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.; TRISTAN FOWLER, D.O.; and COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, on behalf of itself, its patients, physicians, and staff,	)	
Plaintiffs,	)	
v.	)	Case No. 23CV03140 Division No. 12 K.S.A. Chapter 60
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; SUSAN GILE, in her official capacity as Executive Director of the Kansas Board of Healing Arts; JERRY DEGRADO, D.C., in his official capacity as President of the Kansas Board of Healing Arts; and JANET STANEK, in her official capacity as Secretary of the Kansas Department of Health and Environment,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR LEAVE TO SUPPLEMENT SECOND AMENDED PETITION

Just six months after this Court ruled that Plaintiffs are likely to succeed on the merits of their claims that the Woman's Right to Know Act and H.B. 2264 violate Plaintiffs' right to free speech and their patients' right to personal autonomy, the Legislature passed over gubernatorial

veto a new law that compels providers to ask their patients to identify the "most important factor" in their decision to seek an abortion from a list of government-scripted reasons and report data regarding their responses to the State ("H.B. 2749" or "the Reason Mandate"). With an effective date of July 1, 2024, the Reason Mandate represents another legislative attempt to co-opt abortion providers to serve as the State's conduit—this time to pry into patients' personal medical decision-making via intrusive, government-scripted inquiries. As a result, Plaintiffs seek leave to file a supplemental petition pursuant to K.S.A. 60-215(d) that supplements the Second Amended Petition to add claims and allegations related to the Reason Mandate. For the reasons set forth below, Plaintiffs respectfully request that the Court grant this Motion.

BACKGROUND

Plaintiffs brought this action to challenge the Kansas Legislature's repeated efforts to compel abortion providers to communicate government-scripted messages that intrude upon patients' personal medical decision-making, interfere with the physician-patient relationship, and stigmatize abortion. The Reason Mandate is more of the same.

Enacted in 1997 and supercharged over the years, the "Woman's Right to Know Act" ("the WRTK Act") requires providers to convey state-mandated disclosures—in some instances, using government-scripted language—only to patients seeking abortion and not to patients seeking other care. It also requires providers to police such patients' compliance with state-mandated waiting periods and arbitrary formatting requirements. As the State readily acknowledges, the WRTK Act is designed to "discourage abortion" by inserting the State's preference for childbirth into the patients' personal medical decision-making and the physician-patient relationship. AG's Response in Opp. to Pls' Mot. for Temp. Injunction at 14. In April 2023, the Legislature overrode a gubernatorial veto to pass H.B. 2264 ("the Reversal Amendment"), the sixth and most recent

amendment to the WRTK Act, which requires providers to convey, no less than five times before providing a medication abortion, the misinformation that "it may be possible to reverse the intended effects of a medication abortion that uses mifepristone," and to advertise "resources" that purport to provide assistance with "attempt[ing] to reverse the medication abortion." Prior to the Reversal Amendment's July 1, 2023 effective date, Plaintiffs commenced this action challenging it and the underlying WRTK Act and sought a Temporary Injunction against their enforcement.

On October 30, 2023, this Court granted in part Plaintiffs' Motion for Temporary Injunction, concluding that Plaintiffs had demonstrated a likelihood of success on the merits of their claims that the certain provisions of the Act—namely K.S.A. 65-6709, 65-6710(a)(3)–(a)(4), and 65-6712—and the Reversal Amendment violate their constitutional right to free speech and their patients' constitutional right to personal autonomy. The Attorney General and Defendant District Attorneys appealed this Court's ruling. The parties agreed to and this Court entered a joint stipulation to stay proceedings before this Court until completion of the briefing on appeal. The stay of proceedings before this Court expired upon completion of appellate briefing on April 24, 2024.

Despite Kansas voters' overwhelming rejection in August 2022 of the Legislature's attempt to rescind state constitutional protection for individuals' fundamental right to decide to terminate a pregnancy, and despite this Court's recognition of "women's fundamental rights to decide matters regarding her body without public scrutiny and in contravention of any messaging prescribed by the sovereign," Journal Entry on Pls.' Mot. for a Temp. Injunction at 42, the Legislature has passed a new law that mandates intrusive, government-prescribed inquiries into

intimate aspects of abortion patients' personal lives and medical decision-making for State and public scrutiny.

As of July 1, 2024, H.B. 2749 will, among other things, compel abortion providers to ask "each patient . . . prior to the termination of such patient's pregnancy, which of the following" list of government-scripted "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.

H.B. 2749 § 1(c). The Reason Mandate further amends K.S.A. 65-445 to specify that the written reports providers submit to the Department of Health and Environment 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." H.B. 2749 § 1(d).

In addition, H.B. 2749 introduces several other new informational requirements to the

reports, specifically:

- "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;"
- "whether the patient reported having experienced domestic violence in the 12 months prior to the abortion;"
- "whether the patient is living in a place that the patient considers to be safe, stable, and affordable[.]"

H.B. 2749 § 1(e).

Requiring providers to ask patients to justify their decision to seek abortion care by selecting from a list of intensely personal—and in some instances, pejoratively worded—"reasons," among other intrusive questions, invades patients' fundamental right to personal autonomy. Indeed, the chair of the House Committee on Health and Human Services, which sponsored H.B. 2749, stated regarding the bill: "We just want to have more information. Make sure *we're* making the right decision *for* these women."[1] Moreover, co-opting providers to make this inquiry on the State's behalf compels them to alter the content of their speech. In short, through the Reason Mandate, the Legislature has doubled down on the same type of unconstitutional abortion restrictions this Court has already preliminarily enjoined.

ARGUMENT

Trial courts have "broad discretion to permit a party to serve a supplemental pleading setting forth post-complaint transactions, occurrences or events," *Walker v. United Parcel Serv.*,

[1] Tim Carpenter, *Kansas House Passes Abortion Survey Bill, Rebuffs Erectile Dysfunction, Vasectomy Amendments,* Kansas Reflector (Mar. 6, 2024) (statement of Rep. Brenda Landwehr (emphases added)), https://kansasreflector.com/2024/03/06/kansas-house-moves-abortion-survey-bill-draws-erectile-dysfunction-vasectomy-amendments/.

Inc., 240 F.3d 1268, 1278 (10th Cir. 2001).[2] Such a discretionary approach "fosters a full adjudication of the merits of the parties' disputes within a single comprehensive proceeding . . . to promote as complete an adjudication of the dispute between the parties as is possible." *First Sav. Bank, F.S.B. v. U.S. Bancorp*, 184 F.R.D. 363, 368 (D. Kan. 1998).

"On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence or event that happened after the date of the pleading to be supplemented." K.S.A. 60-215(d). Generally, supplemental pleadings "set forth new facts in order to update an earlier pleading," while amended pleadings "relate to matters that occurred prior to the filing of the original pleading." *Carter v. Bigelow*, 787 F.3d 1269, 1278 (10th Cir. 2015). Regardless, courts apply the same standard in evaluating a motion to amend or supplement a pleading. *Fowler v. Hodge*, 94 F. App'x 710, 714 (10th Cir. 2004); *First Sav. Bank, F.S.B.*, 184 F.R.D. at 368.

A motion for leave to supplement should be "liberally granted unless good reason exists for denying leave, such as prejudice to the defendants." *United Parcel Serv.*, 240 F.3d at 1278; *see also Johnson v. Bd. of Cnty. Comm'rs of Pratt Cnty.*, 259 Kan. 305, 327, 913 P.2d 119, 135 (1996) (agreeing that the district court erred in denying leave to amend in the absence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the opposing party); *Walker v. Fleming Motor Co.*, 195 Kan. 328, 330, 404 P.2d 929, 931 (1965) ("As a general rule, amendments to

[2] Because K.S.A. 60-215 mirrors Fed. R. Civ. P. 15, federal authority is "uniquely persuasive" in this context. *State v. Johnson*, 19 Kan. App. 2d 315, 318, 868 P.2d 555 (1994); *Smart v. BNSF Ry. Co.*, 52 Kan. App. 2d 486, 494, 369 P.3d 966, 973 (2016).

pleadings are favored in law and should be allowed liberally in the furtherance of justice to the end that every case may be presented on its real facts and determined on its merits.").

I. The Proposed Supplemental Petition Sets Out an Event that Happened After the Date Plaintiffs Sought Leave to File the Second Amended Petition and Asserts Claims Related to the Original Suit.

The Reason Mandate passed over gubernatorial veto on April 29, 2024—five months after Plaintiffs sought leave to file their Second Amended Petition. Accordingly, this Court should exercise its broad discretion to permit Plaintiffs to supplement their Second Amended Petition with new facts that post-date the filing of that pleading, as well as new claims that correspond with those facts.

Supplementation is appropriate because the new claims involve the same parties and pose the same legal questions as the original suit. As the Proposed Supplemental Second Amended Petition indicates, Plaintiffs seek to assert the same constitutional claims against the Reason Mandate as those they asserted against the WRTK Act. Consequently, the new claims against the Reason Mandate would pose the same legal questions as the original lawsuit, namely:

- Does the challenged law infringe Plaintiffs' patients' fundamental right to personal autonomy?
- Does the challenged law infringe Plaintiffs' fundamental right to free speech?
- Does the challenged law withstand strict scrutiny?
- Does the challenged law discriminate on the basis of the exercise of a fundamental right?
- Does the challenged law discriminate on the basis of sex?

The supplemental claims against H.B. 2749 also involve substantial overlap of facts relevant to the original suit. For instance, facts in the Second Amended Petition regarding Plaintiffs' provision

of abortion care in Kansas, Exhibit 1 at ¶¶ 21–37, and facts regarding health care providers' general professional, ethical, and legal obligations to obtain informed consent to treatment, *id.* at ¶¶ 38–47, 118–23, are relevant to Plaintiffs' supplemental claims against H.B. 2749.

