is equipped with a bed or cargo box for hauling materials, and shall also include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto. “Farm machinery and equipment” includes precision farming equipment that is portable or is installed or purchased to be installed on farm machinery and equipment. “Precision farming equipment” includes the following items used only in computer-assisted farming, ranching or aquaculture production operations: Soil testing sensors, yield monitors, computers, monitors, software, global positioning and mapping systems, guiding systems, modems, data communications equipment and any necessary mounting hardware, wiring and antennas. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of tangible personal property to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of tangible personal property for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose, and all sales of food products by or on behalf of any such contractor or organization for any such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b, *Second* through *Sixth*. As used in this paragraph,

“severing” shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises occurring prior to January 1, 2006;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418, and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) “Mobile homes” and “manufactured homes” shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto; and (2) “sales of used mobile homes or manufactured homes” means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased prior to January 1, 2012, except as otherwise provided, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115, and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business, and all sales of tangible personal property or services purchased on or after January 1, 2012, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business which meets the requirements established in K.S.A. 74-50,115(e), and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. As used in this subsection, “business” and “retail business” have the meanings respectively ascribed thereto by K.S.A. 74-50,114, and amendments thereto. Project exemption certificates that have been previously issued under this subsection by the department of revenue pursuant to K.S.A. 74-50,115, and amendments thereto, but not including K.S.A. 74-50,115(e), and amendments thereto, prior to January 1, 2012, and have not expired will be effective for the term of the project or two years from the effective date of the certificate, whichever occurs earlier. Project exemption certificates that are submitted to the department of revenue prior to January 1, 2012, and are found to qualify will

be issued a project exemption certificate that will be effective for a two-year period or for the term of the project, whichever occurs earlier;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, “mobile homes” and “manufactured homes” shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, “durable medical equipment” means equipment including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury and is not worn in or on the body, but does not include mobility enhancing equipment as defined in subsection (r), oxygen delivery equipment, kidney dialysis equipment or enteral feeding systems;

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based facility for people with intellectual disability or mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto, and all sales of tangible personal property or services purchased by contractors during the time period from July, 2003, through June, 2006, for the purpose of constructing, equipping, maintaining or furnishing a new facility for a community-based facility for people with intellectual disability or mental health center located in Riverton, Cherokee County, Kansas, which would have been eligible for sales tax exemption pursuant to this subsection if purchased directly by such facility or center. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) “Integrated production operation” means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) “production line” means the assemblage of machinery and equip-

ment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) “manufacturing or processing plant or facility” means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) “manufacturing or processing business” means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) “repair and replacement parts and accessories” means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) “primary” or “primarily” mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from off-site, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such materials purchased by a nonprofit corporation which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such tangible personal property purchased by a nonprofit organization which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by

or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease;

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(9) the heartstrings community foundation for the purpose of providing training, employment and activities for adults with developmental disabilities;

(10) the Cystic Fibrosis Foundation, Heart of America Chapter, for the purposes of assuring the development of the means to cure and control cystic fibrosis and improving the quality of life for those with the disease;

(11) the spina bifida association of Kansas for the purpose of providing financial, educational and practical aid to families and individuals with spina bifida. Such aid includes, but is not limited to, funding for medical devices, counseling and medical educational opportunities;

(12) the CHWC, Inc., for the purpose of rebuilding urban core neighborhoods through the construction of new homes, acquiring and renovating existing homes and other related activities, and promoting economic development in such neighborhoods;

(13) the cross-lines cooperative council for the purpose of providing social services to low income individuals and families;

(14) the Dreams Work, Inc., for the purpose of providing young adult day services to individuals with developmental disabilities and assisting families in avoiding institutional or nursing home care for a developmentally disabled member of their family;

(15) the KSDS, Inc., for the purpose of promoting the independence and inclusion of people with disabilities as fully participating and contributing members of their communities and society through the training and providing of guide and service dogs to people with disabilities, and providing disability education and awareness to the general public;

(16) the lyme association of greater Kansas City, Inc., for the purpose of providing support to persons with lyme disease and public education relating to the prevention, treatment and cure of lyme disease;

(17) the Dream Factory, Inc., for the purpose of granting the dreams of children with critical and chronic illnesses;

(18) the Ottawa Suzuki Strings, Inc., for the purpose of providing students and families with education and resources necessary to enable each child to develop fine character and musical ability to the fullest potential;

(19) the International Association of Lions Clubs for the purpose of creating and fostering a spirit of understanding among all people for humanitarian needs by providing voluntary services through community involvement and international cooperation;

(20) the Johnson county young matrons, inc., for the purpose of promoting a positive future for members of the community through volunteerism, financial support and education through the efforts of an all volunteer organization;

(21) the American Cancer Society, Inc., for the purpose of eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy and service;

(22) the community services of Shawnee, inc., for the purpose of providing food and clothing to those in need;

(23) the angel babies association, for the purpose of providing assistance, support and items of necessity to teenage mothers and their babies; and

(24) the Kansas fairgrounds foundation for the purpose of the preservation, renovation and beautification of the Kansas state fairgrounds;

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise

imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales

tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such tangible personal property and services purchased by a primary care clinic or health center which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto.* Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation;

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials;

(hhh) all sales of tangible personal property and services purchased by or on behalf of all domestic violence shelters that are member agencies of the Kansas coalition against sexual and domestic violence;

(iii) all sales of personal property and services purchased by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the collection, storage and distribution of food products to nonprofit organizations which distribute such food products to persons pursuant to a food distribution program on a charitable basis without fee or charge, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities used for the collection and storage of such food products for any such organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment

thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 2005, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(jjj) all sales of dietary supplements dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "dietary supplement" means any product, other than tobacco, intended to supplement the diet that: (1) Contains one or more of the following dietary ingredients: A vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract or combination of any such ingredient; (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion, in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and (3) is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. § 101.36;

(lll) all sales of tangible personal property and services purchased by special olympics Kansas, inc. for the purpose of providing year-round sports training and athletic competition in a variety of olympic-type sports for individuals with intellectual disabilities by giving them continuing opportunities to develop physical fitness, demonstrate courage, experience joy and participate in a sharing of gifts, skills and friendship with their families, other special olympics athletes and the community, and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization;

(mmm) all sales of tangible personal property purchased by or on behalf of the Marillac Center, Inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing psycho-social-biological and special education services to children, and all sales of any such property by or on behalf of such organization for such purpose;

(nnn) all sales of tangible personal property and services purchased by the West Sedgwick County-Sunrise Rotary Club and Sunrise Charitable Fund for the purpose of constructing a boundless playground which is an integrated, barrier free and developmentally advantageous play environment for children of all abilities and disabilities;

(ooo) all sales of tangible personal property by or on behalf of a public library serving the general public and supported in whole or in part with tax money or a not-for-profit organization whose purpose is to raise funds for or provide services or other benefits to any such public library;

(ppp) all sales of tangible personal property and services purchased by or on behalf of a homeless shelter which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal income tax code of 1986, and used by any such homeless shelter to provide emergency and transitional housing for individuals and families experiencing homelessness, and all sales of any such property by or on behalf of any such homeless shelter for any such purpose;

(qqq) all sales of tangible personal property and services purchased by TLC for children and families, inc., hereinafter referred to as TLC, which is exempt from federal income taxation pursuant to section

501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of TLC for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC. When TLC contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(rrr) all sales of tangible personal property and services purchased by any county law library maintained pursuant to law and sales of tangible personal property and services purchased by an organization which would have been exempt from taxation under the provisions of this subsection if purchased directly by the county law library for the purpose of providing legal resources to attorneys, judges, students and the general public, and all sales of any such property by or on behalf of any such county law library;

(sss) all sales of tangible personal property and services purchased by catholic charities or youthville, hereinafter referred to as charitable family providers, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of charitable family providers for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for charitable family providers for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by charitable family providers. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for charitable

family providers. When charitable family providers contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to charitable family providers a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, charitable family providers shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ttt) all sales of tangible personal property or services purchased by a contractor for a project for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility owned by a nonprofit museum which has been granted an exemption pursuant to subsection (qq), which such home or facility is located in a city which has been designated as a qualified hometown pursuant to the provisions of K.S.A. 75-5071 et seq., and amendments thereto, and which such project is related to the purposes of K.S.A. 75-5071 et seq., and amendments thereto, and which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit museum. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility for any such nonprofit museum. When any such nonprofit museum shall contract for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project, the contractor shall furnish to such nonprofit museum a sworn statement on a form to be provided by the director of taxation that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in a home or facility or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such nonprofit museum shall be liable for tax on all materials purchased for the project, and upon

payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(uuu) all sales of tangible personal property and services purchased by Kansas children's service league, hereinafter referred to as KCSL, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing for the prevention and treatment of child abuse and maltreatment as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of KCSL for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for KCSL for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by KCSL. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for KCSL. When KCSL contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to KCSL a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, KCSL shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(vvv) all sales of tangible personal property or services, including the renting and leasing of tangible personal property or services, purchased by Jazz in the Woods, Inc., a Kansas corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing Jazz in the Woods, an event benefiting children-in-need and other nonprofit charities assisting such children, and all sales of any such property by or on behalf of such organization for such purpose;

(www) all sales of tangible personal property purchased by or on behalf of the Frontenac Education Foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing education support for stu-

dents, and all sales of any such property by or on behalf of such organization for such purpose;

(xxx) all sales of personal property and services purchased by the booth theatre foundation, inc., an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling of the booth theatre, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling the booth theatre for such organization, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after January 1, 2007, but prior to the effective date of this act upon the gross receipts received from any sale which would have been exempted by the provisions of this subsection had such sale occurred after the effective date of this act shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(yyy) all sales of tangible personal property and services purchased by TLC charities foundation, inc., hereinafter referred to as TLC charities, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of encouraging private philanthropy to further the vision, values, and goals of TLC for children and families, inc.; and all sales of such property and services by or on behalf of TLC charities for any such purpose and all sales of tangible personal property or services purchased by a contractor for the purpose

of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC charities for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC charities. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC charities. When TLC charities contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC charities a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be incorporated into the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC charities shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(zzz) all sales of tangible personal property purchased by the rotary club of shawnee foundation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended, used for the purpose of providing contributions to community service organizations and scholarships;

(aaaa) all sales of personal property and services purchased by or on behalf of victory in the valley, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing a cancer support group and services for persons with cancer, and all sales of any such property by or on behalf of any such organization for any such purpose;

(bbbb) all sales of entry or participation fees, charges or tickets by Guadalupe health foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for such organization's annual fundraising event which purpose is to provide health care services for uninsured workers;

(cccc) all sales of tangible personal property or services purchased by or on behalf of wayside waifs, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing such organization's annual fundraiser, an event whose purpose is to support the care of homeless and abandoned animals, animal adoption efforts, education programs for children and efforts to reduce animal over-population and animal welfare services, and all sales of any such property, including entry or participation fees or charges, by or on behalf of such organization for such purpose;

(dddd) all sales of tangible personal property or services purchased by or on behalf of Goodwill Industries or Easter Seals of Kansas, Inc., both of which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing education, training and employment opportunities for people with disabilities and other barriers to employment;

(eeee) all sales of tangible personal property or services purchased by or on behalf of All American Beef Battalion, Inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of educating, promoting and participating as a contact group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services;

(ffff) all sales of tangible personal property and services purchased by sheltered living, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing residential and day services for people with developmental disabilities or intellectual disability, or both, and all sales of any such property by or on behalf of sheltered living, inc., for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling homes and facilities for sheltered living, inc., for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by sheltered living, inc. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities for sheltered living, inc. When sheltered living, inc., contracts for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to sheltered living, inc., a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, sheltered living, inc., shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto; and

(gggg) all sales of game birds for which the primary purpose is use in hunting.

New Sec. 23. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 24. K.S.A. 2012 Supp. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 76-3308, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,**

Plaintiffs,

v.

**KIMBERLY TEMPLETON, MD, President of
the Kansas Board of Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,**

Defendants.

Case No. 13-cv-2302 KHV/KGG

COMPLAINT

Plaintiffs bring this complaint against the above-named Defendants, their employees, agents and successors in office, and allege as follows:

1. This is an action pursuant to 42 U.S.C. § 1983 challenging new and existing provisions of Kansas law that compel Plaintiffs to engage in speech in violation of their rights under the First and Fourteenth Amendments to the U.S. Constitution.

2. Plaintiffs challenge the constitutionality of two requirements in section 14 of newly enacted Kansas House Bill 2253, 85th Leg., Reg. Sess. (2013) (the “Act”), set to take effect July 1, 2013. One provision compels Plaintiff Comprehensive Health of Planned

Parenthood of Kansas and Mid-Missouri, Inc. (“CHPPKM”) to place on the homepage of its public website both a hyperlink to a government website that contains the government’s viewpoint on abortion, and a scripted message of endorsement of the content on the government’s website, even where CHPPKM disagrees with the message, thereby violating the First Amendment rights of CHPPKM. If CHPPKM fails to comply with this command, it cannot legally provide abortions. Thus, this provision also violates the Fourteenth Amendment rights of Plaintiffs’ patients.

3. The Act also compels a physician who is to perform an abortion to provide every patient seeking an abortion with information intended to convey the misleading suggestion that a fetus can feel pain after reaching a certain gestational age. Yet, all or virtually all of the women who have abortions at CHPPKM do not have pregnancies that reach that gestational age. Thus, regardless of the misleading nature of the information, it is also entirely irrelevant to them. Compelling this speech violates the First Amendment rights of Plaintiff Dr. Moore, and the Fourteenth Amendment rights of his abortion patients.

