

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

**HOUSE BILL No. 2218**

By: By Representatives Kinzer, Arpke, Billinger, Boman, Brown, Brunk, Calloway, DeGraaf, Donohoe, Fund, Garber, Goico, Goodman, Gregory, Grosserode, Hedke, Henry, Hermanson, Hiltabrand, Hoffman, M. Holmes, Howell, Kiegerl, Kleeb, Knox, Landwehr, Mast, McLeland, Meigs, Mesa, Montgomery, O'Brien, O'Hara, Otto, Patton, Peck, Rhoades, Rubin, Ryckman, Scapa, Schwab, Siegfried, Smith, Sullentrop, Vickrey, Weber, Wetta and B. Wolf

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1 AN ACT concerning abortion; relating to restrictions on late term  
2 abortions; amending K.S.A. 65-445 and repealing the existing section.

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

4 *New Section 1. The legislature hereby finds and declares that*

5 (a) Pain receptors (nociceptors) are present throughout the unborn  
6 child's entire body by no later than 16 weeks after fertilization and nerves  
7 link these receptors to the brain's thalamus and subcortical plate by no  
8 later than 20 weeks.

9 (b) by eight weeks after fertilization, the unborn child reacts to  
10 stimuli that would be recognized as painful if applied to an adult human  
11 for example by recoiling.

12 (c) in the unborn child, application of such painful stimuli is  
13 associated with significant increases in stress hormones known as the  
14 stress response.

15 (d) subjection to such painful stimuli is associated with long-term  
16 harmful neurodevelopmental effects, such as altered pain sensitivity and  
17 possibly emotional, behavioral and learning disabilities later in life.

18 (e) for the purposes of surgery on unborn children, fetal anesthetics  
19 routinely administered and is associated with a decrease in stress  
20 hormones compared to their level when painful stimuli is applied without  
21 such anesthetics.

22 (f) the position asserted by some medical experts, that the unborn  
23 child is incapable of experiencing pain until a point later in pregnancy  
24 than 20 weeks after fertilization, predominately rests on the assumption  
25 that the ability to experience pain depends on the cerebral cortex and  
26 requires nerve connections between the thalamus and the cortex.  
27 However, recent medical research and analysis, especially since 2007,  
28 provides strong evidence for the conclusion that a functioning cortex is  
29 not necessary to experience pain.  
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Ballon regarding medical statements

Prepared by: Jason B. Long

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Senate Judiciary  
Attachment

(g) substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(h) in adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(i) substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development such as the subcortical plate, to fulfill the role of pain processing.

(j) consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization, and

(k) it is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

New Sec. 21. As used in sections 1 through 3, and amendments

and 2

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.

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(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 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.

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(f) "Pain-capable unborn child" means an unborn child having reached the gestational age of 26 weeks or more.

and having a functioning cerebral cortex

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1 (g) "Physician" means a person licensed to practice medicine and  
2 surgery in this state.

3 (h) "Pregnant" or "pregnancy" means that female reproductive  
4 condition of having ~~an unborn child~~ in the mother's body.

5 New Sec. 22. (a) No person shall perform or induce, or attempt to  
6 perform or induce an abortion upon a pain-capable ~~unborn child~~ unless  
7 such person is a physician and has a documented referral from another  
8 physician not legally or financially affiliated with the physician  
9 performing or inducing, or attempting to perform or induce the abortion  
10 and both physicians provide a written determination, based upon a  
11 medical judgment arrived at using and exercising that degree of care, skill  
12 and proficiency commonly exercised by the ordinary skillful, careful and  
13 prudent physician in the same or similar circumstances and that would be  
14 made by a reasonably prudent physician, knowledgeable in the field, and  
15 knowledgeable about the case and the treatment possibilities with respect  
16 to the conditions involved, that: (1) The abortion is necessary to preserve  
17 the life of the pregnant woman; or (2) a continuation of the pregnancy  
18 will cause a substantial and irreversible physical impairment of a major  
19 bodily function of the pregnant woman. No such condition shall be  
20 deemed to exist if it is based on a claim or diagnosis that the woman will  
21 engage in conduct which would result in her death or in substantial and  
22 irreversible physical impairment of a major bodily function.

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

32 (1) If the abortion is necessary to preserve the life of the pregnant  
33 woman and the medical basis of such determination, including the  
34 specific medical condition the physician believes would cause the death  
35 of the pregnant woman; or

36 (2) if a continuation of the pregnancy will cause a substantial and  
37 irreversible physical impairment of a major bodily function of the  
38 pregnant woman and the medical basis of such determination, including  
39 the specific medical condition the physician believes would constitute a  
40 substantial and irreversible impairment of a major bodily function of the  
41 pregnant woman.

42 (c) (1) Except in the case of a medical emergency, prior to

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1 performing or inducing, or attempting to perform or induce an abortion  
 2 upon a woman, the physician shall determine the gestational age of the  
 3 ~~unborn child~~ according to accepted obstetrical and neonatal practice and  
 4 standards applied by physicians in the same or similar circumstances. In  
 5 making such a determination, the physician shall make such inquiries of  
 6 the woman and perform or cause to be performed such medical  
 7 examinations and tests as a reasonably prudent physician, knowledgeable  
 8 about the case and medical conditions involved, would consider  
 9 necessary to perform in making an accurate diagnosis with respect to  
 10 gestational age. The physician shall document as part of the medical  
 11 records of the woman the basis for the determination of gestational age.  
 12 The physician shall report such determinations, the medical basis and the  
 13 reasons for such determinations in writing to the medical care facility in  
 14 which the abortion is performed **or induced** for inclusion in the report of  
 15 the medical care facility to the secretary of health and environment under  
 16 K.S.A. 65-445, and amendments thereto, or if the abortion is not  
 17 performed **or induced** in a medical care facility, the physician who  
 18 performs **or induces** the abortion shall report such determinations, the  
 19 medical basis and the reasons for such determinations in writing to the  
 20 secretary of health and environment as part of the written report made by  
 21 the physician to the secretary of health and environment under K.S.A. 65-  
 22 445, and amendments thereto.

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23 (2) If the physician determines the gestational age of the ~~unborn~~  
 24 ~~child~~ is ~~22~~ or more weeks, then no abortion of the pain-capable ~~unborn~~  
 25 ~~child~~ shall be performed or induced, or attempted to be performed or  
 26 induced except as provided for in subsection (a). In such event, the  
 27 physician who performs **or induces** the abortion shall report such  
 28 determinations, the medical basis and the reasons for such  
 29 determinations, including the specific medical diagnosis for the  
 30 determination that an abortion is necessary to preserve the life of the  
 31 pregnant woman or that a continuation of the pregnancy will cause a  
 32 substantial and irreversible physical impairment of a major bodily  
 33 function of the pregnant woman and the name of the referring physician  
 34 required by subsection (a) in writing to the medical care facility in which  
 35 the abortion is performed **or induced** for inclusion in the report of the  
 36 medical care facility to the secretary of health and environment under  
 37 K.S.A. 65-445, and amendments thereto, or if the abortion is not  
 38 performed **or induced** in a medical care facility, the physician who  
 39 performs **or induces** the abortion shall report such determinations, the  
 40 medical basis and the reasons for such determinations, including the  
 41 specific medical diagnosis for the determination that an abortion is  
 42 necessary to preserve the life of the pregnant woman or that a

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