Moreover, permitting Plaintiffs to supplement the amended petition with claims that are closely related, both legally and factually, to those already raised in this case would serve judicial economy and efficiency. If Plaintiffs were to file their challenge to H.B. 2749 as a separate lawsuit, this Court would have discretion to consolidate it with this action, and there would be strong arguments for doing so. *See* K.S.A. 60-242(a) (district court may consolidate actions involving a common question of law or fact); *Plains Transport of Kan., Inc. v. Baldwin*, 217 Kan. 2, 4–5, 535 P.2d 865, 869 (1975) (noting that consolidation is left "to the sound discretion of the district court" and that it is "for the court to weigh the saving of time and effort that consolidation would produce against any inconvenience, delay or expense that it would cause"). Accordingly, permitting supplementation comports with the goal of K.S.A. 60-215 to facilitate as complete and comprehensive an adjudication of the parties' dispute as possible.

II. No Good Reason Exists for Denying Leave to Supplement.

Under K.S.A. 60-215(d), leave to supplement should be freely given in the absence of undue prejudice to the opposing party, undue delay, or bad faith or dilatory motives. *United Parcel Serv.*, 240 F.3d at 1278; *see Johnson*, 259 Kan. at 327; *Fleming Motor Co.*, 195 Kan. at 330. Here, no such reason exists to deny supplementation.

Supplementation would not unduly prejudice Defendants. For purposes of K.S.A. 60-215, undue prejudice means "undue difficulty in prosecuting or defending a lawsuit as a result of change of tactics or theories on the part of the movant." *Garcia v. Tyson Foods, Inc.*, No. CIV. A. 06-2198-JWL, 2010 WL 4102299, at *4 (D. Kan. Oct. 18, 2010). Where supplemental claims are not

"so distinct from Plaintiffs' original claims," Defendants are unlikely to be prejudiced. *Id.* Here, the proposed challenge to H.B. 2749 raises the same claims, based on the Kansas Constitution's protections for the rights to personal autonomy, free speech, and equal protection, as Plaintiffs' existing challenge to the WRTK Act and the Reversal Amendment. As discussed *supra* Section I, the factual basis underlying the supplemental claims substantially overlaps with that for Plaintiffs' existing claims. Moreover, discovery in this case is ongoing: no depositions have been conducted; no dispositive motions have been filed; and the parties have just set a trial schedule for late February 2025. Accordingly, the parties will have ample opportunity to undertake any additional discovery necessary to fully litigate the issues raised by the supplemental amended complaint. *See* Amended Case Management Order ¶ 10 (providing for modification of pre-trial deadlines "subject to the Court's ruling on" this motion and directing parties to "confer with the Court to determine whether" such deadlines require adjustment in the event this motion is granted).

Plaintiffs' request for leave to supplement their Petition is timely and was made expeditiously. As discussed *supra* Section I, the veto override underlying Plaintiffs' supplemental allegations occurred on April 29, 2024—several months after Plaintiffs sought leave to file the Second Amended Petition. Accordingly, claims against H.B. 2749 could not have been added to the petition through previous amendments. Nor have Plaintiffs acted in bad faith or with dilatory motive: Plaintiffs promptly informed the Court and Defendants of Plaintiffs' intent to seek leave to supplement one week after H.B. 2749 was enacted and set a briefing schedule that provides the State with additional time to respond to the instant motion. *See Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006).

Finally, supplementation of the Second Amended Petition with claims against H.B. 2749 would not be futile. Whether an amendment or supplementation would be futile is "analyzed under

the same standard as a motion to dismiss." *Phillips v. Boilermaker-Blacksmith Nat'l Pension Tr.*, No. 19-2402-TC-BGS, 2024 WL 1328378, at *5 (D. Kan. Mar. 28, 2024). To survive a motion to dismiss, a petition must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The party opposing the motion must establish the futility of the proposed supplementation. *Phillips*, 2024 WL 1328378, at *5. Here, Plaintiffs seek to allege that H.B. 2749 violates the constitutional rights to free speech, personal autonomy, and equal protection.

First, the law compels Plaintiffs' speech by requiring providers to ask patients to identify which "reason" from a government-scripted list was the most important factor for in their decision to seek an abortion and to report statistics on patients' responses to the State. Compelled speech "is a content-based" speech restriction because "[m]andating speech that a speaker would not otherwise make necessarily alters the content of that speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). Content-based restrictions are presumptively unconstitutional and "valid only where narrowly tailored to serve compelling public interests and where no less restrictive alternatives are available." *State v. Smith*, 57 Kan. App. 2d 312, 322, 452 P.3d 382, 391 (2019). Because the compelled inquiries that the Reason Mandate adds to K.S.A. 65-445's existing reporting requirements do not fall within the tradition of informed consent under common law, and thus cannot be considered a regulation of professional conduct that incidentally burdens speech, the Reason Mandate is a content-based speech restriction subject to strict scrutiny.

Second, like the WRTK Act, the Reason Mandate singles out abortion care for unique regulation in addition to the generally applicable health regulations to which all health care providers, including abortion providers, are subject. The Reason Mandate also intrudes upon patients' personal medical decision-making and interferes with the physician-patient relationship

by compelling providers to interrogate patients regarding their reasons for seeking abortion to collect data for the State's assessment. Interviewing or surveying individuals to obtain personal information for use, study, or analysis amounts to research involving human subjects. *See* Exhibit 1 at ¶¶ 129–31. The Reason Mandate thus conscripts abortion patients to participate in the State's human subjects research without any of the vetting generally required to ensure that the research methods are ethical, or that there exist adequate protections for the rights, dignity, and welfare of participants. Moreover, because the government-scripted "reasons" set forth in H.B. 2749 are intensely personal, and some are worded in a stigmatizing way, the Reason Mandate may inflict feelings of guilt, shame, or distress. For all of these reasons, H.B. 2749 infringes on abortion patients' fundamental right to personal autonomy and is presumptively unconstitutional unless the State demonstrates that it withstands strict scrutiny.

Third, the Reason Mandate treats people seeking abortion differently based on their exercise of a fundamental right. As alleged in the Proposed Supplemental Second Amended Petition, Plaintiffs are aware of no other requirement for a patient to justify their decision to seek a health care treatment by selecting their "reason" from a government-prescribed list. *See* Exhibit 1 at ¶ 123.

Finally, because only people seeking abortion are subject to the Reason Mandate, it discriminates based on sex and pregnancy. "All gender-based classifications," even those ostensibly based on physical differences between men and women, are subject to heightened scrutiny. *J.E.B. v. Alabama*, 511 U.S. 127, 136 (1994). Such differences are not cause "for denigration of the members of either sex or for artificial constraints on an individual's opportunity" and "may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women." *United States v. Virginia*, 518 U.S. 531, 533–34 (1996) (internal citation

omitted). In addition to targeting pregnant people seeking abortion for intrusive, government-mandated interrogation to which no other patients are subject, the requirement for providers to ask people seeking abortion to justify their decision to terminate their pregnancy is premised on the outdated, gender-based stereotype that women's natural role and destiny is to bear children.

Because no countervailing discretionary factors weigh against granting leave to supplement here, Plaintiffs' motion should be granted.

DATED: May 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of May, 2024, a copy of the foregoing was electronically filed with the Court using CM/ECF system, which will cause this document to be served on all counsel.

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Exhibit 1

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.; TRISTAN FOWLER, D.O.; and COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, on behalf of itself, its patients, physicians, and staff,	)	
Plaintiffs,	)	
v.	)	Case No. 23CV03140 Division No. 12 K.S.A. Chapter 60
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; SUSAN GILE, in her official capacity as Executive Director of the Kansas Board of Healing Arts; JERRY DEGRADO, D.C., in his official capacity as President of the Kansas Board of Healing Arts; and JANET STANEK, in her official capacity as Secretary of the Kansas Department of Health and Environment,	)	
Defendants.	)	

PROPOSED SUPPLEMENTAL SECOND AMENDED PETITION

(Pursuant to K.S.A. Chapter 60)

Plaintiffs, Hodes & Nauser, MDs, P.A., Traci Lynn Nauser, M.D., Tristan Fowler, D.O., and Comprehensive Health of Planned Parenthood Great Plains ("Comprehensive Health"), (collectively "Plaintiffs"), by and through their undersigned attorneys, bring this petition against Defendants, their employees, agents, and successors in office ("Defendants" or "the State") and in support thereof state the following:

I. PRELIMINARY STATEMENT

1. This lawsuit, seeking declaratory and injunctive relief, challenges the Kansas Woman's Right to Know Act ("the WRTK Act" or "the Biased Counseling Scheme"). K.S.A. §§ 65-6708 through 65-6715. A copy is attached as Exhibit A. The Scheme includes amendments made by H.B. 2264 ("the Reversal Amendment"), which take effect July 1, 2023. H.B. 2264 is attached as Exhibit B. This lawsuit also challenges the amendments to K.S.A. 65-445 made by H.B. 2749 ("the Reason Mandate"), which take effect July 1, 2024. H.B. 2749 is attached as Exhibit C.

2. Over time, the Biased Counseling Scheme has become increasingly absurd and invasive—requiring patients to be bombarded with medically inaccurate information through multiple channels; imposing numerous onerous and logistically challenging mandatory delays; adding so many irrelevant, stigmatizing, offensive, and sometimes false statements to the mandatory disclosures that Plaintiffs must post a billboard in their office to house them all; and even dictating the paper color, typeface, and font size of the disclosures.