4. Plaintiffs also challenge existing subsection (b)(5) of Kan. Stat. Ann. § 65-6709, which compels a physician who is to perform an abortion to inform every patient that “the abortion will terminate the life of a whole, separate, unique, living human being”—a misleading statement of philosophical and/or religious belief. Compelling this speech violates the First Amendment rights of Plaintiff Dr. Moore, and the Fourteenth Amendment rights of his abortion patients.

5. Plaintiffs seek a judgment declaring that the above requirements violate the rights of Plaintiffs and their patients, and seek appropriate injunctive relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331 because this case arises under the Constitution and laws of the United States and under 28 U.S.C. § 1343(a)(3) because this case seeks to redress the deprivation under color of state law of rights guaranteed by the Constitution of the United States.

7. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district.

PARTIES

Plaintiffs

9. Plaintiff Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. is a not-for-profit corporation, organized and existing under the laws of Kansas, with its principal place of business in Overland Park, Johnson County, Kansas. CHPPKM operates a licensed ambulatory surgical center and provides reproductive health care services, including abortion services, to hundreds of women, teens, and men on a monthly basis.

10. Plaintiff Orrin Moore, MD, is a Board Certified obstetrician and gynecologist and is licensed to practice medicine in Kansas by the Kansas Board of Healing Arts. Dr. Moore is the Medical Director of CHPPKM and the primary abortion care provider at CHPPKM.

11. Plaintiffs bring this action on their own behalf and on behalf of their patients who presently desire, or, in the future, may desire, abortion services in Kansas.

Defendants

12. Defendant Kimberly J. Templeton, MD, is the President of the Kansas Board of Healing Arts (“BOHA”), the agency responsible for the regulation and licensure of physicians in Kansas. BOHA has the power and duty to take disciplinary action against a physician for unprofessional conduct, including revoking, suspending, or limiting a physician’s license. Ms. Templeton is sued in her official capacity, as are her agents and successors.

13. Defendant Robert Moser, MD, is the Secretary of the Kansas Department of Health and Environment (“KDHE”), the agency responsible for the regulation and licensure of medical facilities, including ambulatory surgical centers. KDHE has the power and duty to take disciplinary action against a medical facility for failure to report a physician’s unprofessional conduct, including suspending, revoking or limiting the medical facility’s license, as well as imposing civil fines. KDHE is also responsible for creating the State materials and website required under Kan. Stat. Ann. § 65-6710. Secretary Moser is sued in his official capacity, as are his agents and successors.

14. Defendant Derek Schmidt is the Attorney General of Kansas. Attorney General Schmidt is authorized to assist in the prosecution of and take over prosecutions of violations of Kansas criminal laws, upon the request of a District Attorney. Attorney General Schmidt is also authorized to assist in the prosecution of and take over prosecutions of any violation of the Kansas Healing Arts Act, upon the request of the Board of Healing Arts. Attorney General Schmidt is sued in his official capacity, as are his agents and successors.

15. Defendant Stephen M. Howe is the District Attorney for Johnson County, Kansas, where CHPPKM is located. District Attorney Howe is authorized to prosecute violations of Kansas criminal laws. District Attorney Howe is also authorized to assist in the prosecution of

and take over prosecutions of any violation of the Kansas Healing Arts Act, upon the request of the Board of Healing Arts. Mr. Howe is sued in his official capacity, as are his agents and successors.

CHALLENGED PROVISIONS

H.B. 2253

16. The Act was signed into law on April 19, 2013. A copy of the Act is attached hereto as Exhibit A.

17. Section 14 of the Act supplements Kan. Stat. Ann. § 65-6709. Kan. Stat. Ann. § 65-6709 states that “[n]o abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced,” and sets forth an array of requirements necessary for voluntary and informed consent.

18. Section 14 of the Act amends Kan. Stat. Ann. § 65-6709 to further require, as a condition of a woman’s ability to give valid consent to an abortion, that:

Any . . . facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment’s website that provides informed consent materials under the woman’s right-to-know act. Such link shall read: “The Kansas Department of Health and Environment maintains a website containing *objective, nonjudgmental, scientifically accurate information* about the development of the unborn child, as well as a video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment’s website can be reached by clicking here.”

Act § 14 (emphasis added) (to be codified at Kan. Stat. Ann. § 65-6709(1)) (Ex. A, at 10).

19. Section 14 of the Act further expands Kan. Stat. Ann. § 65-6709 to require, as a condition of a woman’s ability to give valid consent to an abortion, that she be provided with a written statement at least 24 hours in advance of the abortion procedure that states:

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

Act § 14 (emphasis added) (to be codified at Kan. Stat. Ann. § 65-6709(b)(6)) (Ex. A, at 8).

Existing Kan. Stat. Ann. § 65-6709(b)(5)

20. Kan. Stat. Ann. § 65-6709(b)(5) requires, as a condition of a woman's ability to give valid consent to an abortion, that she be provided with a written statement at least 24 hours in advance of the abortion procedure that "the abortion will terminate the life of a whole, separate, unique, living human being."

Penalties and Liability

21. A physician that performs an abortion without a woman's valid consent, as required by Kan. Stat. Ann. § 65-6709, commits unprofessional conduct and faces significant licensing penalties, including license suspension, revocation, and/or limitation. *See* Kan. Stat. Ann. §§ 65-2836(b), (f), (k); 65-2837(b); 65-2864. *See also* Kan. Admin. Regs. § 100-6-1 (conditioning granting of license by BOHA on compliance with the requirements of the laws of the state of Kansas). An act of unprofessional conduct also exposes a physician to prosecution for a misdemeanor that carries monetary penalties for each separate offense. *See* Kan. Stat. Ann. § 65-2862.

22. Further, a licensed ambulatory surgical center is required to report to BOHA when a physician has acted in a manner which may be grounds for disciplinary action (which, as stated above, includes performing a procedure on a patient without informed consent). *See* Kan. Stat. Ann. §§ 65-28, 121(a); 65-4921; 65-4923(a)(2). Failure to report a physician's unprofessional conduct carries penalties against the medical facility, including possible licensure

suspension, revocation, or limitation by KDHE, as well as civil and criminal penalties. See Kan. Stat. Ann. §§ 65-4927(b), (c); 65-28,121(a), (c); 65-430.

FACTUAL ALLEGATIONS

23. CHPPKM provides surgical abortions through 21 weeks and 6 days of pregnancy from the first day of the woman's last menstrual period, as well as medication abortion, which is an FDA-approved, non-invasive method of terminating an early pregnancy by oral medication.

24. CHPPKM measures gestational age from the first day of the woman's last menstrual period ("LMP") because this is the common and accepted medical practice employed by health care providers who treat pregnant women. While the exact date of fertilization is rarely known, it typically occurs 14 days from the first day of the LMP, which means that a gestational age referred to in terms of fertilization is typically two weeks earlier than one measured by LMP.

25. Approximately 90% of the abortions performed at CHPPKM are provided in the first trimester of pregnancy, i.e. through 13 weeks LMP. Approximately 99% of the abortions are provided for pregnancies that are no later than 20 weeks LMP (i.e., no later than 18 weeks from fertilization).

26. Plaintiffs maintain a close, confidential relationship with their patients, whom seek to keep their pregnancy and the care they are seeking private.

27. In addition to abortion services, CHPPKM provides other reproductive health care, including family planning services, cervical and breast cancer screening services, pregnancy testing, all-options counseling, and testing and treatment for sexually transmitted infections, for women, teens, and men, as appropriate.

28. CHPPKM maintains a publicly available website, <http://www.plannedparenthood.org/comprehensive-health/>, for the purpose of conveying information about its services, accurate reproductive health educational information, and educational or training opportunities or other opportunities to engage with CHPPKM.

29. CHPPKM's website receives a high volume of visits: for example, in 2012, it received 46,500 visits from 28,900 unique visitors. Some of these visitors—but far from all—are CHPPKM's patients (both abortion and non-abortion patients).

30. Plaintiffs comply with all statutory requirements relating to informed consent for abortion, including that an abortion patient, at least 24 hours in advance of the procedure, be informed in writing that State-created materials are available in printed form and online that “describe the unborn child, list agencies with offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services,” Kan. Stat. Ann. § 65-6709(b)(2), and be given the State-created materials, *see id.* § 65-6709(d).

31. As required by current law, Kan. Stat. Ann. § 65-6710(b), KDHE maintains a website, <http://www.womansrighttoknow.org/>, that contains the government's viewpoint about what materials and statements a woman should consider prior to having an abortion, including numerous statements about a fetus.

32. CHPPKM objects to the requirement that it, in effect, endorse the State's materials by stating on its website homepage that certain information on the State's website is “objective, nonjudgmental, and scientifically accurate.” Further, CHPPKM does not agree with this statement, in that CHPPKM believes that several aspects of the State's materials are inaccurate, judgmental, and not objective.

33. For example, the document titled, “If You are Pregnant,” which is available on the government’s website, states that “pregnancy begins at conception with the union of a man’s sperm and a woman’s egg.” CHPPKM believes, as do most major medical organizations, including the American College of Obstetricians & Gynecologists, that pregnancy is established only upon the conclusion of implantation, which typically occurs 5-9 days following fertilization.

34. The materials also state that “[a]bortion terminates the life of a whole, separate, unique, living human being.” CHPPKM does not believe this is an objective, nonjudgmental, and scientifically accurate statement.

35. Pursuant to section 15 of the Act, the State’s materials must now also contain a statement “that less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity, and a fetal heartbeat is, therefore, a key medical indicator that an unborn child is likely to achieve the capacity for live birth.” CHPPKM does not believe this statistic is accurate; medical literature suggests that close to 10% of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity.

36. CHPPKM does not have the ability to continually monitor the government’s website to ensure that it is scientifically accurate, objective, and non-judgmental. The same is true for any website that the government chooses to link to from its website for the purpose of conveying information about fetal development.

37. Plaintiff Dr. Moore objects to the requirement imposed by section 14 of the Act that every woman receiving an abortion, regardless of the gestational age of her pregnancy, be given information about characteristics of a fetus “by” or “no later than” “20 weeks from fertilization” (i.e., 22 weeks LMP) that imply that, at that gestational age, a fetus may experience pain. Not only is this information misleading, it is irrelevant to all or virtually all of Dr. Moore’s

patients because neither he nor CHPPKM provide abortions when a pregnancy has reached 20 weeks post-fertilization. Plaintiff Dr. Moore also objects to having to inform his patients that “the abortion will terminate the life of a whole, separate, unique, living human being.” This statement is an expression of a moral, philosophical, and/or religious belief.

38. Unless Plaintiffs comply with the Act and publicly endorse the State-prepared materials with which they disagree, as well as make statements to their patients which are irrelevant to their patients’ situations, misleading, and/or not truthful, they will effectively be prevented from engaging in the provision of abortion services, thereby restricting their patients’ access to abortion.

39. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

40. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 39 above.

41. By compelling Plaintiff CHPPKM to unwillingly place on the homepage of its public website a hyperlink to a government website, and deliver a scripted government message of endorsement of information on the government’s website, section 14 of the Act violates the rights of Plaintiff CHPPKM under the First Amendment, as applied through the Fourteenth Amendment, to the U.S. Constitution.

SECOND CLAIM FOR RELIEF

42. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 41 above.

43. By compelling Plaintiff Dr. Moore to communicate to every patient seeking an abortion a) irrelevant and misleading statements related to whether a fetus at or no later than 20

weeks post-fertilization can feel pain , and b) the government’s ideological message that a woman’s “abortion will terminate the life of a whole, separate, unique, living human being,” section 14 of the Act and existing Kan. Stat. Ann. § 65-6709(b)(5) violate the rights of Plaintiff Dr. Moore under the First Amendment, as applied through the Fourteenth Amendment, to the U.S. Constitution.

THIRD CLAIM FOR RELIEF

44. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 43 above.

45. By preventing a woman from having an abortion unless Plaintiffs engage in impermissible compelled public speech, and make statements to patients seeking abortions that are untruthful, misleading, and/or not relevant to those women, section 14 of the Act and existing Kan. Stat. Ann. § 65-6709(b) violate the rights of Plaintiffs’ patients under the Fourteenth Amendment to the U.S. Constitution.

WHEREFORE, Plaintiffs request that this Court:

1. Grant Plaintiffs a judgment declaring that the challenged provisions in section 14 of the Act, to be codified at Kan. Stat. Ann. §§ 65-6709(b)(6), (1), and existing Kan. Stat. Ann. § 65-6709(b)(5), violate the U.S. Constitution.

2. Grant Plaintiffs a permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing or taking any action based on a violation of the challenged provisions in section 14 of the Act, to be codified at Kan. Stat. Ann. §§ 65-6709(b)(6), (1), and existing Kan. Stat. Ann. § 65-6709(b)(5).

3. Grant Plaintiffs interim injunctive relief as may be necessary to maintain the *status quo* pending award of a final judgment.

4. Grant Plaintiffs attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988.
5. Grant such further relief as this Court deems equitable and just under the circumstances.

Respectfully submitted,

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Attorneys for Plaintiffs

**Application for Admission Pro Hac Vice
Forthcoming*

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,**

Plaintiffs,

v.

**KIMBERLY TEMPLETON, MD, President of
the Kansas Board of Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,**

Defendants.

Case No. 2:13-cv-02302-KHV-KGG

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
A PRELIMINARY INJUNCTION AND, IF NECESSARY,
FOR A TEMPORARY RESTRAINING ORDER**

I. NATURE OF THE CASE

Plaintiffs have filed an action pursuant to 42 U.S.C. § 1983, challenging the constitutionality of certain provisions of recently enacted H.B. 2253, 85th Leg., Reg. Sess. (Kan. 2013) ("Act").