3. In 2019, the Kansas Supreme Court held that Section 1 of the Kansas Constitution Bill of Rights guarantees the fundamental "right of personal autonomy—which includes the ability to control one's own body . . . and to exercise self-determination," and, because Kansans do not relinquish their rights upon becoming pregnant, this includes protection for the right to abortion.

Hodes & Nauser, MDs, P.A. v. Schmidt, 309 Kan. 610, 660, 440 P.3d 461, 492 (2019).

4. Despite this landmark ruling—and Kansans' resounding rejection of the State's attempt to eliminate this constitutional protection in 2022—~~this year~~in 2023 the Kansas Legislature amended the Biased Counseling Scheme for the *sixth* time to add harmful new requirements for physicians to disseminate to their patients no less than five times, in four separate ways, the false message that "it may be possible to reverse the intended effects of a medication abortion that uses mifepristone." H.B. 2264 § 1(c)(1)(A) ("the Reversal Amendment"). This additional layer of regulation was piled on at a time when providers are struggling to meet the demands of an unprecedented surge of patients seeking abortion after the federal right to abortion was rescinded.

5. Compelling providers to serve as the State's mouthpiece and disseminators for inaccurate and ideological government-scripted messages that are designed to pressure patients into choosing childbirth over abortion, and enlisting providers to enforce the Biased Counseling Scheme's multiple mandatory delays and onerous bureaucratic requirements—regardless of the patient's circumstances or how certain they are in their decision to terminate their pregnancy—interferes with the principles of bodily integrity and patient autonomy that underlie informed consent. Drowning patients in a firehose of irrelevant information likewise inhibits their ability to provide truly informed consent by creating confusion, diluting the information that is imperative to their decision-making, and undermining their trust in their provider.

6. Accordingly, the Biased Counseling Scheme is the antithesis of an informed-consent requirement. Instead, it singles out abortion care for medically unnecessary additional regulation that delays and impedes access to abortion, stigmatizes and demeans people seeking abortion, and perpetuates the discriminatory view that pregnant people are uniquely in need of the

State's paternalistic intervention into their health care and family planning decisions.

7. On October 30, 2023, this Court granted in part Plaintiffs' request for a temporary injunction against enforcement of the Biased Counseling Scheme, including the Reversal Amendment, in an opinion concluding that Plaintiffs were likely to succeed on the merits of their constitutional claims. Just five months later, Kansas flouted this ruling by passing the Reason Mandate, a new law that compels providers to ask abortion patients to identify the "most important factor" in their decision to seek an abortion from a list of government-scripted reasons. Like the Biased Counseling Scheme, the Reason Mandate interferes with the personal decision-making of pregnant people seeking abortion, inserts the State into the relationship between a patient and their health care provider, and co-opts providers to serve as the State's agents to collect private, nonclinical data on its behalf.

II. JURISDICTION AND VENUE

~~7.~~8. This Court has jurisdiction under K.S.A. § 20-301.

~~8.~~9. Plaintiffs' requests for declaratory and injunctive relief are authorized by K.S.A. §§ 60-1701, 60-1703 (declaratory relief) and K.S.A. §§ 60-901, 60-902 (injunctive relief).

~~9.~~10. Venue in this Court is proper under K.S.A. § 60-602(2) because Defendant Howe maintains his office in this district, and under K.S.A. § 60-603(3) because the enforcement authority of Defendants Kobach and Howe is exercised in Johnson County.

III. PARTIES

A. Plaintiffs

~~10.~~11. Plaintiff Traci Lynn Nauser, M.D., is a board-certified obstetrician-gynecologist licensed to practice medicine in Kansas. For the past 24 years, she has been providing a full range of obstetrical and gynecological services, including but not limited to family planning services,

pap smears, prenatal care, delivery of babies, gynecological procedures and surgeries, screening for and treatment of sexually transmitted infections, screening for gynecological and breast cancers, treatment of menopausal symptoms, treatment of dysfunctional uterine bleeding and fibroids, infertility treatments, and abortions up to 21 weeks and 6 days of pregnancy (dated from the patient's last menstrual period, or "LMP"). Dr. Nauser sues on her own behalf and on behalf of her patients.

~~11.~~12. Plaintiff Hodes & Nauser, MDs, P.A., is the private medical practice owned and operated by Dr. Nauser. The practice is located in Overland Park, Kansas, and goes by the name "Center for Women's Health." Hodes & Nauser, MDs, P.A., sues on its own behalf, on behalf of its physicians and staff, and on behalf of its patients.

~~12.~~13. Plaintiff Tristan Fowler, D.O., is an obstetrician-gynecologist and joined Hodes & Nauser, MDs, P.A., in 2020. He graduated from Kansas City University of Medicine and completed his residency in Obstetrics and Gynecology at Michigan State University-Sparrow Hospital. While there, he also served as an Assistant Professor of Obstetrics and Gynecology at Michigan State University. Like Dr. Nauser, Dr. Fowler provides a full range of obstetrical and gynecological services, including abortion services. Dr. Fowler sues on his own behalf and on behalf of his patients.

~~13.~~14. Plaintiff Comprehensive Health of Planned Parenthood Great Plains ("Comprehensive Health") operates three health care centers in Kansas, located in Overland Park, Wichita, and Kansas City, that provide a full range of family-planning services, including well-person preventative care visits; breast and chest exams; pap tests; sexually transmitted infection testing; a wide range of U.S. Food and Drug Administration-approved contraception methods, including highly effective, long-acting reversible contraceptives; pregnancy testing; risk

assessments to screen for high-risk pregnancy issues; prenatal referral services; urinary tract infection treatment; cervical cancer and testicular cancer screening; fertility awareness services; and abortions up to 21 weeks and 6 days of pregnancy LMP. Comprehensive Health sues on its own behalf, on behalf of its physicians and staff, and on behalf of its patients.

B. Defendants

~~14.~~15. Defendant Kris Kobach is the Attorney General and is responsible for defending Kansas laws against constitutional challenge. K.S.A. § 75-702. As Attorney General, Defendant Kobach is the "chief law enforcement officer of the state" and "one of the state's prosecuting attorneys." *State ex. rel Miller v. Rohleder*, 208 Kan. 193, 194, 490 P.2d 374, 376 (1971); *accord* K.S.A. § 22-2202(r). Pursuant to this prosecutorial power, Defendant Kobach may assist in the prosecution of and take over prosecutions of violations of Kansas criminal laws, upon the request of a District Attorney. Defendant Kobach 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. Defendant Kobach is sued in his official capacity, as are his agents and successors.

~~15.~~16. Defendant Susan Gile is the Executive Director, and Defendant Jerry DeGrado, D.C~~.~~., is the President, of the Board of Healing Arts, the agency responsible for enforcing violations of the WRTK Act, which may be punishable as unprofessional conduct. *See* K.S.A. §§ 65-6712, 65-2836(b) (describing the Board of Healing Arts' enforcement authority regarding unprofessional conduct). A physician guilty of unprofessional conduct may have their license "revoked, suspended or limited," "may be publicly censured or placed under probationary conditions," or may have their "application for a license or for reinstatement of a license . . . denied." K.S.A. § 65-2836. The Board of Healing Arts is also empowered to enforce willful or repeated violations of the Reason Mandate. *See* K.S.A. § 65-2836(f) (authorizing the Board of

Healing Arts to take disciplinary action against a licensee who "has willfully or repeatedly violated . . . any rules or regulations of the secretary of health and environment that are relevant to the practice of the healing arts"). Defendants Gile and DeGrado are sued in their official capacities, as are their agents and successors.

~~16.~~17. Defendant Stephen M. Howe is the District Attorney for Johnson County, which includes Overland Park. As District Attorney, Defendant Howe is empowered to prosecute violations of the WRTK Act occurring in Johnson County. *See* K.S.A. § 22a-104 (district attorney duties); K.S.A. § 22-2602 (place of trial). An act of unprofessional conduct also exposes a physician to prosecution for a misdemeanor and monetary penalties for each separate offense. *See* K.S.A. § 65-2862. District Attorney Howe is sued in his official capacity, as are his agents and successors.

~~17.~~18. Defendant Marc Bennett is the District Attorney for Sedgwick County, which includes Wichita. As District Attorney, Defendant Bennett is empowered to prosecute violations of the WRTK Act occurring in Sedgwick County. *See* K.S.A. §§ 22a-104, 22-2602, 65-2862. District Attorney Bennett is sued in his official capacity, as are his agents and successors.

~~18.~~19. Defendant Mark A. Dupree Sr. is the District Attorney for Wyandotte County, which includes Kansas City. As District Attorney, Defendant Dupree is empowered to prosecute violations of the WRTK Act occurring in Wyandotte County. *See* K.S.A. §§ 22a-104, 22-2602, 65-2862. District Attorney Dupree is sued in his official capacity, as are his agents and successors.

~~19.~~20. Defendant Janet Stanek is the Secretary of the Kansas Department of Health and Environment, which is responsible for enforcing violations of Section (b) of the Reversal Amendment. H.B. 2264 § 1(g) and for enforcing violations of the Reason Mandate. *See* K.S.A. § 65-454. Defendant Stanek is sued in her official capacity, as are her agents and successors.

IV. STATUTORY FRAMEWORK AND RELEVANT FACTS

A. Abortion Care in Kansas

~~20.~~21. Legal abortion is among the safest, most common health services in the United States. In fact, abortion is far safer than the alternative of carrying a pregnancy to term. The risk of death associated with childbirth is approximately 13 times higher than that associated with abortion, and every pregnancy-related complication is more common among people who undergo childbirth than people who have abortions. For 2016–2020, Kansas's maternal mortality rate of 19.9 maternal deaths per 100,000 live births exceeded the national average.[1] By contrast, according to the CDC, the case-fatality rate for legal abortion for 2013–2019 was 0.43 deaths per 100,000 legal abortions.[2]

~~21.~~22. Approximately one in four American women of reproductive age has had an abortion.

~~22.~~23. Access to safe and legal abortion is critical to gender equality and women's equal participation in economic and social life. People denied a wanted abortion are more likely to experience economic insecurity and raise their existing children in poverty.

~~23.~~24. Abortion is legal in Kansas and protected as a fundamental right under the Kansas Constitution, yet it is subject to restrictions not imposed in any other area of health care. For example: both public and private insurance are largely prohibited from covering abortion, K.S.A. § 40-2,190; abortion patients and providers are subject to numerous tax penalties not imposed on patients and providers of other health care, K.S.A. §§ 65-6733(b), 79-32,261(d)(2) 79-

[1] Kansas Maternal Mortality Review Committee, *Defining Maternal Mortality*, https://kmmrc.org (last visited June 2, 2023).
[2] Katherine Kortsmit et al., *Abortion Surveillance – United States, 2020*, Ctrs. for Disease Control & Prevention (Nov. 25, 2022), https://www.cdc.gov/mmwr/volumes/71/ss/ss7110a1.htm?s_cid=ss7110a1_w.

32,182b(c), 79-3606; and pre-viability abortion is generally prohibited in Kansas after 22 weeks LMP, even where indicated for a fetal diagnosis, K.S.A. §§ 65-6703(a), 65-6725(a).

~~24.~~25. Multiple other abortion restrictions have been enjoined by the Kansas courts. In 2019, the Kansas Supreme Court recognized that the Kansas Constitution guarantees individuals the right to abortion and affirmed a temporary injunction barring enforcement of K.S.A. § 65-6741 *et seq.*, which bans the standard method of abortion after approximately 15 weeks. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019). In April 2021, a Shawnee County district court entered a permanent injunction against that ban. *Hodes & Nauser v. Schmidt*, No. 2015-CV-490, 2021 WL 7450395 (Kan. Dist. Ct. Apr. 7, 2021), *appeal docketed* No. 21-124130-S (argument heard March 27, 2023). In December 2021, a Shawnee County district court held unconstitutional and permanently enjoined a 2011 set of statutes and regulations that targeted abortion care for unique and additional regulation that applied on top of Kansas's generally applicable laws governing health care. *Hodes & Nauser v. Norman*, No. 2011-CV-1298, 2021 WL 7906942 (Kan. Dist. Ct. Dec. 3, 2021) (holding K.S.A. §§ 65-4a01–4a12 and implementing regulations violated Kansans' rights to abortion and equal protection), *appeal docketed* No. 22-125051-S (argument heard March 27, 2023). And in 2022, the Kansas Court of Appeals directed a Shawnee County district court to enter a temporary injunction against a 2011 law that barred patients from accessing abortion via telehealth. *Tr. Women Found. v. Bennett*, No. 2019-CV-60, 2022 WL 18062279 (Kan. Dist. Ct. Nov. 23, 2022), *on remand from Tr. Women Found. v. Bennett*, No. 121,693, 2022 WL 1597011 (Kan. Ct. App. May 20, 2022).

~~25.~~26. Since the United States Supreme Court overturned *Roe v. Wade* and rescinded federal constitutional protection for the right to abortion in *Dobbs v. Jackson Women's Health Organization*, 14 states have banned abortion, and several others—including states that border

Kansas—have prohibited it after the earliest weeks of pregnancy. As a result, access to this essential health care is even more severely restricted across the Midwest.

~~26.~~27. Demand for abortion care at Plaintiffs' facilities increased exponentially after *Dobbs*. Plaintiffs receive a greater volume of calls from people in need of abortion care than they can possibly accommodate, especially given the numerous onerous, medically unnecessary requirements piled on by the Biased Counseling Scheme. Consequently, Kansans confront longer wait times for abortion appointments, substantially longer travel distances, and other barriers.

~~27.~~28. The majority of abortion care provided in the United States is either through use of medications (medication abortion) or via an outpatient procedure (procedural abortion). Procedural abortions involve a two-step process in which the medical provider first partially dilates the patient's cervix (using medications and/or mechanical or osmotic dilators), then evacuates the uterus using suction aspiration, instruments, or some combination. Dilation is done either the same day or the day before, and the procedural abortion typically takes around five minutes in the first trimester of pregnancy and ten to twenty minutes in the second trimester, depending on the patient's response to the procedure and the complexity of the case.

~~28.~~29. Medication abortions are typically indicated up to 11 weeks LMP and involve the ingestion of medication to terminate the pregnancy, expelling the pregnancy via vaginal bleeding, akin to a heavy period or spontaneous miscarriage. The standard and most common regimen of medication abortion is a combination of two prescription drugs, mifepristone and misoprostol. Mifepristone, also known as "RU-486" or by its commercial name, Mifeprex, was first approved by the U.S. Food and Drug Administration ("FDA") in 2000 for use, in conjunction with misoprostol, to terminate an early pregnancy. The combined use of mifepristone and misoprostol—referred to as "medication abortion"—is regulated by the FDA.

~~29.~~30. Mifepristone works by binding to progesterone receptors in the body, temporarily blocking the hormone progesterone, which is necessary to maintain pregnancy. This causes the pregnancy tissue and lining of the uterus to break down and separate from the wall of the uterus. Because mifepristone has a higher affinity for progesterone receptors, it binds to them more tightly than progesterone. Mifepristone also increases the efficacy of the second drug in the regimen, misoprostol, by weakening the endometrial lining and increasing the strength and efficacy of uterine contractions. Misoprostol, which is taken 24 to 48 hours after mifepristone, causes the uterus to contract and expel its contents.

~~30.~~31. Since 2000, more than five million patients in the United States have had a medication abortion using these medications.[3]

~~31.~~32. The FDA updated the drug label for mifepristone in 2016 to bring it up to date with certain evidence-based protocols used by health care professionals for the provision of medication abortion. As provided by the 2016 label, the protocol for administration of medication abortion is as follows: on day one, the patient takes 200 mg of mifepristone orally; 24 to 48 hours later, the patient takes 800 mcg of misoprostol buccally (meaning, held inside the cheek while the pills dissolve). As the FDA has found, as well as dozens of studies have found, this protocol is exceedingly safe and effective in terminating pregnancy.

~~32.~~33. Because of mifepristone's track record of safety and efficacy, in January 2023, the FDA took the long overdue action of removing medically unnecessary restrictions that required it to be dispensed in-person by a certified health care provider instead of direct to patient telehealth.[4]

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[3] *See A Private Choice for Early Abortion*, Danco, https://www.earlyoptionpill.com (last visited May 24, 2023) (brand-name mifepristone has been used by over five million patients in the U.S.).

[4] *See* U.S. Food & Drug Admin., *Information About Mifepristone for Medical Termination of Pregnancy Through 10 Weeks Gestation* (Mar. 23, 2023), https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/information-about-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation.

~~33.~~34. Plaintiffs offer both procedural and medication abortion.

~~34.~~35. Plaintiffs' patients obtain abortions for a variety of reasons. Nationally, approximately sixty percent of people who access abortion already have children and do not feel they can adequately parent and provide for additional children. Some younger patients believe that parenthood will interfere with completing their education, which would hinder both their own development and their ability to provide for a family. Other patients seek abortions because they are pregnant as a result of rape, are victims of intimate-partner violence, because the pregnancy threatens their health, or because they face a lethal fetal diagnosis. Some patients simply do not wish to remain pregnant or to become parents.

~~35.~~36. Plaintiffs' physicians and staff advise each patient that the decision to continue or terminate pregnancy is theirs alone to make and that an abortion will only be provided if they are making a voluntary decision and are firm in their decision to terminate their pregnancy.

~~36.~~37. The overwhelming majority of Plaintiffs' patients are certain of their decision to have an abortion by the time they call to schedule their appointment. In rare cases where a patient expresses any doubt or ambivalence about their decision to have an abortion at their appointment, Plaintiffs instruct the patient to take more time to consider the decision and only return for the abortion if and when they have made up their mind.

B. Informed Consent

~~37.~~38. The standard of care before initiating any abortion is to provide patients with information that is necessary and relevant to their decision-making, afford the opportunity to ask questions, and ensure that the patient is certain in their decision to terminate their pregnancy. As medical professionals, Plaintiffs' physicians and staff are guided by ethical and professional duties to provide accurate, adequate, and understandable information to their patients about their health

status and all medically relevant health care options.

~~38.~~39. Under common law, the informed-consent doctrine developed to safeguard and promote patient autonomy by ensuring that medical professionals "provide *sufficient* information to their patients to permit patients to make intelligent, informed decisions about medical treatment." *Rojas v. Barker*, 40 Kan. App. 2d 758, 761–62, 195 P.3d 785, 788 (Kan. Ct. App. 2008) (emphasis added).

~~39.~~40. The Kansas Supreme Court pioneered the modern approach of defining the scope of the information physicians are required to disclose with respect to the medical profession's standard of care. *Natanson v. Kline*, 186 Kan. 393, 350 P.2d 1093 (1960), *clarified on denial of reh'g* 187 Kan. 186, 354 P.2d 670 (1960). In *Natanson*, the Court recognized that the physician's duty to disclose "significant facts within his knowledge which are necessary to form the basis of an intelligent consent" is "primarily a question of medical judgment" and limited it "to those disclosures which a reasonable medical practitioner would make under the same or similar circumstances." *Id.* at 393, 409.