The Act takes effect July 1, 2013. Accordingly, Plaintiffs have filed a motion for a preliminary injunction and a temporary restraining order in order to preserve the status quo and

prevent the immediate and irreparable injuries that will otherwise unfold upon the Act taking effect.¹ This Memorandum of Law is submitted in support of Plaintiffs' motion.

Section 14 of the Act compels Plaintiff Comprehensive Health of Planned Parenthood of Mid-Missouri & Kansas ("Comprehensive Health" or "CHPPKM") to place on the homepage of its website both a hyperlink to a government website that contains State prepared materials on abortion and a message of endorsement of the content of those materials, even though Comprehensive Health disagrees with the endorsement and some of the content of the materials found at the link. The Act compels Comprehensive Health to engage in this speech by requiring the link and the endorsement as a condition to providing a legal abortion. Failure to comply with the Act would expose physicians at Comprehensive Health and Comprehensive Health to significant penalties, including possible suspension, revocation, or limitation of their respective licenses, as well as civil and/or criminal liability.

Section 14 also mandates that a physician inform a woman seeking an abortion of information relating to the capacity of a fetus to feel pain beginning at a specific gestational age. This information implies that the fetus is capable of feeling pain at that gestational age, an implication rejected by the overwhelming majority of medical authority. More egregious is the requirement's blanket application to all women seeking an abortion regardless of the gestational stage of the woman's pregnancy. This flaw is particularly important as applied to Plaintiff Orrin Moore, MD, and his patients because Plaintiffs do not provide abortions at or after the gestational age referenced in the compelled statement. Nonetheless, if Plaintiffs do not provide the information, they face penalties, including the suspension, revocation, or limitation of Dr. Moore's medical license.

¹ Plaintiffs have also challenged the constitutionality of another provision of Kan. Stat. Ann. § 65-6709(b)(5) that is already in effect. Plaintiffs' motion does not seek to enjoin that provision.

II. STATEMENT OF FACTS

A. PLAINTIFFS

Plaintiff Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. operates a licensed medical facility in Overland Park, Johnson County, Kansas. *See* Decl. of Peter B. Brownlie (“Brownlie Decl.”) ¶ 4-5 (attached hereto as Exhibit A). Plaintiff Orrin Moore, MD, is the Medical Director of Comprehensive Health and the primary abortion care provider. *See* Decl. of Orrin Moore, MD (“Moore Decl.”) ¶ 1 (attached hereto as Exhibit B). Comprehensive Health provides surgical abortions through 21 weeks and 6 days of pregnancy, as measured from the first day of the woman’s last menstrual period (“LMP”)², as well as medication abortion, which is an FDA-approved, non-invasive method of terminating an early pregnancy by oral medication. *Id.* at ¶ 10; Brownlie Decl. ¶ 5. In addition to abortion services, Comprehensive Health provides other reproductive health care, including family planning services, testing and treatment for sexually transmitted infections, cervical and breast cancer screening services, pregnancy testing, and all-options counseling. Before an abortion, as with any medical procedure, Comprehensive Health takes a number of steps to ensure that a patient’s consent is voluntary and informed, including meeting all legal requirements.

Comprehensive Health maintains a publicly available website, <http://www.plannedparenthood.org/comprehensive-health/>, for the purpose of conveying information to the public about its services, accurate reproductive health educational

² CHPPKM measures gestational age from the first day of the woman’s last menstrual period (“LMP”) because this is the common and accepted medical practice employed by health care providers who treat pregnant women. A different method of measuring gestational age is by the date of fertilization. This method is far less common because the exact date of fertilization is rarely known. However, it typically occurs 14 days from the first day of the LMP, which means that a gestational age referred to in terms of fertilization is typically two weeks earlier than one measured by LMP. Moore Decl. ¶ 9.

information, and other information, including information about how to get involved with CHPPKM. Brownlie Decl. ¶ 12. For example, Comprehensive Health’s website contains information about birth control, sexually transmitted diseases, and general preventative health care. Most of this information comes from Planned Parenthood Federation of America (“PPFA”), of which Comprehensive Health is an affiliate, which is vetted by PPFA’s Medical Affairs and Education Departments to ensure that the information is accurate, up-to-date, accessible and non-judgmental.

Comprehensive Health’s website receives a high volume of visitors. In 2012, it received 46,500 visits from 28,900 unique visitors. Brownlie Decl. ¶ 14. Some of these visitors—but far from all—are Comprehensive Health’s patients.

B. THE ACT AND EXISTING STATUTORY FRAMEWORK

Under Kansas law, “[n]o abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced,” and “consent to an abortion is voluntary and informed only if” an array of requirements set out in Kan. Stat. Ann. § 65-6709 are met. For example, in order for a patient to be able to give “voluntary and informed consent,” 24 hours in advance of the procedure the patient must both be informed in writing that State-created materials are available in printed form and online that “describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services,” *id.* § 65-6709(b)(2), and be given the State-created materials, *id.* § 65-6709(d).

The State-created website, <http://www.womansrighttoknow.org/>, is maintained by the Kansas Department of Health and Environment (“KDHE”), as required by Kan. Stat. Ann. § 65-

6710(b), and contains the government's viewpoint about what materials and statements a woman should consider prior to having an abortion, including numerous statements about a fetus.

The Act amends Kan. Stat. Ann. § 65-6709 and dramatically expands the State's effort to compel speech. Under the Act, Comprehensive Health must place a link to the State's website and materials on its website homepage, a vehicle by which Comprehensive Health communicates on a variety of subjects with an audience much wider than women to whom they will be providing an abortion. Not only must Comprehensive Health provide that link, it must also endorse the contents of the State's materials with these words: "The Kansas Department of Health and Environment maintains a website containing objective, nonjudgmental, scientifically accurate information about the development of the unborn child, as well as a video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here." Act § 14 (to be codified at Kan. Stat. Ann. § 65-6709(l)) (Compl. Ex. A, at 10.)

Comprehensive Health strongly objects to having to make these public statements in order to continue providing abortion services. Comprehensive Health also disagrees with the actual message. Brownlie Decl. ¶ 16. Indeed, the State's materials that are available on the government website contain statements that Comprehensive Health believes are not "objective, nonjudgmental, and scientifically accurate." *Id.* at ¶¶ 16-19

Section 14 of the Act also expands Kan. Stat. Ann. § 65-6709 to require that a physician provide a woman seeking an abortion (in addition to information relating to the proposed abortion method, and a description of risks related to the proposed abortion method) 24 hours in advance of her abortion procedure with the following information:

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

Act § 14 (to be codified at Kan. Stat. Ann. § 65-6709(b)(5)) (Compl. Ex. A, at 8.). Twenty weeks from fertilization equates to 22 weeks LMP. *See* Moore Decl. ¶ 6. Given that Plaintiff Dr. Moore does not provide abortions at 22 weeks LMP—and, indeed, the vast majority of abortions he performs are performed in the first trimester, i.e. before 13 weeks LMP—Dr. Moore strongly objects to the application of this requirement to him and his patients. *Id.* at ¶ 24.

The Act's placement of the challenged requirements in the existing informed consent statute for abortion—such that a patient's consent is not valid unless the requirements are complied with—exposes Comprehensive Health and its physicians to significant penalties for failure to comply with the challenged requirements. Under Kan. Stat. Ann. § 65-2836, Defendant Board of Healing Arts (“BOHA”) has the authority to revoke, suspend or limit a physician's license where a physician has committed an act of unprofessional conduct, which includes providing medical care to a patient without informed consent. *See* Kan. Stat. Ann. §§ 65-2836(b), (f), (k); § 65-2837(b); § 65-2864. *See also* Kan. Admin. Regs. § 100-6-1 (conditioning granting of license by BOHA on compliance with the requirements of the laws of the state of Kansas). In addition, any violation of the Kansas Healing Arts Act, which governs licensed physicians, is deemed a misdemeanor and upon conviction requires the payment of civil fines for each separate offense. *See* Kan. Stat. Ann. § 65-2862.

Moreover, Comprehensive Health, as a licensed medical facility, is required to report to BOHA when a physician has acted in a manner which may be grounds for disciplinary action (which, as stated above, includes performing a procedure on a patient without informed consent).

See Kan. Stat. Ann. §§ 65-28, 121(a); 65-4921; 65-4923(a)(2); Failure to report a physician's unprofessional conduct carries penalties against Comprehensive Health, including: possible suspension, revocation, or limitation of its medical facility license by KDHE, as well as civil and criminal penalties, including a class C misdemeanor conviction. *See* Kan. Stat. Ann. §§ 65-4927(b), (c); 65-28,121(a), (c); 65-430.

The Act, thus, places Plaintiffs in an untenable position: Comprehensive Health must either publicly deliver the government's message with which it disagrees, and Dr. Moore must provide irrelevant, misleading, and untruthful information to his patients seeking abortions, or they disregard the law at the risk of losing their respective licenses to engage in the provision of medical services, which in turn would restrict their patients' access to abortion services.

The Act takes effect on July 1, 2013. Plaintiffs have abortions scheduled for July 2, 2013. Thus, in order to preserve the status quo and to prevent irreparable injury to Plaintiffs and Plaintiffs' patients, this Court should grant Plaintiffs' motion for a preliminary injunction and, if necessary, also grant Plaintiffs' application for a temporary restraining order. This relief is necessary to protect the constitutional rights of Plaintiffs and their patients, who will suffer irreparable injury if Defendants are not enjoined from enforcing the challenged provisions in the Act and/or taking any action for violations of the challenged provisions.

III. QUESTIONS PRESENTED

(1) Is Plaintiff Comprehensive Health likely to prevail on its claim that the Act's requirement that it unwillingly place on the homepage of its website a hyperlink to a government website, and place a scripted message of endorsement of the information on the government website violates its rights under the First Amendment?

(2) Is Plaintiff Dr. Moore likely to prevail on his claim that, as applied to him, the Act's requirement that he deliver information about whether a fetus can feel pain at a gestational age in pregnancy at which he does not perform abortions violates his First Amendment rights?

(3) Are Plaintiffs likely to prevail on their claim that section 14 of the Act, as applied to Plaintiffs' patients, violates their patients' Fourteenth Amendment rights because the Act prohibits their patients from consenting to an abortion unless they are provided with information that is irrelevant, misleading, and untruthful?

(4) Will Plaintiffs and their patients suffer irreparable injury without preliminary injunctive relief? Does that injury outweigh any injury to Defendants? And, is the preliminary injunction in the public interest?

IV. ARGUMENT

A temporary injunction serves to "preserve the status quo pending the outcome of the case" in order to "preserve the power to render a meaningful decision on the merits." *Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986) (citations omitted). The status quo is considered to be "the last uncontested status between the parties which preceded the controversy." *See Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001) (citation & internal quotations omitted).

In ruling on a motion for temporary injunctive relief, this Court should consider whether: (1) there is a substantial likelihood that the moving party will eventually prevail on the merits; (2) the moving party will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the moving party outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *See*

Hartford House, Ltd. v. Hallmark Cards, Inc., 846 F.2d 1268, 1270 (10th Cir. 1988) (citing *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980)) (internal quotations omitted); *see also* *Bushnell Inc. v. Brunton Co.*, 673 F.Supp.2d 1241, 1248 (D. Kan. 2009).

A. There is a Substantial Likelihood That Plaintiffs Will Succeed on Their Claims.

1. The Challenged Provisions Violate Plaintiffs' First Amendment Rights.

As the U.S. Supreme Court affirmed just days ago:

It is . . . a basic First Amendment principle that ‘freedom of speech prohibits the government from telling people what they must say.’ ‘At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.’

Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc., No. 12-10, slip op. at 6-7 (U.S. June 20, 2013) (finding that a requirement in a funding program that compelled recipients to involuntarily adopt and endorse the government’s policy of opposing prostitution as their own, “plainly violate[s] the First Amendment”) (citing *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006); *W. Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977)); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994); *See also id.* (*Knox v. SEIU, Local 1000*, 132 S.Ct. 2277, 2288 (2012) (“The government may not . . . compel the endorsement of ideas that it approves.”)).

“The First Amendment’s proscription of compelled speech does not turn on the ideological content of the message that the speaker is being forced to carry. The constitutional harm—and what the First Amendment prohibits—is being forced to speak rather than to remain silent.” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1284 n.4 (10th Cir. 2004) (citing collection of U.S. Supreme Court cases). *See also* *Cressman v. Thompson*, No. 12-6151, 2013 WL 2501938,

at *11 (10th Cir. June 12, 2013) (affirming its holding in *Axson-Flynn*, including that it is “difficult to divine a standard for determining when speech is ideological and when it is not”). The proscription “applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.” *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 at 573 (1995).

Nor is “[t]he identity of the speaker . . . decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster.” *Pac. Gas & Elec. Co. v. Pub. Util. Comm’n of Cal.*, 475 U.S. 1, 907 (1986); *Citizens United v. FEC*, 558 U.S. 310, 312 (2010) (“The Court has recognized that the First Amendment applies to corporations.”).

A law that “[m]andat[es] speech that a speaker would not otherwise make necessarily alters the content of the speech,” and is “considered a content-based regulation of speech.” *Riley v. Nat’l Fed. of the Blind of N.C. Inc.*, 487 U.S. 781, 795 (1988) (citing *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (statute compelling newspaper to print an editorial reply “exact[s] a penalty on the basis of the content of a newspaper”)). *See also Farnsworth v. City of Mulvane*, 660 F.Supp.2d 1217, 1228 (D. Kan. 2009) (“The government must abstain from regulating speech when the motivating ideology or opinion or perspective of the speaker is the rationale for the restriction.” (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995))). A “content-based regulation is subject to exacting First Amendment scrutiny” which demands that the regulation be narrowly tailored to achieve a compelling state interest in order to justify the deprivation of a constitutional right. *Riley*, 487 U.S. at 798.

The challenged provisions in section 14 of the Act are plainly unconstitutional under these principles.

a. The Requirement That Comprehensive Health Link to and Endorse the Government’s Message on its Public Website Is Unconstitutional.

Under the Act, Comprehensive Health is required to place a link to a government website that contains State-created information concerning abortion on the home page of its website, and state that certain of that information is “objective, nonjudgmental, [and] scientifically accurate”—even though Comprehensive Health objects to and does not agree with this statement. Act § 14 (to be codified at Kan. Stat. Ann. § 65-6709(b)(1)) (Compl. Ex. A, at 8.). See *Brownlie Decl.* ¶¶ 16-19 (providing examples of statements in the government’s materials that it believes are not accurate, objective, and non-judgmental, including statements about medical facts as basic as when pregnancy begins). Put simply, the Act compels Comprehensive Health “to speak rather than to remain silent,” *Axson-Flynn*, 356 F.3d at 1284 n.4, allows the “government to tell[] [them] what they must say,” *Agency for Int’l Dev.*, slip op. at 6, and “compel[s] the endorsement of ideas that [the government] approves,” *Knox*, 132 S.Ct. at 2282—a clear contravention from binding precedent.

Indeed, the challenged Act is worse than the requirement struck down by the U.S. Supreme Court in *Wooley v. Maynard* that forced every driver to become a “mobile billboard” through the “passive” placement of the State’s motto on license plates. 430 U.S. at 715. Here, the Act seeks to hijack Comprehensive Health’s website and turn it into a billboard that not only advertises the State’s website containing its views about abortion, but also requires Comprehensive Health to become a spokesperson for the government’s website by mandating a scripted message of endorsement, all on a mammoth information superhighway.

By forcing Comprehensive Health to link to the government's website from its homepage and disseminate a view contrary to its own, and the information it seeks to advance, "its right to autonomy over [its] message is compromised" and the expressive content it seeks to advance is necessarily altered. *Hurley*, 515 U.S. at 576. *See also id.* at 515 U.S. at 557 (finding that a mandate requiring private citizens to include in their organized parade a group expressing a message that the organizers did not wish to convey violated the organizers' First Amendment rights as it "affect[] the message conveyed by the private organizers"); *Pac. Gas & Elec.*, 475 U.S. at 15 (invalidating a ratepayer's coerced access to the envelope of a private utility's bill and newsletter because the utility "may be forced either to appear to agree with [the intruding leaflet] or to respond").

A personal webpage conveys information "to the outside world" about the owner of the webpage, and through the use of certain hyperlinks on the website "communicate[s] an important message about itself." *Sutcliffe v. Epping Sch. Dist.*, 584 F.3d 314, 331 (1st Cir. 2009). *See id.* (holding that town's decision not to allow a hyperlink to a group's website was constitutional government speech). Indeed, the Internet is a "dynamic, multifaceted category of communication," the content of which is "as diverse as human thought," and allows the dissemination of information to a massive audience, including through web pages. *Reno v. ACLU*, 521 U.S. 844, 870 (1997). *See generally id.* (noting that the number of people that use the internet was expected to be 200 million over a decade ago); Brownlie Decl. ¶ 14 (in 2012 Comprehensive Health's website received in 46,500 visits from 28,900 unique visitors). Understandably so then, Comprehensive Health has an important stake in controlling the message it distributes on its webpage, and strongly objects to being required to lend its imprimatur to information it does not want agree with, and believes is inaccurate.

Even if, however, the information on the State’s website were accurate today, there is nothing to guarantee that would be the case tomorrow, or the day after. The same is true for any website the State chose to link to (as it does now) for the purpose of conveying the information Comprehensive Health would be required to endorse under the Act, which essentially forces Comprehensive Health to endorse more information that it has no control over. And even if Comprehensive Health had the resources to continually monitor the State’s website for its accuracy and objectivity or the websites it links to (which it does not, Brownlie Decl. ¶ 22), there are no exceptions in the Act for compliance—it is true compulsion on pain of significant penalties.

Whatever the State interest may be in enacting the challenged requirement, the State certainly cannot establish that the requirement is narrowly tailored. Of course, the State is free to disseminate its materials through other means without conscripting private parties to do so unwillingly. *Cf. Riley*, 487 U.S. at 800 (finding that the State’s disclosure requirement is impermissible compelled speech in part because “more benign and narrowly tailored options are available,” including that the State itself could publish the detailed disclosure forms).

The website link and scripted endorsement requirement in section 14 of the Act is a clear violation of Comprehensive Health’s First Amendment rights, and therefore must be enjoined.

b. The Requirement That Dr. Moore Deliver Irrelevant, Misleading, and Untruthful Information to His Patients Seeking an Abortion Is Unconstitutional as Applied to Him.

As applied to Dr. Moore, the requirement that he provide his patients with information about the capacity of a fetus to experience pain is unconstitutional because it compels him to provide his patients with irrelevant, misleading, and untruthful information. Specifically, the Act

expands the existing informed consent law for abortion to now require that a physician inform a patient in writing, 24-hours in advance of their abortion procedure, that

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

Act § 14 (to be codified at Kan. Stat. Ann. § 65-6709(b)(6)) (Compl. Ex. A, at 8).

Dr. Moore (and Comprehensive Health) provides abortions only up to where a pregnancy has reached 21 weeks and 6 days LMP, which equates to 19 weeks and 6 days post-fertilization. Moore Decl. ¶ 8.³ In other words, Dr. Moore does *not* perform abortions at the gestational age that the Act implies a fetus may experience pain.⁴ Indeed, approximately 90% of the abortions performed at Comprehensive Health are performed in the first trimester (i.e., through 13 weeks LMP), and 99% are performed no later than 20 weeks LMP (i.e., no later than 18 weeks post-fertilization). Brownlie Decl. ¶ 24.

Thus, regardless of the veracity of the statement (which is contested by the majority of the medical community⁵) the Act compels Dr. Moore, over his objection, to deliver information

³ See *supra* note 2 explaining the difference between measuring gestational age by LMP versus post-fertilization.

⁴ In fact, the State of Kansas has banned abortion upon a “pain-capable unborn child” beginning at 22 weeks LMP, except under extremely narrow circumstances. See Kan. Stat. Ann. § 65-6724.

⁵ Whether a fetus can feel pain as early as 22 weeks LMP is highly contested by the majority of the medical community. See S.J. Lee et al., *Fetal Pain: A Systematic Multidisciplinary Review of the Evidence* 294(8) JAMA 947, 952 (2005) (concluding, after a multidisciplinary literature review of scientific studies on fetal pain, that because pain is an “emotional and psychological experience” it requires consciousness, and “conscious perception of pain can arise only after the thalamocortical pathways begin to function, which may occur in the third trimester around 29 to 30 weeks gestational age”; also noting that thalamocortical fibers begin to grow at 23 to 30 weeks, “but their mere presence is insufficient—this pathway must also be functional”); Royal College of Obstetricians & Gynaecologists, *Fetal Awareness: Review of Research and*

that is entirely irrelevant to all of his patients' situations, and does not bear on their decision to have an abortion. Receiving the information may also cause Dr. Moore's patients to mistakenly infer that the statement *is* applicable to their pregnancies. This is especially true because the mandated statements refer to 18 weeks *post-fertilization*—which sounds earlier than it is because gestational ages referred to in terms of post-fertilization are typically two weeks less than when referred to by LMP (the common and accepted method of dating pregnancies employed by Dr. Moore and Comprehensive Health). *Id.* at ¶ 6.

While *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 882 (1992), recognizes that a physician can be required to tell an abortion patient certain information, the Court was clear that the information had to be “truthful, non-misleading” and relevant to the patient's decision to have an abortion. Indeed, the Court in *Casey* considered it important that the statute at issue in that case did not place physicians in a “straightjacket” and prevent them from exercising their medical judgment. *See Casey*, 505 U.S. at 884. Thus, under no constitutional principle or holding can Dr. Moore be compelled, over his objection, to provide the mandated statements in the Act relating to when a fetus may experience pain which are irrelevant to his patients. See also *id.* (stating that “a physician's First Amendment rights are implicated” even in the context of the regulation of medicine); *Planned Parenthood of the Heartland v. Heineman*, 724 F.Supp.2d 1025, 1048 (D. Neb. 2010) (holding that “requir[ing] medical providers to give untruthful, misleading, and irrelevant information to patients” implicates the providers' First Amendment rights); *Planned Parenthood Minn., N.D., S.D. v.*

Recommendations for Practice viii (2010) (Concluding, after a comprehensive review of the relevant research, that: “In reviewing the neuroanatomical and physiological evidence in the fetus, it was apparent that connections from the periphery to the cortex are not intact before 24 weeks of gestation and, as most neuroscientists believe that the cortex is necessary for pain perception, it can be concluded that the fetus cannot experience pain in any sense prior to this gestation.”).

Daugaard, 799 F.Supp.2d 1048, 1072 (D. S.D. 2011) (striking a requirement that compelled physicians to give untruthful, misleading and/or irrelevant information because it violated the First Amendment). Thus, Dr. Moore is likely to succeed on his claim that section 14 of the Act, as applied to him, violates his First Amendment rights. *Cf. Planned Parenthood of Ind. v. Comm. of Ind. Dep't of Health*, 794 F. Supp. 2d 892, 919 (S.D. Ind. 2011) (preliminarily enjoining a similar requirement that a physician inform all patients that a fetus can feel pain at or before 20 weeks post-fertilization as applied to an abortion provider that does not perform abortions at that gestational age because it required the disclosure of false, misleading, and irrelevant information).

2. The Requirement That Women Seeking an Abortion be Told Irrelevant, Misleading, and Untruthful Information Is Unconstitutional, as Applied to Plaintiffs' Patients.

Plaintiffs are also likely to succeed on their claim that the challenged provisions in the Act violate the rights of Plaintiffs' patients under the Fourteenth Amendment of the U.S. Constitution. As stated above, the Supreme Court was clear in *Casey* that any information the State requires a woman to receive as a condition of being able to exercise her right to have an abortion cannot be untruthful or misleading, and must be relevant to her decision. 505 U.S. at 882. Because section 14 prohibits a physician from performing an abortion unless he provide a woman with irrelevant, misleading, and untruthful information that implies a fetus can feel pain at a gestational age at which none of Plaintiffs' patients are seeking an abortion, *see supra*, this requirement, as applied to Plaintiffs' patients, is an undue burden on their constitutional right to have an abortion.

For the above reasons, Plaintiffs have demonstrated that they are likely to succeed on all their claims that the challenged provisions in section 14 of the Act are unconstitutional.

B. Plaintiffs and Their Patients Will Suffer Irreparable Harm.

In the absence of relief from this Court, CHPPKM and its patients will suffer ongoing and irreparable violations of their constitutional rights. Courts have found that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) (finding that “the curtailment of [the plaintiffs’] constitutionally protected speech” demonstrated “a sufficient showing that they will suffer irreparable injury”); *Bey v. Douglas Cnty. Correctional Facility*, 540 F. Supp. 2d 1194, 1197 (D. Kan. 2008) (“[W]hen a plaintiff alleges the deprivation of his First Amendment rights, courts do not require more in the showing of irreparable harm.”).

Plaintiffs’ patients will also suffer irreparable violations of their rights under the Fourteenth Amendment by preventing a woman from having an abortion unless Plaintiffs deliver untruthful, misleading and/or not relevant information, in violation of their constitutional rights. *See Planned Parenthood of Kansas, Inc. v. City of Wichita*, 729 F. Supp. 1282, 1291 (D. Kan. 1990) (irreparable injury is found where there is “a threat to important constitutional rights of the plaintiffs and their clients”); *Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) (the “deprivation of a constitutional right is, itself, irreparable harm.”).

Obviously, the alternative is untenable. If Plaintiffs continue to provide abortions in a way that does not violate their constitutional rights, they face licensure penalties, including possible revocation of their respective licenses to provide medical services, as well as civil and criminal penalties. Courts have held that the threat of such penalties establishes irreparable harm. *See, e.g., A Choice for Women v. Butterworth*, 54 F. Supp. 2d 1148, 1158 (S.D. Fla. 1998) (stating that because clinics faced potential prosecution for offering abortions, there was irreparable

injury); *Planned Parenthood of Cent. N.J. v. Verniero*, 41 F. Supp. 2d 478, 504 (D.N.J. 1998) (finding irreparable injury, in part, because Planned Parenthood faced heavy fines for noncompliance with abortion regulation). *See also Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 867, 866 (8th Cir. 1977) (where an abortion clinic’s “good will [is] imperiled by the prospect of having to interrupt its services” and its business will suffer “adverse effect[s],” a finding of irreparable injury is justified) *Tri-State Generation & Transmission Ass’n, Inc.*, 805 F.2d at 356 (“A threat to trade or business viability may constitute irreparable harm”).

C. The Balance of Harms Tips Heavily in Plaintiffs’ Favor

If this Court grants an injunction, Defendants, however, will suffer no measurable harm, if any at all. An injunction would merely maintain the status quo in Kansas, where Plaintiffs already inform its abortion patients about the State materials. The State cannot show that this requirement has failed to adequately protect women in Kansas seeking to have an abortion. Indeed, Plaintiffs provide high-quality care and comply with all of the laws of the State in Kansas. Moreover, Defendants have no valid interest in enforcing a clearly unconstitutional law. On the other hand, the denial of an injunction would deprive Plaintiffs and their patients their constitutional rights, and cause immediate and irreparable harm, *see supra*. *See Johnson*, 194 F.3d at 1163 (“the threatened injury to Plaintiffs’ constitutionally protected speech outweighs whatever damage the preliminary injunction may cause Defendants’ inability to enforce what appears to be an unconstitutional statute.”); *Quinly v. City of Prairie Vill.*, 446 F. Supp. 2d 1233, 1237 (D. Kan. 2006) (“[T]here can be no irreparable harm to a municipality when it is prevented from enforcing an unconstitutional statute . . .”).