~~40.~~41. Courts have limited the duty of disclosure to medically material facts about the patient's diagnosis, prognosis, and the risks and benefits of the proposed treatment and its alternatives (including foregoing treatment altogether). *See, e.g.*, *Rojas*, 40 Kan. App. 2d at 761–62, 195 P.3d at 788 ("A physician or surgeon is obligated to inform the patient of the nature of the patient's illness, of the *significant* risks and consequences inherent to the proposed treatment or procedure, and of *reasonable, medically acceptable* alternatives to the proposed treatment, including the option to forego treatment altogether." (emphases added))

~~41.~~42. Consistent with the informed-consent doctrine, medical ethics provide that health care providers should exercise their clinical judgment to provide medically relevant and accurate

information about the risks and benefits of a proposed course of treatment, as well as its alternatives, and tailor this dialogue to the patient's unique values and preferences.

~~42.~~43. Informed consent is one component of the ethical provision of medical treatment. Obtaining informed consent demonstrates respect for patients as autonomous moral agents who are competent to control their own bodies and direct their own lives, and promotes patients' welfare by advancing their best interests. A respectful informed consent process is also critical to building and maintaining trust between the physician and patient.

~~43.~~44. According to the American Medical Association ("AMA") Code of Medical Ethics, "[t]ruthful and open communication between physician and patient is essential for trust in the relationship and for respect for autonomy."[5]

~~44.~~45. Accordingly, "[c]onduct likely to deceive, defraud or harm the public" is unprofessional conduct under K.S.A. § 65-2837(b)(12), subject to misdemeanor liability and fines, K.S.A. § 65-2862, and licensure penalties up to and including revocation, K.S.A. § 65-2836(b). As is aiding or abetting "the practice of the healing arts by" a practitioner who "fail[s] to adhere to the applicable standard of care," K.S.A. §§ 65-2837(a), (b)(14), or making a "false or misleading statement regarding . . . the efficacy or value of a drug." K.S.A. §§ 65-2837(b)(13), 65-1626(vvv)(8).

~~45.~~46. Health care providers are trained to create space for patients to ask questions, share concerns, and guide discussion of their care. Approaching informed consent as a process of shared decision-making that includes a mutual sharing of truthful and relevant information promotes patient autonomy and the provider-patient relationship.

[5] AMA Code of Medical Ethics, Opinion 2.1.3, https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/code-of-medical-ethics-chapter-2.pdf (last visited June 3, 2023).

~~46.~~47. Non-medical, inaccurate, or irrelevant information all fall far outside the bounds of informed consent. Overriding health care providers' clinical judgment and ability to take patients' unique values and preferences into account also contravenes informed consent, as well as its underlying principles of bodily integrity, decisional autonomy, and trust in the provider-patient relationship.

C. Kansas's Biased Counseling Scheme

~~47.~~48. In 1997, the Kansas Legislature first passed a biased counseling scheme that applied only to abortion—a law it euphemistically dubbed "the Woman's Right to Know Act." Even though abortion providers—like all health care providers—were already required under common law and professional standards to fulfill their duty to disclose adequate information for the patient to provide informed consent, then-Representative Susan Wagle sponsored the bill because she "believe[d] the word 'choice' is a propaganda tool . . . used to deceive women" and that "Kansas women involved in a crisis pregnancy" were thus uniquely in need of the State's paternalistic influence.[6]

~~48.~~49. Although its sponsors described the Biased Counseling Scheme as an informed-consent statute, it bears no resemblance to the legal or ethical concepts of informed consent.

1) The Original Act

~~49.~~50. The original version dictates that, except in a medical emergency, an abortion cannot be provided until at least 24 hours after the pregnant person receives certain state-mandated disclosures in writing and is given state-published printed materials ("the Pamphlet"). The 1997 Act also requires that prior to an abortion, the patient meet privately with the physician who will

[6] *Hearing on the Woman's Right to Know Act* Before the H. Comm. on the Judiciary, 1997 Reg. Sess. (Feb. 13, 1997) (statement of Rep. Susan Wagle).

perform the abortion and certify in writing that they have done so and been provided the state-mandated disclosures and state-published printed materials.

~~50.~~51. In addition to information that providers already have the duty to disclose under professional and ethical standards, the state-mandated disclosures contain information and verbatim statements that are medically irrelevant and designed to dissuade the patient from having an abortion. These include:

- The text of a Kansas law that prohibits abortion after fetal viability unless the abortion provider and another physician both determine that the abortion is "necessary to preserve the life of the pregnant woman" or "the fetus is affected by a severe or life-threatening deformity or abnormality";
- That "[i]f 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";
- That "[m]edical assistance benefits may be available for prenatal care, childbirth and neonatal care";
- That the state-published materials "describe the fetus and list agencies which offer alternatives to abortion with a special section listing adoption services";
- That "the father of the fetus is liable to assist in the support of [the] child, even in instances where he has offered to pay for the abortion," except in cases where the pregnancy was the result of rape; and
- That the pregnant person "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." 1997 Kansas Laws Ch. 190 (S.B. 204).

~~51.~~52. The contents of the Pamphlet are one-sided and far afield from the type of information traditionally provided when obtaining informed consent for a proposed course of treatment, including:

- The required disclosure of "[g]eographically indexed 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, adoption agencies";
- The statement that "Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care";
- The statements that "[m]any 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"[7]; and
- "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." 1997 Kansas Laws Ch. 190 (S.B. 204).

~~52.~~53. Other than in a medical emergency, the 1997 Act does not permit patients to decline any of the state-mandated information or the Pamphlet, or to obtain an abortion less than 24 hours

[7] In 2013, an amendment removed "abortion services" from this list. *See infra* ¶ 70.

after receiving such information and materials, regardless of their wishes, life circumstances, stage of pregnancy, or certainty in their decision.

~~53.~~54. The mandated 24-hour delay is arbitrary, paternalistic, and insults patients by telling them that they have not thought about their decision long or well enough. Individually, and together with other aspects of the Scheme, it also delays patients, who could otherwise schedule their appointments when they and a clinician are available.

~~54.~~55. The 1997 Act also requires that prior to an abortion, the pregnant person "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." 1997 Kansas Laws Ch. 190 (S.B. 204). The Act does not permit any other physician besides the one who will perform the abortion to meet this requirement.

~~55.~~56. "Any physician who intentionally, knowingly or recklessly fails to provide" the state-published materials in accordance with the WRTK Act "is guilty of unprofessional conduct as defined in K.S.A. 65-2837 and amendments thereto."[8] K.S.A. § 65-6712. Unprofessional conduct is grounds for "appropriate disciplinary action," including revocation, suspension, or limitation of the physician's license, public censure, or probationary conditions. K.S.A. § 65-2836. An act of unprofessional conduct also exposes a physician to prosecution for a misdemeanor and to monetary penalties for each separate offense. *See* K.S.A. § 65-2862.

~~56.~~57. In the ensuing decades, the WRTK Act has been amended multiple times to add ever more restrictive requirements that push it further and further afield from ensuring informed consent, and increasingly, into the realm of the absurd. The Amendments have also made providing

[8] Prior to a 1998 amendment, the penalty attached to any failure to provide informed consent in accordance with the WRTK Act.

and accessing abortion increasingly more difficult.

2) 2009 Amendment

~~57.~~58. The WRTK Act was amended in 2009 to impose four additional requirements before an abortion can be provided, make certain adjustments to the state-mandated disclosures and the Pamphlet, and to require the Kansas Department of Health and Environment ("KDHE") to publish the information in the Pamphlet on its website and in an "informational video" (also published on its website), that "show[s] ultrasound images, using the best available ultrasound technology, of a fetus at two week gestational increments." 2009 Kansas Laws Ch. 28 (S.B. 238).

~~58.~~59. The 2009 Amendment adds to the state-mandated disclosures "the contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services." A "list of providers of free ultrasound services" were also added to the Pamphlet and the KDHE website. 2009 Kansas Laws Ch. 28 (S.B. 238).

~~59.~~60. Separate from the changes to the disclosures, the new requirements imposed by the 2009 Amendment further interfere with Plaintiffs' patients' access to abortion and ability to give true informed consent, and complicate Plaintiffs' operations and interrupt patient flow.

~~60.~~61. First, the 2009 Amendment adds a *second* mandatory delay, requiring patients to wait out a 30-minute timer after the patient's mandatory private meeting with the physician who is to perform the abortion, prior to receiving abortion care.

~~61.~~62. Second, the 2009 Amendment requires "[a] physician who will use ultrasound equipment" to prepare for or perform the abortion to inform the patient "at least 30 minutes" before the abortion that they have "the right to view the ultrasound image of her unborn child" and "receive a physical picture of the ultrasound image" at "no additional expense," to certify that this offer was made, and to obtain the pregnant person's "signed acceptance or rejection" of that

opportunity. 2009 Kansas Laws Ch. 28 (S.B. 238).

~~62.~~63. Third, "[a] physician who will use heart monitor equipment" to prepare for or perform an abortion must fulfill the same information, offer, certification, and signature requirements regarding the patient's "right to listen to the heartbeat of her unborn child" at least 30 minutes before the abortion. 2009 Kansas Laws Ch. 28 (S.B. 238).

~~63.~~64. Finally, the 2009 Amendment requires "[a]ny private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed" to "conspicuously post a sign" in a location "clearly visible" to patients printed with the following information in "at least three quarters of an inch boldfaced type":

> 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.

2009 Kansas Laws Ch. 28 (S.B. 238). To comply with the signage requirement's font specifications, Plaintiffs must post a giant sign that occupies a glaring amount of wall space. For reference, the font on the sign must be nearly five times larger than Times New Roman 12-point font, in which this Petition is written.