D. Relief Is Not Inconsistent with the Public Interest.

Moreover, granting an injunction in this case will serve the public interest. “Vindicating First Amendment freedoms is clearly in the public interest.” *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005). *See also Elam Constr., Inc. v. Reg’l Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997) (“The public interest also favors plaintiffs’ assertion of their First Amendment rights.”). Additionally, the public more generally “has an interest in protecting constitutional rights.” *See Mease v. City of Shawnee*, 266 F.Supp.2d 1270, 1275 (D. Kan. 2003) (citing *Adams v. Baker*, 919 F.Supp. at 1505)); *see also U.S. Chamber of Commerce v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010) (“[The State] does not have an interest in enforcing a law that is likely constitutionally infirm.”). The public also has an interest in Comprehensive Health and its physicians maintaining their practice and continuing to safely serve the hundreds of women who seek its abortion services on a monthly basis. *Cf. Otero Savings and Loan Ass’n v. Fed Home Loan Bank*, 665 F.2d 279 (10th Cir. 1981) (upholding district court’s finding that the public interest would be served by the granting of a preliminary injunction, because it would prevent the disruption and confusion the termination of services would cause).

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Preliminary Injunction and Temporary Restraining Order.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

By /s/ Arthur A. Benson II

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EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,**

Plaintiffs,

v.

Case No. 2:13-cv-02302-KHV-KGG

**KIMBERLY TEMPLETON, MD, President of
the Kansas Board of Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,**

Defendants.

DECLARATION OF PETER B. BROWNLIE

PETER B. BROWNLIE declares and states the following:

1. I am familiar with the provisions of Kansas House Bill 2253 (“Act”), and submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction, and, if necessary, for a Temporary Restraining Order.

2. I am President and Chief Executive Officer (“CEO”) of Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. (“Comprehensive Health”), where I have held these offices since 1999. For nineteen years prior to that, I was the CEO of two different Planned Parenthood affiliates. Thus, I have over 30 years of experience in the delivery of reproductive health services, including abortion.

3. I am familiar with Comprehensive Health's facilities, policies and practices, and clinical operations, and except where otherwise noted, I submit this declaration on the basis of my personal knowledge.

A. Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri

4. Comprehensive Health is a not-for-profit corporation, organized and existing under the laws of Kansas, with its principal place of business in Overland Park, Johnson County, Kansas. Comprehensive Health is managed by and affiliated with Planned Parenthood of Kansas and Mid-Missouri, Inc. ("PPKM"), and PPKM is an affiliate of Planned Parenthood Federation of America ("PPFA").

5. Comprehensive Health is licensed as an ambulatory surgical center ("ASC") and has been since 1997. Comprehensive Health regularly provides surgical abortions through 21 weeks and 6 days of pregnancy, as measured from the first day of the woman's last menstrual period ("LMP"). It also provides medication abortion through 9 weeks of pregnancy LMP.

6. Comprehensive Health measures a pregnancy from the first day of the woman's last menstrual period because that is the standard medical practice. An LMP measurement is approximately 2 weeks greater than when a pregnancy is measured, as in the Act, by the date of fertilization. Thus, for example, when I state that Comprehensive Health provides abortions until a pregnancy reaches 22 weeks LMP, that is equivalent to 20 weeks post-fertilization.

7. Our first day of abortion services following the Act's effective date is Tuesday, July 2, 2013.

8. On average, Comprehensive Health provides approximately 400 abortions a month. Approximately 90% of those abortions are provided in the first trimester of pregnancy, and 99% are before 20 weeks LMP.

9. In addition to abortion services, Comprehensive Health provides other reproductive health care, including family planning services, testing and treatment for sexually transmitted infections, cervical and breast cancer screening services, pregnancy testing, and all-options counseling.

10. Comprehensive Health complies with all statutory requirements relating to informed consent for abortion, as set out in Kan. Stat. Ann. § 65-6709, and ensures that its physicians comply with those requirements as well.

11. Comprehensive Health is also required, as a condition of its licensure as an ASC, to comply with all statutes and regulations governing ASCs. In particular, Comprehensive Health is required to report (under various statutes) to the Kansas Board of Healing Arts when it has knowledge that a physician has committed an act that may be considered unprofessional conduct. It is my understanding that the performance of any surgical procedure, including abortion, without the valid consent of a patient is considered unprofessional conduct.

12. Comprehensive Health's website, <http://www.plannedparenthood.org/comprehensive-health/>, includes substantial medical information on a variety of topics, from birth control to sexually transmitted diseases to general preventative health care. Much of this information comes from a single source, PPFA. This material is updated to reflect any developments in medicine and is reviewed by PPFA medical affairs staff as well as by its education department to ensure it is up-to-date, accessible, and non-judgmental. These quality controls are essential to us and to our mission to provide accurate, objective, non-judgmental information to the public at large, including patients and potential patients.

13. In addition to posting medical information, we use our website to communicate with the public in other ways, such as alerting it to educational or training opportunities or other opportunities to become involved in Comprehensive Health's activities.

14. The content of our website is particularly important to us since it attracts a high volume of readers. For example, in 2012 it received 46,500 visits from 28,900 unique visitors. For this reason, I personally review any significant changes to the website before they are made, as do Vice President of Services Ryana Parks-Shaw and Center Manager Victoria Pickering.

B. The Act

15. I understand that the Act requires us to include a link (also referred to as a "hyperlink") on the homepage of our publicly available website, accompanied by the following text: "The Kansas Department of Health and Environment maintains a website containing objective, nonjudgmental, scientifically accurate information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here."

16. Comprehensive Health strongly objects to the Act's requirement that we publicly endorse these materials on our website, against our professional judgment and personal beliefs. The Kansas Department of Health and Environment's ("Department") current materials, as well as material the Act requires the Department to incorporate, include statements of ideology, opinion, and moral judgment that are not objective, as well as factually inaccurate or misleading statements.

17. For example, I understand that the Department's materials define pregnancy as beginning at fertilization. We cannot, in good faith, endorse this statement as "scientifically

accurate.” It is Comprehensive Health’s position (and that of our physicians) that pregnancy begins at implantation, which is the scientific definition of pregnancy all major medical organizations adhere to, including the American College of Obstetricians & Gynecologists, as well as PPFAs. See Am. Coll. of Obstetricians & Gynecologists, *Obstetric-Gynecologic Terminology: With Section On Neonatology And Glossary Of Congenital Abnormalities* 327 (E.G. Hughes, ed., F.A. Davis Co. 1972); Am. Coll. of Obstetricians & Gynecologists, *Statement on Contraceptive Methods* (Wash., D.C., Jul. 1998); PlannedParenthood.org, *How Pregnancy Happens*, <http://www.plannedparenthood.org/health-topics/pregnancy/how-pregnancy-happens-4252.htm> (“Pregnancy begins when a fertilized egg implants in the uterus.”). See also K. Diedrich et al., *The Role of the Endometrium and Embryo in Human Implantation*, 13 *Human Reproduction Update* 365 (2007) (explaining that the best available evidence indicates that, even under optimal conditions and timing, fewer than half of all fertilized eggs, or blastocytes, in fact implant in the uterus).

18. I am also aware that the Department’s materials assert “abortion terminates the life of a whole, separate, unique, living human being.” Comprehensive Health objects to having to endorse this ideological statement, which is neither objective nor non-judgmental, but rather is a statement designed to convey the government’s opinion about the morality of abortion.

19. In addition, I understand that, pursuant to the Act, the Department’s materials are now required to state that only 5% of pregnancies in which a fetal heartbeat is detected result in miscarriage. Again, Comprehensive Health objects to having to endorse this statement as scientifically accurate when reliable studies have found the rate to be significantly higher. See, e.g., Soyoung Bae & Joseph Karnitis, *Triple Ultrasound Markers Including Fetal Cardiac*

Activity Are Related to Miscarriage Risk, 96 Fertility & Sterility 1145 (2011) (concluding that 9.5% of such pregnancies result in miscarriage).

20. Even if we did not object to the current information on the Department's website, the Act would require us to continually endorse the information and materials on their website regardless of how they are revised in the future.

21. In addition, the Department's website links to the website of a private organization, the Endowment for Human Development, with which we have no relationship, specifically for the purpose of relaying information about fetal development. Thus, it concerns me that the Act would require us not only to essentially give our seal of approval to statements on the Department's website about fetal development, but also any statements on the Endowment for Human Development's website.

22. We do not have the resources to monitor the accuracy of the information published either by the Department or by the Endowment for Human Development, and even if we did, the Act would require us to publicly endorse these materials regardless of whether we considered them to be "objective, nonjudgmental, [and] scientifically accurate."

23. The Act also requires that our patients be provided with written statements 24 hours prior to the performance of an abortion stating that: "by 20 weeks from fertilization, fetuses possess all of the physical structures necessary to feel pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery."

24. These statements imply that at 20 weeks post-fertilization (i.e., at 22 weeks LMP) a fetus is capable of or could experience pain. Putting aside that this implication is contrary to the views of the majority of relevant medical authorities, it is completely irrelevant to our patients (or virtually all of our patients), as approximately 90% of the abortions we perform are first-trimester abortions, and 99% of the abortions we perform are prior to 20 weeks LMP (or 18 weeks from fertilization). The requirement that we provide it to every patient interferes with our professional, individualized judgment about what information is relevant to each particular patient. I also am concerned that these statements will confuse our patients, and they will mistakenly infer that the statements apply to their pregnancy, especially because the statements refer to a gestational age measured by fertilization rather than, as we measure it, by LMP.

25. The Act's website homepage endorsement requirement will put us in an impossible position. Unless we cease providing abortions or pull down our website, we will be compelled not only to engage in the public speech of providing a link to the Department's website and materials, but to endorse the information on that website and those materials, contrary to our own views as to their objectivity and accuracy. This will compromise our reputation as an honest and trusted health care provider.

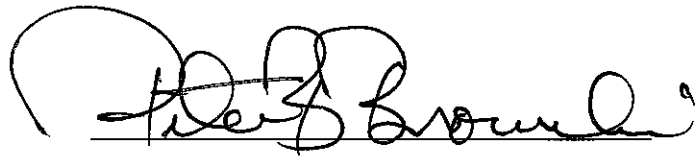
26. Likewise, the compelled speech requirement implying that at 22 weeks LMP a fetus experiences pain places us in an untenable position. Unless we cease providing abortions, we will be forced to provide this misleading, confusing, and completely irrelevant information to all of our patients seeking an abortion.

27. Of course, alternatively, we could not comply with the law. However, that course of action would subject both Comprehensive Health and our physicians to licensing penalties, including potential loss of licensure, fines, and even criminal prosecution. We would be forced

to close our medical facility and lay off our staff, with devastating consequences for the patients who rely on us for abortion and other services, as well as for our staff.

28. I declare under penalty of perjury the foregoing is true and correct.

Executed at Overland Park, this 20th day of June, 2013.

A handwritten signature in black ink, appearing to read "Peter B. Brownlie". The signature is written in a cursive style with a large, looping initial "P".

Peter B. Brownlie, President/CEO
Comprehensive Health of Planned Parenthood
of Kansas and Mid-Missouri, Inc.

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

**COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,**

Plaintiffs,

v.

Case No. 2:13-cv-02302-KHV-KGG

**KIMBERLY TEMPLETON, MD, President of
the Kansas Board of Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,**

Defendants.

DECLARATION OF ORRIN A. MOORE, M.D.

ORRIN A. MOORE, MD, declares and states the following:

1. I am a Plaintiff in this lawsuit, and Medical Director of Plaintiff Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. ("Comprehensive Health"). I am familiar with Comprehensive Health's facilities, policies and practices, and clinical operations, as well as with the provisions of Kansas House Bill 2253 ("Act"). I submit this declaration on the basis of my personal knowledge, in support of Plaintiffs' Motion for a Preliminary Injunction, and, if necessary, for a Temporary Restraining Order.

Background

2. I am a Board Certified obstetrician and gynecologist licensed to practice medicine in Kansas.

3. I received my BS from the University of Maryland in 1972 and my MD from Cornell University Medical School in 1976. From 1976 to 1980, I was a Resident at the Department of Obstetrics and Gynecology, S.U.N.Y. Downstate Medical Center in New York. I am a Fellow of the American College of Obstetricians and Gynecologists, among other medical society memberships.

4. As part of maintaining my license from the Kansas State Board of Healing Arts to practice medicine, I complete many hours of continuing medical education credits each year. I am also responsible for understanding, implementing, and following the clinical standards set by Planned Parenthood Federation of America's comprehensive national medical guidelines. Moreover, I am familiar with and follow the laws regulating the provision of abortion care in Kansas.

5. I have provided abortion and other reproductive health care continuously for almost 30 years. Before coming to Comprehensive Health in 2004, I practiced in several hospitals and women's health centers in New York, Georgia, Missouri, and Kansas, including a previous position at Comprehensive Health in the 1980s.

6. I returned to Comprehensive Health in July 2004 as Medical Director and as the primary abortion care provider.

7. Being Medical Director of Comprehensive Health is my full-time occupation, and Comprehensive Health is the only location at which I currently practice medicine. My primary responsibilities are to oversee the formulation of Comprehensive Health's Medical Standards and Guidelines and to oversee its Quality Management Program, which assures compliance with the Medical Standards and Guidelines. Fulfilling these responsibilities ensures that we provide the

highest quality medical care. I also see patients, and spend the majority of my time doing so providing abortion and other reproductive health care.