~~64.~~65. The 2009 Amendment—in particular, the 30-minute mandatory delay—insults and demeans patients by telling them that they have not thought about their decision long or well enough.

~~65.~~66. The 30-minute mandatory delay, layered with the pre-existing requirement that the physician who is to perform the abortion personally meet with the patient before the abortion, also interrupts patient flow, consumes staff capacity and resources, and causes unnecessary delays to

care. For example, if Dr. Nauser is called to perform a delivery for a patient at the hospital after having fulfilled the requirement that she personally meet with a patient prior to an abortion, her abortion patient is either stuck waiting for Dr. Nauser to return to the office or must restart the 30-minute clock with another physician. Comprehensive Health patients may wait up to triple the amount of time mandated by the State for their physician, if, for example, the physician is providing other care or is with other patients.

3) 2011 Amendment

~~66.~~67. The WRTK Act was again amended in 2011 to replace "fetus" with "unborn child" throughout the scheme and to add to the state-mandated disclosures, the Pamphlet, and the KDHE website and video the statement that "the abortion will terminate the life of a whole, separate, unique, living human being." 2011 Kansas Laws Ch. 44 (H.B. 2035).

~~67.~~68. The 2011 Amendment also adds to the Act the definition of "human being" as "an individual living member of the species homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation." 2011 Kansas Laws Ch. 44 (H.B. 2035).

~~68.~~69. According to the American College of Obstetricians and Gynecologists ("ACOG"), the nation's premier professional organization of obstetrician-gynecologists, "unborn child" is not a medically accurate term for describing a pregnancy.[9] The standard terminology agreed upon by the Ob/Gyn community is "embryo" for a pregnancy through 8 weeks LMP and "fetus" after that point until delivery.

~~69.~~70. There is no universal consensus on the philosophical and ideological question of

[9] Am. Coll. Obstetricians & Gynecologists, *ACOG Guide to Language and Abortion*, https://www.acog.org/contact/media-center/abortion-language-guide (last visited June 3, 2023).

when human life begins. Like the Nation as a whole, the Kansas population is religiously pluralistic, and even within religious traditions, opinions vary on when human life begins. The Kansas Constitution guarantees each and every Kansan the freedom to define their own values in alignment with their personal, religious, and/or cultural beliefs.

4) 2013 Amendment

~~70.~~71. The Act was further amended in 2013 to add even more medically inaccurate statements to the state-mandated disclosures and the Pamphlet, the KDHE website, and the informational video ("the state-published materials"). The 2013 Amendment provides that the state-published materials must "at a minimum" contain a series of verbatim statements, many of which are medically irrelevant, ideological, controversial, and/or redundant with the other requirements of the WRTK Act.

~~71.~~72. The 2013 Amendment adds to the state-mandated disclosures the medically inaccurate statements that there is a "risk of premature birth in future pregnancies" and a "risk of breast cancer" related to abortion, and that "by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain."[10] 2013 Kansas Laws Ch. 119 (H.B. 2253).

[10] Plaintiffs Hodes & Nauser MDs, P.A., Dr. Nauser, and Comprehensive Health previously stipulated that distribution of the Pamphlet satisfies these disclosure requirements. Plaintiffs Hodes & Nauser MDs, P.A., and Dr. Nauser challenged the 2013 Amendment, among other laws, in *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 2013-CV-705 (Shawnee Cnty. Dist. Ct. Div. 1) (dismissed without prejudice in 2019). The *Hodes & Nauser* stipulation provides that distribution of the materials in the Pamphlet, pursuant to K.S.A. § 65-6709(d), satisfies the disclosure requirements under K.S.A. § 65-6709(a)(3) (risk of premature birth in future pregnancies, risk of breast cancer, and other risks to reproductive health) and K.S.A. § 65-6709(b)(6) (information on "fetal pain"). *Hodes & Nauser*, No. 2013-CV-705 (Shawnee Cnty. Dist. Ct. Div. 1 Oct. 29, 2013). Plaintiff Comprehensive Health also challenged the 2013 Amendment, among other laws, in federal court, in *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., v. Templeton*, 954 F. Supp. 2d 1205 (D. Kan. 2013). Like the *Hodes & Nauser* stipulation, the *Comprehensive Health* stipulation provides that distribution of the materials in the Pamphlet satisfies the disclosure requirements under K.S.A. § 65-6709(b)(6) (information on "fetal pain"). It also provides that distribution of the Pamphlet satisfies the disclosure requirement under K.S.A. § 65-6709(b)(5) ("the abortion will terminate the life of a whole, separate, unique, living human being"). Joint Stipulation, *Comprehensive Health of Planned Parenthood of Kan. & Mid-Mo., Inc. v. Templeton*, No. 2:13-cv-02302-KHV-KGG (D. Kan. Aug. 9, 2013), ECF No. 25.

~~72.~~73. The medically inaccurate statement that "a fetal heartbeat is . . . a key medical indicator that an unborn child is likely to achieve the capacity for live birth" was also added to the state-published materials. Moreover, the 2013 Amendment cuts "abortion services" from the statement, in the state-published materials, that "encourag[es]" patients to "seek information" about their options, leaving only "alternatives to abortion, including adoption, and resources available to postpartum mothers." 2013 Kansas Laws Ch. 119 (H.B. 2253).

~~73.~~74. In addition, the 2013 Amendment dictates as minimum requirements for those state-published materials 28 verbatim paragraphs, including the following statements:

- "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. . . . 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";

- Information about embryonic and fetal development in half-week increments starting at five weeks LMP, such as:
    - "At 7 ½ 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 9 weeks, "[g]irls also now have ovaries and boys have testes";
    - By 11 weeks, "[t]he uterus is now present, and girls' ovaries now contain reproductive cells that will give rise to eggs later in life";
    - "By 19 weeks, the unborn child's heart has beaten more than 20 million times";
    - By 20 weeks, the "voice box[] moves in a way similar to movement seen during crying after birth";
    - "Nearly all infants born between [28 weeks] and full term survive"; and
    - "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." 2013 Kansas Laws Ch. 119 (H.B. 2253).

~~74.~~75. Evaluation by a panel of specialists in human anatomy found 43.4% of the

statements about embryonic and fetal development included in the state-published materials to be medically inaccurate.[11]

~~75.~~76. The 2013 Amendment added language to the required signage to also include "the address for the pregnancy resources website published" by the KDHE and text duplicating certain statements in the state-mandated disclosures and state-published materials, such as that "[t]he father of your child must provide support for the child" and that [i]f you decide not to have an abortion, you may qualify for financial help for pregnancy, childbirth and newborn care." 2013 Kansas Laws Ch. 119 (H.B. 2253). With this added language, the sign that the Center for Women's Health posts to comply with the Biased Counseling Scheme is 41 inches by 28 inches, or nearly 4 feet by over 2 feet. Comprehensive Health's sign measures 38 inches by 48 inches, or more than 3 feet by 4 feet.

~~76.~~77. Finally, the 2013 Amendment adds an additional requirement for any facility or clinic to "publish an easily identifiable link on the homepage of [their] website that directly links" to the KDHE's website published under the WRTK Act. The text of the link was to state: "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." 2013 Kansas Laws Ch. 119 (H.B. 2253).

~~77.~~78. The WRTK Act was amended in 2014 to delete the words "objective, nonjudgmental, [and] scientifically accurate" from the required link after Plaintiffs challenged the 2013 Amendment. 2014 Kansas Laws Ch. 87 (S.B. 54).

[11] Informed Consent Project, *Kansas*, https://informedconsentproject.com/states/kansas (last visited June 3, 2023).

5) 2017 Amendment

~~78.~~79. The 2017 Amendment imposed a new requirement ("the Font & Color Requirement") that some—but not all—of the state-mandated disclosures that a patient must receive at least 24 hours prior to an abortion "be provided on white paper in a printed format in black ink with 12-point times new roman font." 2017 Kansas Laws Ch. 88 (S.B. 83).

~~79.~~80. To comply with the Font & Color Requirement without requiring patients to make a separate trip to their facility, Plaintiffs have implemented complicated and time-consuming protocols to ensure that patients bring a printed copy of the state-mandated disclosures and to document that it was printed at least 24 hours prior to the abortion. For instance, the Center for Women's Health and Comprehensive Health direct patients to print the required information in accordance with detailed instructions regarding the required formatting and sign the forms with the time and date that they printed them, to ensure that patients have the materials in printed form at least 24 hours before the abortion. To ensure that patients have printed the materials in accordance with the State's stringent formatting requirements, Dr. Nauser's front office staff offers to review scans of the printed and signed documentation prior to the patient's appointment. Finally, the patient must bring the printed copy to their appointment, and front office staff again reviews to ensure that it meets all of the formatting and timing requirements.

~~80.~~81. Although many patients ask whether they can electronically sign—for example, as part of their electronic medical record—that they have reviewed the information in advance of their appointment, Plaintiffs must tell them that state law does not allow for that.

~~81.~~82. As a result, Plaintiffs' patients must find a way to print the state-mandated materials at least 24 hours in advance of their abortion. Accessing a printer at a specific time presents challenges to many Kansans who need abortion care, especially those who are low-income, those

who have existing children to care for, and those who must evade detection by an abusive partner or family member. For example, in May 2023, a Comprehensive Health patient who was a minor required significant assistance arranging transportation to a library to ensure they had the printed statements in advance of their abortion appointment. That is just one of countless patients impacted by the Scheme.

~~82.~~83. Patients are routinely turned away from Plaintiffs' practices because they have not printed out the state-mandated materials at least 24 hours prior to their appointment, or because the materials did not print in the color ink, font size, and/or typeface dictated by the State. The materials may not print properly because of incorrect printer settings, formatting issues that arise when printing from a mobile device rather than a computer, or the printer running out of black ink or white paper.