Services at Comprehensive Health

8. Comprehensive Health regularly provides abortion care through 21 weeks and 6 days of pregnancy, as measured from the first day of the woman's last menstrual period ("LMP").

9. Comprehensive Health measures gestational age from LMP because this is the common and accepted medical practice employed by health care providers who treat pregnant women. While the exact date of fertilization is rarely known, it typically occurs 14 days from the first day of the LMP, which means that a gestational age referred to in terms of fertilization is typically two weeks less than one referred to by LMP.

10. From 5 weeks and 0 days LMP through 9 weeks and 0 days LMP, Comprehensive Health provides medication abortion, which is a Food and Drug Administration-approved, non-invasive method of terminating an early pregnancy by oral medication. The oral medications induce the woman's body to expel the embryo. From 5 weeks and 0 days LMP through 21 weeks and 6 days LMP, we also provide surgical abortions, in which the physician uses surgical instruments to empty the uterus.

11. Abortion is a very safe medical procedure. Surgical abortion is one of the most common and safest minor surgeries done in the United States. The risks associated with abortion through the 21st week of pregnancy are much lower than the risks associated with pregnancy and childbirth. For example, in the United States, the risk of dying from an abortion is less than one-tenth the risk of dying from a full-term pregnancy, and the risk of lesser complications is also substantially lower. See Elizabeth G. Raymond and David A. Grimes, *The Comparative Safety*

of Legal Induced Abortion and Childbirth in the United States, 119 *Obstet. Gynecol.* 215, 215-17 (2012).

Current Statute

12. I comply with the current informed consent provisions of Kan. Stat. Ann. § 65-6709, which states that “[n]o abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced,” and sets forth an array of requirements necessary for voluntary and informed consent.

Requirements of the Act

13. Both as a physician and as the Medical Director responsible for overseeing the provision of services at Comprehensive Health, I am very concerned that the Act will require me and other Comprehensive Health physicians to provide a written statement to our patients, the content of which is entirely irrelevant and potentially misleading to every (or nearly every) patient.

14. I understand that if the Act goes into effect, I will be compelled to provide every woman receiving an abortion, regardless of the gestational age of her pregnancy, with information concerning the characteristics of a fetus at, “by,” or “no later than” “20 weeks from fertilization” (i.e., 22 weeks LMP) that implies that, at that gestational age, a fetus may experience pain. I strongly object to this requirement for several reasons.

15. First, neither I nor any other physician at Comprehensive Health provides abortions where a pregnancy has reached 20 weeks post fertilization. Therefore, regardless of whether the written statement contains medically accurate information, the statement is irrelevant to my patients because none or virtually none of my patients have reached the gestational age by which the statute suggests a fetus can feel pain.

16. Further, despite the fact that the information is irrelevant to all or nearly all of my patients, the Act will still require me to provide it to every patient – even if, in my medical judgment, receiving the information would be contrary to the patient’s best interests and ultimately harmful to her ability to make an informed decision because it would only distract her from more material information. Comprehensive Health provides no abortion services at or past 20 weeks post-fertilization, but receiving the information may cause a patient to infer that the statement concerning fetuses at or beyond 20 weeks post-fertilization is applicable to her pregnancy. Indeed, receiving the information may be especially misleading because the statute’s dating terminology (“... from fertilization”) will be confusing to a patient who is accustomed to hearing her gestational age discussed using the commonly accepted LMP methodology.

17. I understand that the Act also requires us to include a hyperlink on the home page of our website, accompanied by the following text: “The Kansas Department of Health and Environment maintains a website containing objective, nonjudgmental, scientifically accurate information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment’s website can be reached by clicking here.” We are already required under current law to share the Kansas Department of Health and Environment’s (“KDHE”) materials with our patients who are seeking an abortion. But, that is quite different than making us place a link on our website homepage, where we “speak” to the broader public, only some of whom are patients seeking abortions, on a wide variety of topics, and then, with the link, endorse the state materials as accurate and non-judgmental.

18. Indeed, in order to comply with the Act, we must misrepresent our actual opinion about KDHE's materials, as my colleagues and I believe these materials contain ideological, inaccurate, misleading, and irrelevant statements.

19. If the Act goes into effect and Comprehensive Health and I do not comply with the compelled speech requirements, unless we stop providing abortions, I risk significant licensing penalties—up to revocation of my license—as well as misdemeanor prosecution and monetary penalties. Providing abortion care has been my chosen profession, and my primary medical practice, since 1987 without interruption. Engaging in this profession is crucial to me. I am dedicated to the principle that women have a right to receive this care. I acknowledge that there is a shortage of access to abortion services, and I am therefore committed to providing abortion care as my primary practice.

20. I declare under penalty of perjury the foregoing is true and correct.

Overland
Executed at Park, KS this 21st day of June, 2013.



Orrin A. Moore, Medical Director
Comprehensive Health of Planned Parenthood
of Kansas and Mid-Missouri, Inc.

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,

Plaintiffs,

v.

DEFENDANTS KIMBERLY J. TEMPLETON,
MD; EUSTAQUIO O. ABAY, II, MD;
MICHAEL J. BEEZLEY, MD; RAY N.
CONLEY, DC; GARY L. COUNSELMAN,
DC; ROBIN D. DURETT, DO; ANNE
HODGDON; JOEL HUTCHINS, MD; DAVID
LAHA, DPM; M. MYRON LEINWETTER,
DO; RICHARD MACIAS, JD; GAROLD O.
MINNS, MD; JOHN F. SETTICH, PHD;
CAROLINA M. SORIA, DO; AND TERRY L.
WEBB, DC, Members of the Kansas Board of
Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,

Defendants.

Case No. 2:13-cv-02302-KHV-KGG

**JOINT STIPULATION TO DISMISS WITHOUT PREJUDICE PLAINTIFFS’
SECOND AND THIRD CLAIMS CHALLENGING K.S.A. §§ 65-6709(b)(5) and (b)(6)**

WHEREAS, Plaintiffs filed this action challenging, *inter alia*, the requirement of K.S.A. § 65-6709(b)(5) that requires, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the physician who is to perform

the abortion (the referring physician or a qualified person) inform the woman in writing that “the abortion will terminate the life of a whole, separate, unique, living human being”;

WHEREAS, Plaintiffs filed this action challenging, *inter alia*, the requirement of K.S.A. § 65-6709(b)(6) that requires, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the physician who is to perform the abortion (the referring physician or a qualified person) inform the woman in writing that

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

WHEREAS, K.S.A. § 65-6710 requires the Kansas Department of Health and the Environment to publish materials (KDHE materials) that contains the same information as is required under K.S.A. §§ 65-6709(b)(5) and (b)(6);

WHEREAS, K.S.A. § 65-6709(d) requires that, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the woman is given a copy of the KDHE materials;

WHEREAS, the Defendants agree that Plaintiffs’ obligations under K.S.A. §§ 65-6709(a) and (b) are fully satisfied by their compliance with K.S.A. § 65-6709(d) to the extent that the KDHE materials contain the same statements required to be provided by K.S.A. §§65-6709(a) and (b); and

WHEREAS, the parties agree that the KDHE materials presently contain the statements required by Kan. Stat. Ann. §§ 65-6709(b)(5) and (b)(6);

The parties stipulate as follows:

1. Plaintiffs' Second and Third Claims for Relief challenging K.S.A. §§ 65-6709(b)(5) and (b)(6) are hereby withdrawn without prejudice.
2. Plaintiffs may refile their withdrawn claims should the contents of the KDHE materials change in the future so as to no longer contain the same information as required to be provided by Plaintiffs pursuant to K.S.A. §§65-6709(b)(5) and (b)(6).
3. The Court may enter the attached order, dismissing Plaintiffs' Second and Third Claims for Relief challenging K.S.A. §§ 65-6709(b)(5) and (b)(6) without prejudice.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

By s/ Arthur A. Benson II

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 9th of August, 2013, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send a notice of the electronic filing to the following parties: Jeffrey A. Chanay, Deputy Attorney General, Civil Litigation Division, Office of Kansas Attorney General Derek Schmidt, 120 SW 10th Avenue, 3rd Floor, Topeka, KS 66612-1597; Thompson Ramsdell & Qualseth, P.A., Todd N. Thompson, Stephen R. McAllister, Shon D. Qualseth, Sarah E. Warner, 333 W. 9th Street, P.O. Box 1264, Lawrence, KS 66044.

By s/ Arthur A. Benson II
Arthur A. Benson II D.Kan. # 70134

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COMPREHENSIVE HEALTH OF PLANNED)	
PARENTHOOD OF KANSAS AND MID-MISSOURI, INC.,)	
et al.)	
)	
Plaintiffs,)	
)	CIVIL ACTION
v.)	
)	No.13-2302-KHV
)	
KIMBERLY TEMPLETON, MD. et al,)	
)	
Defendants.)	
_____)	

ORDER

On December 5, 2014, counsel for the parties contacted the court chambers and confirmed that they have settled and compromised the claims in this lawsuit.

IT IS THEREFORE ORDERED that the clerk administratively terminate this action without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. On or before **December 8, 2014** the parties shall file a stipulation of dismissal signed by the parties above who have appeared in the action, under Rule 41(a)(1) of the Federal Rules of Civil Procedure. If no such stipulation is received within the specified time and the parties have not reopened for the purpose of obtaining a final determination, this order shall constitute, for purposes of Rule 58 of the Federal Rules of Civil Procedure, the Court's entry of final judgment of dismissal with prejudice under Rule 41(a)(2).

s/Kathryn H. Vratil

Kathryn H. Vratil
United States District Judge

EXHIBIT J

SENATE BILL No. 54

AN ACT concerning abortion; relating to medical emergencies; relating to the woman's-right-to-know act; amending K.S.A. 65-6704 and K.S.A. 2013 Supp. 65-4a01, 65-4a07, 65-6701, 65-6705, 65-6709, 65-6723 and 76-3308 and repealing the existing sections.

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

Section 1. K.S.A. 2013 Supp. 65-4a01 is hereby amended to read as follows: 65-4a01. As used in K.S.A. 2013 Supp 65-4a01 through 65-4a12, and amendments thereto:

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

(b) "Ambulatory surgical center" means an ambulatory surgical center as defined in K.S.A. 65-425, and amendments thereto.

(c) "*Bodily function*" means *physical functions only. The term "bodily function" does not include mental or emotional functions.*

~~(c)~~(d) "Clinic" means any facility, other than a hospital or ambulatory surgical center, in which any second or third trimester, or five or more first trimester abortions are performed in a month.

~~(d)~~(e) "Department" means the department of health and environment.

~~(e)~~(f) "Elective abortion" means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which would result in her death.

~~(f)~~(g) "Facility" means any clinic, hospital or ambulatory surgical center, in which any second or third trimester elective abortion, or five or more first trimester elective abortions are performed in a month, excluding any abortion performed due to a medical emergency ~~as defined in this act, and amendments thereto.~~

~~(g)~~(h) "Gestational age" has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto, and shall be determined pursuant to K.S.A. 65-6703, and amendments thereto.

~~(h)~~(i) "Hospital" means a hospital as defined in subsection (a) or (b) of K.S.A. 65-425, and amendments thereto.

~~(i)~~(j) "Medical emergency" means a condition that, in a reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy ~~without first determining gestational age in order to avert her death, or for which a delay necessary to determine gestational age~~ *comply with the applicable statutory requirements* will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

~~(j)~~(k) "Physician" has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto.

~~(k)~~(l) "Secretary" means the secretary of the department of health and environment.

Sec. 2. K.S.A. 2013 Supp. 65-4a07 is hereby amended to read as follows: 65-4a07. Except in the case of a medical emergency, ~~as defined in this act, and amendments thereto,~~ an abortion performed when the gestational age of the unborn child is 22 weeks or more shall be performed in a hospital or ambulatory surgical center licensed pursuant to this act. ~~All other abortions shall be performed in a hospital, ambulatory surgical center or facility licensed pursuant to this act.~~ All other abortions shall be performed in a facility licensed pursuant to this act, except that a hospital or ambulatory surgical center that does not meet the definition of a facility under this act and that is licensed pursuant to K.S.A. 65-425 et seq., and amendments thereto, may perform abortions.

Sec. 3. K.S.A. 2013 Supp. 65-6701 is hereby amended to read as

follows: 65-6701. As used in K.S.A. 65-6701 through 65-6721, and amendments thereto:

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

(b) “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.

(c) “Counselor” means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master’s level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors; (4) a licensed physician assistant; or (5) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(d) “Department” means the department of health and environment.

(e) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

(f) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(g) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy ~~without first determining gestational age~~ ~~to avert the death of the woman or for which a delay necessary to determine gestational age~~ *comply with the applicable statutory requirements* will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(h) “Minor” means a person less than 18 years of age.

(i) “Physician” means a person licensed to practice medicine and surgery in this state.

(j) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

(k) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, licensed marriage and family therapist, licensed master’s level psychologist, licensed clinical psychotherapist, registered nurse or physician.

(l) “Unemancipated minor” means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor’s parents.

(m) “Viable” means that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures.

Sec. 4. K.S.A. 65-6704 is hereby amended to read as follows: 65-6704.

(a) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor’s questions to be addressed. A parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor’s well-being, shall accompany the minor and be involved in the minor’s decision-making process regarding whether to have an abortion. Such information and counseling shall include:

(1) The alternatives available to the minor, including abortion, adoption and other alternatives to abortion;

(2) an explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;

(3) make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available;

(4) discussion of the possibility of involving the minor's parent or parents, other adult family members or guardian in the minor's decision-making; and

(5) information regarding the provisions of K.S.A. 65-6705, *and amendments thereto*, and the minor's rights under such provisions.