~~83.~~84. Some patients are turned away after waiting for an appointment for weeks, traveling hundreds of miles, and arranging complicated logistics, including transportation, work coverage, and childcare, only to realize they do not have their printed, completed, and dated materials in the proper format.

~~84.~~85. When they are turned away because they have not complied with these absurd and bureaucratic requirements, patients are demoralized and traumatized. Many break down in tears and are inconsolable. Some threaten to commit suicide.

~~85.~~86. Plaintiffs' staffs are likewise devastated; the Scheme makes people who have committed themselves to helping patients helpless and unwilling participants in the State's efforts to impede access to abortion.

~~86.~~87. Plaintiffs do their best to reschedule patients who are turned away. But that means patients must take more time away from work, arrange for additional childcare, and either travel

home and return for their abortion appointment the next day or find accommodations nearby. Some patients time out of medication abortion or are pushed beyond Kansas's 22-week LMP gestational limit by the time they can be seen again. Other patients choose to leave the state to seek timelier care or avoid having to surmount as many bureaucratic and absurd obstacles to access the care they need.

~~87.~~88. The 2017 Amendment also added to the state-mandated disclosures detailed information about the physician who will perform the abortion, including the year that they "received a medical doctor's degree," the date that their employment at the abortion facility commenced, and whether they are "a resident of this state." 2017 Kansas Laws Ch. 88 (S.B. 83). That information is medically irrelevant and falls well outside of physicians' duty of disclosure.

6) 2023 Reversal Amendment

~~88.~~89. In 2023, over Governor Kelly's veto, the Kansas Legislature added yet another offensive requirement to the WRTK Act.

~~89.~~90. Section 1 of H.B. 2264 ("the Reversal Amendment") amends the WRTK Act to add several new requirements to communicate medically inaccurate information about an experimental practice that is contrary to Plaintiffs' clinical judgment and the medical consensus. All told, patients must be told about this experimental practice no less than five times and in four different ways.

~~90.~~91. First, any facility or clinic "where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion" must "post a conspicuous sign" in each patient waiting room and each patient consultation room used by medication abortion patients with the following message about medication abortion reversal:

> 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.

H.B. 2264 §§ 1(b)(1)–(2)(A). The sign must be printed with lettering that is "at least ¾ of an inch boldfaced type" and must be "clearly visible to patients." *Id.* § 1(b)(1).

~~91.~~92. In practice, H.B. 2264 would require Plaintiff Dr. Nauser to post five such signs in her office and Comprehensive Health to post at least eight signs in each of their health centers.

~~92.~~93. In addition, any hospital or other facility that is not a private office or "freestanding surgical outpatient clinic" must post such a sign "in each patient admission area used by patients seeking medication abortions that use mifepristone." *Id.* § 1(b)(2)(B).

~~93.~~94. Any pharmacy where mifepristone is prescribed, dispensed, or administered to medication abortion patients also must post such a sign "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." *Id.* § 1(b)(2)(C).

~~94.~~95. Second, except in the case of a medical emergency, H.B. 2264 requires physicians to inform patients at least 24 hours in advance of a medication abortion "[t]hat 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 that "information on reversing the effects of a medication abortion that uses mifepristone is available on" the KDHE'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." *Id.* § 1(c)(1). In addition to including this information in the written state-mandated disclosures required under the WRTK Act, H.B. 2264 compels physicians to provide this information "either by telephone or in person"

at least 24 hours prior to the abortion. *Id.*

~~95.~~96. Accordingly, H.B. 2264 forces physicians to orally speak a State-mandated message that is contrary to their beliefs and medical consensus. Not only does this requirement conscript physicians to serve as the State's unwilling mouthpiece, it poses potentially unsustainable and insurmountable operational challenges. At the Center for Women's Health, for instance, Dr. Nauser cannot step away from performing a procedural abortion—or delivering a baby at her obstetrics practice—to personally communicate the information required by H.B. 2264 to a caller seeking medication abortion. Yet, any delay in conveying that information over the phone may effectively result in extending the patient's mandatory waiting period beyond the 24-hour minimum required by the WRTK Act.

~~96.~~97. Third, after the patient has been provided mifepristone, "the physician or an agent of the physician" must "provide a legible, written notice" to the patient that contains the same statements as displayed on the signs. *Id.* § 1(c)(2).

~~97.~~98. Fourth, within 90 days after H.B. 2264's effective date, the KDHE must publish in the Pamphlet and on its website "comprehensible materials" in "English and in each language that is the primary language of 2% or more of the state's population" 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 KDHE website must "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." *Id.* § 1(e).

~~98.~~99. Although the KDHE has until September 28 to publish information and "relevant telephone and internet resources" about medication abortion reversal on its website, H.B. 2264

requires abortion providers to direct patients to such information and resources from July 1. As a result, Plaintiffs may be left with no guidance for as long as 90 days on what the State considers to be a relevant or appropriate resource for assistance with medication abortion reversal.

~~99.~~100. Moreover, H.B. 2264 forces Plaintiffs to bestow legitimacy on an experimental practice that has not been proven safe or effective by forcing them to direct patients toward unknown entities or individuals who purport to provide "assistance to attempt to reverse [a] medication abortion."

~~100.~~101. H.B. 2264 carries criminal penalties. Any person who is convicted for a violation of H.B. 2264 is guilty of a misdemeanor. Any person who is convicted for a second or subsequent violation of H.B. 2264 is guilty of a felony. *Id.* § 1(f).

~~101.~~102. The KDHE will fine any facility that fails to post the required signage $10,000 for every day the signs are not posted. *Id.* § 1(g).

~~102.~~103. Physicians who provide a medication abortion using mifepristone in violation of H.B. 2264 are also subject to civil damages in a lawsuit brought by the patient, the "father" of the fetus or embryo, or the parents of a minor patient or a deceased patient. *Id.* § 1(h).

~~103.~~104. The statement that "it may be possible to reverse the intended effects of a medication abortion that uses mifepristone" is false and deceptive. There is no credible scientific evidence that a medication abortion using mifepristone can be "reversed."

~~104.~~105. Under H.B. 2264, an abortion is defined as "the use or prescription of any instrument, medicine, drug or any other means to terminate the pregnancy of a woman knowing that such termination will, with reasonable likelihood, result in the death of the unborn child." *Id.* § 4(a). Because it is not possible to reverse the intended effect of a medication abortion—*i.e.*, the death of an "unborn child"—the 2023 Reversal Amendment forces providers to confuse and

mislead patients with the untrue message that it may be possible to "reverse the intended effects of a medication abortion that uses mifepristone."

~~105.~~106. Upon information and belief, the concept of "reversing" a medication abortion is based on an experimental practice proposed by Dr. George Delgado, who has alleged, based only on two poorly designed studies, that treatment with progesterone can "reverse" the effects of mifepristone prior to the administration of misoprostol. Taken alone, mifepristone administered as part of a medication abortion will terminate a significant percentage of pregnancies, but not all. Separate from other study design flaws and ethical issues, without control groups, Dr. Delgado's papers cannot demonstrate whether progesterone treatment had any impact on participants' pregnancy outcomes.

~~106.~~107. Progesterone has not been approved by the FDA for use in "reversing" the effects of mifepristone. There is no FDA-approved protocol for the administration of progesterone to "reverse" the effects of mifepristone.

~~107.~~108. Moreover, this experimental practice is opposed by ACOG, because its safety and efficacy have not been established.[12]

~~108.~~109. To date, only one clinical trial has been started for the purpose of assessing the potential risks to pregnant people who undergo medication abortion "reversal." This randomized controlled clinical trial was terminated early due to safety risks to the participants after three of the twelve participants experienced severe hemorrhage requiring hospital transport. The trial authors concluded that "patients in early pregnancy who use only mifepristone may be at high risk of

[12] Am. Coll. Obstetricians & Gynecologists, *Facts Are Important: Medication Abortion "Reversal" Is Not Supported By Science*, https://www.acog.org/advocacy/facts-are-important/medication-abortion-reversal-is-not-supported-by-science (last visited June 3, 2023).

significant hemorrhage."[13]

~~109.~~110. Because there is no credible scientific evidence to support the theory that medication abortion can be "reversed," H.B. 2264 compels physicians to personally lie to their patients. Further, forcing physicians to refer patients to "resources" that convey false and deceptive information about medication abortion reversal and offer "assistance" with "attempt[ing]" an experimental and potentially dangerous treatments violates medical ethics and subjects Plaintiffs to potential disciplinary action or liability.

D. The Reason Mandate

111. K.S.A. 65-445 requires facilities that offer abortion care to "keep written records of all pregnancies that are lawfully terminated" within such facilities and to "annually submit a written report . . . to the secretary of health and environment" pursuant to "rules and regulations adopted" to "implement this section." K.S.A. § 65-445(a), (f). K.S.A. 65-445 prescribes that such written reports "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," and "information required to be reported" under certain other statutes, where "applicable to the pregnancy terminated." K.S.A. § 65-445(b). Aside from those specifications, K.S.A. 65-445 leaves "the information required in the reports" to the discretion of the Department of Health and Environment. K.S.A. § 65-445(f).

112. Pursuant to regulations adopted by the Department of Health and Environment, abortion providers in Kansas must file a report "for each abortion performed" containing the patient's de-identified demographic and biographic data, certain medical history, and certain

[13] Mitchell D. Creinin et al., *Mifepristone Antagonization with Progesterone to Prevent Medical Abortion: A Randomized Controlled Trial*, 135 Obstetrics & Gynecology 158, 158 (2020).

information regarding the reported abortion. *See* K.A.R. § 28-56-2(d).