(b) After the performance of an abortion on a minor, a counselor shall provide counseling to assist the minor in adjusting to any post-abortion problems that the minor may have.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsections (a) and (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of subsections (a) and (b) and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this section.

(f) The requirements of subsection (a) shall not apply when, ~~in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion~~ *a medical emergency exists*. A physician who does not comply with the requirements of this section by reason of this exception shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

Sec. 5. K.S.A. 2013 Supp. 65-6705 is hereby amended to read as follows: 65-6705. (a) Except in the case of a medical emergency ~~or as otherwise provided in this section~~, no person shall perform an abortion upon an unemancipated minor, unless the person first obtains the notarized written consent of the minor and both parents or the legal guardian of the minor.

(1) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

(2) If the minor's parents are married and one parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.

(3) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father, stepfather or legal guardian, then the written consent of the minor's mother shall be sufficient. Notice of such circumstances shall be reported to the proper authorities as provided in K.S.A. 2013 Supp. 38-2223, and amendments thereto.

(b) After receiving counseling as provided by subsection (a) of K.S.A. 65-6704, and amendments thereto, the minor may object to the written consent requirement set forth in subsection (a). If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the written consent requirement. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704, and amendments thereto, shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the petition. The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the

minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

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

(d) Consent shall be waived if the court finds by clear and convincing evidence that either: (1) The minor is mature and well-informed enough to make the abortion decision on her own; or (2) the consent of the individuals specified in subsection (a) would not be in the best interest of the minor.

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

(1) Granting the minor's application for waiver of consent pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without the consent of the individuals specified in subsection (a);

(2) granting the minor's application for waiver of consent if the court finds that the minor is immature but that consent of the individuals specified in subsection (a) would not be in the minor's best interest; or

(3) denying the application if the court finds that the minor is immature and that waiver of the consent of the individuals specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) ~~No consent shall be required under this section if in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion when a medical emergency exists.~~

(2) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

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

(m) Prior to conducting proceedings under this section, the court may require the minor to participate in an evaluation session with a psychiatrist, licensed psychologist or licensed clinical social worker. Such evaluation session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment and maturity with regard to her abortion decision in

order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and materials referred to in K.S.A. 65-6708 et seq., and amendments thereto, in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure or extortion by any other persons. The results of such evaluation shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to or at the proceedings initiated pursuant to this section.

(n) In determining if a minor is mature and well-enough informed to make the abortion decision without parental consent, the court shall take into account the minor's experience level, perspective and judgment. In assessing the minor's experience level, the court shall consider, along with any other relevant factors, the minor's age, experience working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the minor's perspective, the court shall consider, along with any other relevant factors, what steps the minor has taken to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the minor's judgment, the court shall consider, along with any other relevant factors, her conduct since learning of her pregnancy and her intellectual ability to understand her options and to make informed decisions.

(o) The judicial record of any court proceedings initiated pursuant to this section shall upon final determination by the court be compiled by the court. One copy of the judicial record shall be given to the minor or an adult chosen by the minor to bring the initial petition under this section. A second copy of the judicial record shall be sent by the court to the abortion provider who performed or will perform the abortion for inclusion in the minor's medical records and shall be maintained by the abortion provider for at least 10 years.

(p) The chief judge of each judicial district shall send annual reports to the department of health and environment disclosing in a nonidentifying manner:

(1) The number of minors seeking a bypass of the parental consent requirements through court proceedings under this section;

(2) the number of petitions granted;

(3) the reasons for granting such petitions;

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

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

(6) the gestational age of the unborn child if the petition is granted.

(q) (1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

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

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

(D) reasonable attorney fees.

(r) In the course of a judicial hearing to waive parental consent, if the court has reason to suspect that a minor has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection (c) of K.S.A. 2013 Supp. 38-2223, and amendments thereto. In the course of reporting suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.

(s) Nothing in this section shall be construed to create a right to an

abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

Sec. 6. K.S.A. 2013 Supp. 65-6709 is hereby amended to read as follows: 65-6709. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

- (1) The name of the physician who will perform the abortion;
- (2) a description of the proposed abortion method;
- (3) a description of risks related to the proposed abortion method, including risk of premature birth in future pregnancies, risk of breast cancer and risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
- (4) the probable gestational age of the unborn child at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;
- (5) the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
- (6) the contact information for counseling assistance for medically challenging pregnancies, the contact information for perinatal hospice services and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;
- (7) the medical risks associated with carrying an unborn child to term; and
- (8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

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

- (1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;
- (2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;
- (3) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted;
- (4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled;
- (5) the abortion will terminate the life of a whole, separate, unique, living human being; and
- (6) by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn

children who are 20 weeks from fertilization or older who undergo prenatal surgery.

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

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

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

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

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

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

- (1) Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;
- (2) informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;
- (3) offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;
- (4) certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and
- (5) obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

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

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

- (1) Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;
- (2) offers the woman the opportunity to listen to the heartbeat of her unborn child;
- (3) certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and
- (4) obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

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

(j) The physician's certification required by subsections (h) and (i)

together with the pregnant woman's signed acceptance or rejection of such offer shall be placed in the woman's medical file in the physician's office and kept for 10 years. However, in the case of a minor, the physician shall keep a copy of the certification and the signed acceptance or rejection in the minor's medical file for five years past the minor's majority, but in no event less than 10 years.

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

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

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

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

(m) For purposes of this section:

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

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

Sec. 7. K.S.A. 2013 Supp. 65-6723 is hereby amended to read as follows: 65-6723. As used in K.S.A. 2013 Supp. 65-6722 through 65-6724, and amendments thereto:

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

(b) "Bodily function" means physical function. The term "bodily function" does not include mental or emotional functions.

(c) "Department" means the department of health and environment.

(d) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(e) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy ~~without first determining gestational age~~ *comply with the applicable statutory requirements* to avert her death or for which a delay necessary to ~~determine gestational age~~ will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(f) “Pain-capable unborn child” means an unborn child having reached the gestational age of 22 weeks or more.

(g) “Physician” means a person licensed to practice medicine and surgery in this state.

(h) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

Sec. 8. K.S.A. 2013 Supp. 76-3308 is hereby amended to read as follows: 76-3308. (a) The authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation, the following powers to:

- (1) Have the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;
- (2) have perpetual existence and succession;
- (3) adopt, have and use a seal and to alter the same at its pleasure;
- (4) sue and be sued in its own name;
- (5) make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions including, without limitation, to make and execute contracts with hospitals or other health care businesses to operate and manage any or all of the hospital facilities or operations and to incur liabilities and secure the obligations of any entity or individual;
- (6) borrow money and to issue bonds evidencing the same and pledge all or any part of the authority’s assets therefor;
- (7) purchase, lease, trade, exchange or otherwise acquire, maintain, hold, improve, mortgage, sell, lease and dispose of personal property, whether tangible or intangible, and any interest therein; and to purchase, lease, trade, exchange or otherwise acquire real property or any interest therein, and to maintain, hold, improve, mortgage, lease and otherwise transfer such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;
- (8) incur or assume indebtedness to, and enter into contracts with the Kansas development finance authority, which is authorized to borrow money and provide financing for the authority;
- (9) develop policies and procedures generally applicable to the procurement of goods, services and construction, based upon sound business practices;
- (10) contract for and to accept any gifts, grants and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;
- (11) acquire space, equipment, services, supplies and insurance necessary to carry out the purposes of this act;
- (12) deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;
- (13) procure such insurance, participate in such insurance plans or provide such self insurance or both as it deems necessary or convenient to carry out the purposes and provisions of this act; the purchase of insurance, participation in an insurance plan or creation of a self-insurance fund by the authority shall not be deemed as a waiver or relinquishment of any sovereign immunity to which the authority or its officers, directors, employees or agents are otherwise entitled;

(14) appoint, supervise and set the salary and compensation of a president of the authority who shall be appointed by and serve at the pleasure of the board;

(15) fix, revise, charge and collect rates, rentals, fees and other charges for the services or facilities furnished by or on behalf of the authority, and to establish policies and procedures regarding any such service rendered for the use, occupancy or operation of any such facility; such charges and policies and procedures not to be subject to supervision or regulation by any commission, board, bureau or agency of the state; and

(16) do any and all things necessary or convenient to carry out the authority's purposes and exercise the powers given in this act.

(b) The authority may create, own in whole or in part, or otherwise acquire or dispose of any entity organized for a purpose related to or in support of the mission of the authority.

(c) The authority may participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act.

(d) The authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests and gifts and bequests in trust which entity or entities shall not engage in trust business.

(e) In carrying out any activities authorized by this act, the authority may provide appropriate assistance, including the making of loans and providing time of employees, to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by the authority.

(f) Effective with the transfer date, all moneys of the authority shall be deposited in one or more banks or trust companies in one or more special accounts. All banks and trust companies are authorized to give security for such deposits if required by the authority. The moneys in such accounts shall be paid out on a warrant or other orders of the treasurer of the authority or any such other person or persons as the authority may authorize to execute such warrants or orders.

(g) Notwithstanding any provision of law to the contrary, the authority, effective with the transfer date, may invest the authority's operating funds in any obligations or securities as authorized by the board. The board shall adopt written investment guidelines.

(h) The authority is authorized to negotiate contracts with one or more qualified parties to provide collection services. The selection of a collection services provider shall be based on responses to a request for proposals from qualified professional firms and shall be administered in accordance with policies adopted by the board.

(i) Notwithstanding any provision of law to the contrary, no abortion shall be performed, except in the event of a medical emergency, in any medical facility, hospital or clinic owned, leased or operated by the authority. The provisions of this subsection are not applicable to any member of the physician faculty of the university of Kansas school of medicine when such abortion is performed outside the scope of such member's employment on property not owned, leased or operated by the authority. As used in this subsection, "medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman *or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function*. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death *or in substantial and irreversible physical impairment of a major bodily function*.

Sec. 9. K.S.A. 65-6704 and K.S.A. 2013 Supp. 65-4a01, 65-4a07, 65-6701, 65-6705, 65-6709, 65-6723 and 76-3308 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

EXHIBIT K

SENATE BILL No. 83

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

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

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

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

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

(A) *The name of such physician;*

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

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

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

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

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

(G) *the name of any hospital where such physician has lost clinical privileges; and*

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

(2) a description of the proposed abortion method;

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

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

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

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

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

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

(b) At least 24 hours before the abortion, the physician who is to

perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

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

(2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment's website that provides informed consent materials under the woman's-right-to-know act. Such link shall read: "The Kansas Department of Health and Environment maintains a website containing information about the development of the unborn child, as well as video of sonogram images of the

unborn child at various stages of development. The Kansas Department of Health and Environment’s website can be reached by clicking here.”

(m) For purposes of this section:

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

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

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

EXHIBIT L

HOUSE BILL No. 2264

AN ACT concerning health and healthcare; relating to abortion; requiring certain notifications that a medication abortion may be reversed; excluding certain procedures from the definition of abortion; amending K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723 and 65-6742 and repealing the existing sections.

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

New Section 1. (a) As used in this section:

(1) "Abortion" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(2) "Medication abortion" means the use or prescription of any drug for the purpose of inducing an abortion.

(3) "Medical emergency" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(b) (1) Any private office, freestanding surgical outpatient clinic, hospital or other medical care facility or clinic or any pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post a conspicuous sign that is clearly visible to patients and customers, that is printed with lettering that is legible and at least $\frac{3}{4}$ of an inch boldfaced type and that reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources."

The notice shall also include information about the department of health and environment website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) (A) Any private office or freestanding surgical outpatient clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in each patient waiting room and patient consultation room used by patients seeking medication abortions.

(B) A hospital or other medical care facility or clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion that is not a private office or freestanding surgical outpatient clinic shall post the sign required by paragraph (1) in each patient admission area used by patients seeking medication abortions that use mifepristone.

(C) A pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in the area inside the premises where customers are provided prescription medications and on the exterior of the premises in the area where customers are provided prescription medications via a drive-through window.

(c) (1) Except in the case of a medical emergency, no physician shall provide, induce or attempt to provide or induce a medication abortion that use mifepristone without informing the woman, in writing, in the manner prescribed by K.S.A. 65-6709, and amendments thereto, and also either by telephone or in person, at least 24 hours prior to the medication abortion:

(A) That it may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and

(B) information on reversing the effects of a medication abortion that uses mifepristone is available on the department of health and environment's website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) After a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of

performing a medication abortion, the physician or an agent of the physician shall provide a legible, written notice to the patient that includes the same information as required under subsection (b)(1).

(d) When a medical emergency compels the performance of a medication abortion that use mifepristone, the physician shall inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

(e) Within 90 days after the effective date of this section, the department of health and environment shall cause to be published, in English and in each language that is the primary language of 2% or more of the state's population, in print and on the website required to be maintained under K.S.A. 65-6710, and amendments thereto, comprehensible materials designed to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The website shall also include other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(f) Upon a first conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

(g) The department of health and environment shall assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital or other clinic or facility that fails to post a sign required by subsection (b). Each day that a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant woman, is performed in any private office, freestanding surgical outpatient clinic, hospital or other facility or clinic when the required sign is not posted during a portion of that day's business hours when patients or prospective patients are present shall be a separate violation. The department of health and environment shall remit all moneys received from fines under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state general fund.

(h) (1) If a physician provides a medication abortion using mifepristone in violation of this section, the following individuals may bring a civil action in a court of competent jurisdiction against the physician for actual damages, exemplary and punitive damages and any other appropriate relief:

(A) A woman to whom such medication abortion has been provided;

(B) the father of the unborn child who was subject to such medication abortion; or

(C) any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

(2) Notwithstanding any other provision of law, any action commenced in accordance with this subsection shall be filed within two years after the later of:

(A) The date of the discovery of the violation under this section; or

(B) the conclusion of a related criminal case.

(3) In any action brought under this section, the court shall award reasonable attorney fees and costs to:

(A) A prevailing plaintiff; or

(B) a prevailing defendant upon a finding that the action was

frivolous and brought in bad faith.

(4) Except for the woman to whom the medication abortion was provided, no action may be brought by any person whose criminal conduct resulted in the pregnancy, and any such person shall not be awarded any damages in any action brought pursuant to this section.

(i) In any civil or criminal proceeding or action brought under this section, the court shall rule whether the anonymity of any woman to whom a medication abortion has been provided, induced or attempted to be provided or induced shall be preserved from public disclosure, if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced or attempted to be provided or induced, any person, other than a public official, who brings an action under this section shall do so under a pseudonym. This subsection shall not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

(j) If any provision of this section, or any application thereof to any person or circumstance, is held invalid by court order, then such invalidity shall not affect the remainder of this section and any application thereof to any person or circumstance that can be given effect without such invalid provision or application, and to this end, the provisions of this section are declared to be severable.

(k) The provisions of this section shall be a part of and supplemental to the woman's-right-to-know act.

Sec. 2. K.S.A. 40-2,190 is hereby amended to read as follows: 40-2,190. (a) Any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization, municipal group-funded pool and the state employee health care benefits plan which is delivered, issued for delivery, amended or renewed on or after July 1, 2011, shall exclude coverage for elective abortions, unless the procedure is necessary to preserve the life of the mother. Coverage for abortions may be obtained through an optional rider for which an additional premium is paid. The premium for the optional rider shall be calculated so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis.

(b) No health insurance exchange established within this state or any health insurance exchange administered by the federal government or its agencies within this state shall offer health insurance contracts, plans, or policies that provide coverage for elective abortions, nor shall any health insurance exchange operating within this state offer coverage for elective abortions through the purchase of an optional rider.

(c) For the purposes of this section:

(1) ~~"Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child and which causes the premature termination of the pregnancy same as defined in K.S.A. 65-6701, and amendments thereto.~~

(2) "Elective" means an abortion for any reason other than to

prevent the death of the mother upon whom the abortion is performed; ~~provided, except~~ that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that ~~she~~ *such mother* will engage in conduct ~~which~~ *that* will result in ~~her~~ *such mother's* death.

~~(d) The provisions of this section shall be effective from and after July 1, 2011.~~

Sec. 3. K.S.A. 65-4a01 is hereby amended to read as follows: 65-4a01. As used in K.S.A. 65-4a01 through 65-4a12, and amendments thereto:

~~(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy same as defined in K.S.A. 65-6701, and amendments thereto.~~

(b) "Ambulatory surgical center" means an ambulatory surgical center as defined in K.S.A. 65-425, and amendments thereto.

(c) "Bodily function" means physical functions only. The term "bodily function" does not include mental or emotional functions.

(d) "Clinic" means any facility, other than a hospital or ambulatory surgical center, in which any second or third trimester; or five or more first trimester abortions are performed in a month.

(e) "Department" means the department of health and environment.

(f) "Elective abortion" means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; ~~provided, except~~ that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that ~~she~~ *such mother* will engage in conduct ~~which~~ *that* would result in ~~her~~ *such mother's* death.

(g) "Facility" means any clinic, hospital or ambulatory surgical center; in which any second or third trimester elective abortion; or five or more first trimester elective abortions are performed in a month, excluding any abortion performed due to a medical emergency.

~~(h) "Gestational age" has the same meaning ascribed thereto means the same as defined in K.S.A. 65-6701, and amendments thereto, and shall be determined pursuant to K.S.A. 65-6703, and amendments thereto.~~

(i) "Hospital" means a hospital as defined in ~~subsection (a) or (b) of K.S.A. 65-425(a) or (b)~~, and amendments thereto.

~~(j) "Medical emergency" means a condition that, in a reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

~~(k) "Physician" has the same meaning ascribed thereto means the same as defined in K.S.A. 65-6701, and amendments thereto.~~

(l) "Secretary" means the secretary of the department of health and environment.

Sec. 4. K.S.A. 65-6701 is hereby amended to read as follows: 65-6701. As used in K.S.A. 65-6701 through 65-6721, and amendments thereto:

(a) (1) "Abortion" means the use or prescription of any instrument, medicine, drug or any other ~~substance or device~~ *means* to terminate the

~~pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy knowing that such termination will, with reasonable likelihood, result in the death of the unborn child.~~

(2) *Such use or prescription is not an "abortion" if done with the intent to:*

(A) *Preserve the life or health of the unborn child;*

(B) *increase the probability of a live birth;*

(C) *remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or the unborn child; or*

(D) *remove an ectopic pregnancy.*

(3) *"Abortion" does not include the prescription, dispensing, administration, sale or use of any method of contraception.*

(b) "Bodily function" means physical functions only. The term "bodily function" does not include mental or emotional functions.

(c) "Counselor" means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master's level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors; (4) a licensed physician assistant; or (5) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(d) "Department" means the department of health and environment.

(e) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(f) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

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

(h) "Minor" means a person less than 18 years of age.

(i) "Physician" means a person licensed to practice medicine and surgery in this state.

(j) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body.

(k) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, licensed marriage and family therapist, licensed master's level psychologist, licensed clinical psychotherapist, registered nurse or physician.

(l) "Unemancipated minor" means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(m) "Viable" means that stage of fetal development when it is the

physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

Sec. 5. K.S.A. 65-6708 is hereby amended to read as follows: 65-6708. K.S.A. 65-6701 and K.S.A. 65-6708 ~~to through 65-6715, inclusive,~~ and amendments thereto, *and section 1, and amendments thereto*, shall be known and may be cited as the woman's-right-to-know act.

Sec. 6. K.S.A. 65-6723 is hereby amended to read as follows: 65-6723. As used in K.S.A. 65-6722 through 65-6724, and amendments thereto:

(a) ~~"Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy same as defined in K.S.A. 65-6701, and amendments thereto.~~

(b) "Bodily function" means physical function. The term "bodily function" does not include mental or emotional functions.

(c) "Department" means the department of health and environment.

(d) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) ~~"Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

(f) "Pain-capable unborn child" means an unborn child having reached the gestational age of 22 weeks or more.

(g) "Physician" means a person licensed to practice medicine and surgery in this state.

(h) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body.

Sec. 7. K.S.A. 65-6742 is hereby amended to read as follows: 65-6742. As used in K.S.A. 65-6741 through 65-6749, and amendments thereto:

(a) ~~"Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy same as defined in K.S.A. 65-6701, and amendments thereto.~~

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

(2) The term "dismemberment abortion" does not include an abortion ~~which~~ that uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, ~~although it does include~~. "Dismemberment abortion" includes an abortion in which a dismemberment abortion, as defined in ~~subsection (b)(1) paragraph (1)~~, is used to cause the death of an unborn child, but suction is subsequently used to extract fetal parts after the death of the unborn child.

(c) "Knowingly" ~~shall have the same meaning attributed to such term means the same as defined~~ in K.S.A. 2022 Supp. 21-5202, and amendments thereto.

(d) "Medical emergency" ~~means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function the same as defined in K.S.A. 65-6701, and amendments thereto.~~

Sec. 8. K.S.A. 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723 and 65-6742 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

EXHIBIT M

STATE OF KANSAS



CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612

PHONE: (785) 296-3232
GOVERNOR.KANSAS.GOV

GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF HOUSE BILL 2749

Kansans spoke loud and clear in August 2022. Voters do not want politicians getting between doctors and their patient by interfering in private medical decisions.

House Bill 2749 is invasive and unnecessary. There is no valid medical reason to force a woman to disclose to the legislature if they have been a victim of abuse, rape, or incest prior to obtaining an abortion. There is also no valid reason to force a woman to disclose to the legislature why she is seeking an abortion.

I refuse to sign legislation that goes against the will of the majority of Kansans who spoke loudly on August 2, 2022: Kansans don't want politicians involved in their private medical decisions.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto House Bill 2749.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

A handwritten signature in blue ink, appearing to read "Laura Kelly", written over a horizontal line.

DATED

A handwritten date in blue ink, "April 12, 2024", written over a horizontal line.

HOUSE BILL No. 2749

AN ACT concerning abortion; relating to reports on abortions performed in this state; requiring the reporting of the reasons for each abortion performed at a medical care facility or by a healthcare provider; amending K.S.A. 2023 Supp. 65-445 and repealing the existing section.

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

Section 1. K.S.A. 2023 Supp. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies that are lawfully terminated within such medical care facility and shall ~~annually~~ submit a written report thereon *biannually* to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies that are lawfully terminated by such person in a location other than a medical care facility and shall ~~annually~~ submit a written report thereon *biannually* to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility ~~in which~~ *where* the pregnancy was terminated, information required to be reported under K.S.A. 65-6703(b) and (c), 65-6705(j), 65-6721(c) and 65-6724, and amendments thereto, if applicable to the pregnancy terminated, information required to be reported under K.S.A. 2023 Supp. 65-6758, and amendments thereto, and such other information as may be required by the secretary of health and environment, ~~but~~. The report shall not include the names of the persons whose pregnancies were so terminated or upon whom an attempted abortion was performed. Each report required by K.S.A. 65-6703(b) and (c), 65-6705(j) and 65-6721(c), and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition that necessitated performance of an abortion to preserve the life of the ~~pregnant woman~~ *patient*. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.

(c) *Except in the case of a medical emergency, as defined in K.S.A. 65-6701, and amendments thereto, each patient shall be asked, prior to the termination of such patient's pregnancy, which of the following reasons was the most important factor in such patient's decision to seek an abortion:*

- (1) *Having a baby would interfere with the patient's education, employment or career;*
 - (2) *the patient cannot provide for the child;*
 - (3) *the patient already has enough, or too many, children;*
 - (4) *the patient's husband or partner is abusive to such patient or such patient's children;*
 - (5) *the patient's husband or partner wants such patient to have an abortion;*
 - (6) *the patient does not have enough support from family or others to raise a child;*
 - (7) *the pregnancy is the result of rape;*
 - (8) *the pregnancy is the result of incest;*
 - (9) *the pregnancy threatens the patient's physical health;*
 - (10) *the pregnancy threatens the patient's mental or emotional health; or*
 - (11) *the child would have a disability.*
- If the patient declines to answer, such response shall be recorded.*
- (d) *Each report required by this section shall include, for the*

period of time covered by the report:

(1) *The number of times each of the reasons listed in subsection (c) was described as the most important; and*

(2) *the number of times a patient seeking an abortion was asked about the reasons listed in subsection (c) and declined to answer.*

(e) *Each report required by this section shall include:*

(1) *The patient's age in years on the patient's last birthday;*

(2) *the patient's marital status at the time of the abortion;*

(3) *the state or United States territory of residence of the patient or, if the patient is not a resident of the United States, the patient's country of residence;*

(4) *the patient's race and, if applicable, the hispanic origin of the patient;*

(5) *the highest level of education completed by the patient;*

(6) *whether, in the 30 days prior to the abortion, the patient received services, financial assistance, excluding financial assistance in obtaining an abortion, or other assistance from a nonprofit organization that supports pregnant women;*

(7) *whether the patient reported having experienced domestic violence in the 12 months prior to the abortion;*

(8) *whether the patient is living in a place that the patient considers to be safe, stable and affordable;*

(9) *whether a report of physical, mental or emotional abuse or neglect was made pursuant to K.S.A. 38-2223, and amendments thereto, where the patient was the victim of such physical, mental or emotional abuse or neglect; and*

(10) *the method by which the abortion was performed on the patient.*

(f) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility that submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general or any district or county attorney in this state upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts, the attorney general or any district or county attorney pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner that would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection ~~(e)~~ (f) is a class A nonperson misdemeanor. The provisions of this subsection shall expire on July 1, ~~2028~~ 2029, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, ~~2028~~ 2029.

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

~~(e)~~(h) For the purpose of maintaining confidentiality as provided by subsections ~~(e)~~ (f) and ~~(d)~~ (g), reports required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

~~(f)~~(i) The ~~annual~~ *biannual* public report on abortions performed in Kansas issued by the secretary of health and environment shall contain the information required to be reported by this section to the extent such information is not deemed confidential pursuant to this section. *Such biannual report shall be issued not later than 30 days after the end of the reporting period for the information contained in such report.* The secretary of health and environment shall adopt rules and regulations to implement this section. Such rules and regulations shall prescribe, in detail, the information required to be kept by the physicians and hospitals and the information required in the reports that must be submitted to the secretary.

~~(g)~~(j) The Kansas department for children and families shall prepare and publish an annual report on the number of reports of child sexual abuse received by the department from abortion providers. Such report shall be categorized by the age of the victim and the month the report was submitted to the department. The name of the victim and any other identifying information shall be kept confidential by the department and shall not be released as part of the public report.

(k) *The provisions of this section are declared severable. If any provision, phrase or clause or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the remaining provisions, phrases or clauses or the application thereof to any person or circumstance.*

Sec. 2. K.S.A. 2023 Supp. 65-445 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

EXHIBIT N
Confidential
(Produced Natively)

EXHIBIT O

Confidential – Attorney’s Eyes Only

EXHIBIT P
(Submitted Separately
Due to File Size)

EXHIBIT Q
Confidential

EXHIBIT R
Confidential