113. On April 29, 2024, the Legislature overrode Governor Kelly's veto to pass several amendments to K.S.A. 65-445 in H.B. 2749. Section 1(e) of H.B. 2749 codifies in K.S.A. 65-445 some of the information that K.A.R. 28-56-2 already requires providers to include in their reports to the Department of Health and Environment. However, Section 1(e) also goes further, adding several new informational requirements to the reports. Specifically, the reports must include:

- 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;
- whether the patient reported having experienced domestic violence in the 12 months prior to the abortion;
- whether the patient is living in a place that the patient considers to be safe, stable, and affordable[.]

H.B. 2749 § 1(e).

114. In addition, Section 1(c) of H.B. 2749 amends K.S.A. 65-445 to require that each abortion patient "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.

H.B. 2749 § 1(c). "If the patient declines to answer, such response shall be recorded." *Id.*

115. The written reports submitted to the Department of Health and Environment must 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." H.B. 2749 § 1(d).

116. Anti-abortion lobbyists testified in support of H.B. 2749 that "understanding reasons can inform policy" and asserted that "the abortion industry already has this information," but "lawmakers should not have to rely on [data from Guttmacher]."[14] Meanwhile, Representative Brenda Landwehr, who chairs the House Committee of Health and Human Services that sponsored H.B. 2749, acknowledged her motivation to "ban abortion except for the three exceptions."[15] She

[14] *Requiring medical care facilities and providers to report the reasons for each abortion performed at such facility or by such provider to the secretary of health and environment: Hearing on HB 2749 Before S. Comm. on Public Health and Welfare*, 2024 Reg. Sess. (Kan. 2024) (statement of Jean Goden at 13:42); (statement of Brittany Jones at 15:58), https://www.youtube.com/watch?v=Rb80QQmJRd0 (last visited May 20, 2024).

[15] *Requiring medical care facilities and providers to report the reasons for each abortion performed at such facility or by such provider to the secretary of health and environment: Hearing on HB 2749 Before H. Comm. on Health and Human Servs.*, 2024 Reg. Sess. (Kan. 2024) (statement of Rep. Brenda Landwehr, Chair, H. Comm. on Health and Human Servs. at 1:21:40), https://www.youtube.com/watch?v=DAd2x2JrvVE (last visited May 20, 2024).

later commented about H.B. 2749: "We just want to have more information. Make sure *we're* making the right decision *for* these women."[16]

E. The Biased Counseling Scheme ~~Is~~and the Reason Mandate Are Not ~~a~~ Proper Informed-Consent ~~Requirement.~~Requirements.

~~110.~~117. To the extent the Biased Counseling Scheme was sold as a way to promote informed consent in abortion care, its impact has been the opposite. The Biased Counseling Scheme is not a proper informed-consent requirement because it undermines the principles of bodily integrity and decisional autonomy that underlie the doctrine of informed consent, mandates government-scripted disclosures far outside the scope of physicians' traditional duty of disclosure under established tort law principles, and contravenes medical ethics. Moreover, the Reason Mandate violates ethical duties to obtain informed consent to participate in research before involving an individual in a research project.

1) No Other Health Care Is Subject to "Informed Consent" Requirements Remotely Comparable to the Biased Counseling Scheme~~,~~ or the Reason Mandate.

~~111.~~118. Abortion is the only health care in Kansas that is subject to unique and additional regulation that undermines—rather than facilitates—patients' ability to provide informed consent. By singling out abortion patients to receive repetitive disclosures of one-size-fits-all information—much of which is irrelevant, medically inaccurate, and/or misleading—and endure arbitrary mandated delays as conditions for accessing critical, time-sensitive health care, the Biased Counseling Scheme discriminates against people seeking abortion and perpetuates the stereotype that they are incapable of making thoughtful medical decisions. The Reason Mandate further

[16] Tim Carpenter, *Kansas House Passes Abortion Survey Bill, Rebuffs Erectile Dysfunction, Vasectomy Amendments*, Kansas Reflector (Mar. 6, 2024), https://kansasreflector.com/2024/03/06/kansas-house-moves-abortion-survey-bill-draws-erectile-dysfunction-vasectomy-amendments/ (last visited May 20, 2024).

discriminates against people seeking abortion by compelling providers to interrogate their reasons for seeking abortion care using language that is stigmatizing.

~~112.~~119. Kansas does not mandate any specific state-scripted disclosures for any other safe and standard health care. Aside from abortion, the only two treatments that are subject to informed-consent requirements that include any specific disclosures are dry needling[17] and lipodissolve.[18] In stark contrast to the well-documented safety and efficacy of abortion, these practices have been cautioned against by major medical associations like the AMA[19] and the American Society for Dermatologic Surgery.[20]

~~113.~~120. Despite credible concerns about lack of regulation and/or evidence to support their safe use, Kansas law imposes far fewer requirements for informed consent to these practices. *See* K.A.R. 100-29-19(b) (requiring for informed consent to dry needling the patient's signature, the risks and benefits of dry needling, the diagnosis for which the physical therapist is performing dry needling, each anatomical region of training completed by the physical therapist, and a statement that the procedure being performed is dry needling as defined by the physical therapy practice act); K.A.R. 100-22-8a(d)(3) (requiring for written consent to lipodissolve acknowledgement that it is

[17] Dry needling is a relatively new and unstudied intervention utilized by physical therapists that involves insertion of filiform needles into muscles or tissue. There exists controversy over whether it is properly within physical therapists' scope of practice. *See, e.g.*, David Boyce et al., *Adverse Events Associated with Therapeutic Dry Needling*, 15 Int'l J. Sports Physical Therapy 103 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7015026.

[18] Lipodissolve is an injection of phosphatidylcholine and sodium deoxycholate ("PCDC"), a "nonsurgical method to eliminate unwanted fat" with an "uncertain" record of safety and efficacy. Dominic N. Reeds et al., *Metabolic and Structural Effects of Phosphatidylcholine and Deoxycholate Injections on Subcutaneous Fat*, 33 Aesthetic Surgery J. 400 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3667691. Under Kansas law, physicians are only permitted to administer such injections during "clinical research of PCDC as an investigational new drug" or when it is compounded with written informed consent. K.A.R. 100-22-8a.

[19] The AMA maintains that dry needling is an "invasive procedure" and "should only be performed by practitioners with standard training and familiarity with routine use of needles in their practice, such as licensed medical physicians and licensed acupuncturists." Am. Medical Ass'n, *Dry Needling is an Invasive Procedure H-410.949* (2016), https://policysearch.ama-assn.org/policyfinder/detail/dry%20needling?uri=%2FAMADoc%2FHOD-410.949.xml.

[20] Sandra G. Boodman, *Doctors Warn Against Lipo-dissolve, But Fans Say It Works*, Seattle Times (July 22, 2007), https://www.seattletimes.com/seattle-news/health/doctors-warn-against-lipo-dissolve-but-fans-say-it-works.

a drug that has not been approved by a federal or state agency, "that a preponderance of competent medical literature regarding clinical research establishing whether PCDC is safe and effective has not been published," that clinical data will be submitted to an IRB for peer review, and a description of the known and potential side effects of PCDC).

~~114.~~121. Aside from these underregulated or untested treatments, Kansas only imposes generalized informed-consent requirements—limited to the risks, benefits, and side effects of medical interventions—in a select few health care contexts. For instance, Kansas law sets forth certain requirements for obtaining informed consent from individuals with disabilities, but those do not include any specific, government-scripted disclosures. *See, e.g.*, K.A.R. 30-63-23(b)(1)(C); K.A.R. 28-39-228(n).

~~115.~~122. Kansas law does not require a mandatory delay before accessing dry needling, lipodissolve, or any other type of health care.

123. Nor does Kansas law require the provider of any other health care to interrogate patients about which out of a list of government-scripted "reasons" is the "most important factor" in their decision to seek such care. Indeed, a proposal to amend H.B. 2749 to require the same inquiry prior to providing a vasectomy was ruled not germane.[21]

2) The Biased Counseling Scheme ~~Undermines~~and the Reason Mandate Undermine Informed Consent and Its Underlying Ethical Principles.

~~116.~~124. The Biased Counseling Scheme forces providers to engage in conduct that is antithetical to informed consent and its underlying ethical principles.

~~117.~~125. Forcing providers to disseminate inaccurate and/or misleading information is a gross violation of medical ethics, and it undermines patients' trust in their providers. So too does

[21] H. Amendment to H.B. 2749, 2024 Reg. Sess. (Kan. 2024) (amendment offered by Rep. Oropeza and ruled not germane on Mar. 6, 2024).

conscripting health care providers to serve as mouthpieces for the State's ideological message in favor of childbirth and as the State's arm in enforcing mandatory waiting periods, regardless of how certain a patient is in their decision, and other arbitrary restrictions. Likewise, forcing providers to foist the same set of one-size-fits-all state-mandated information upon *all* patients, regardless of individual needs and circumstances or how certain they are in their decision to have an abortion, undermines patient autonomy and shared decision-making.

~~118.~~126. The Biased Counseling Scheme also forces providers to inundate patients with an overwhelming volume of information, much of which is irrelevant to the patient's individual circumstances.

~~119.~~127. The 2023 Reversal Amendment is among the most extreme requirements yet, as it forces physicians and their agents to speak and otherwise provide their patients with information and resources that are not medically credible and scientifically established. In doing so, it forces providers to violate their ethical obligations to their patients and undermines the provider-patient relationship.

~~120.~~128. Specifically, the government-mandated disclosure that "it may be possible to reverse the intended effects of a medication abortion that uses mifepristone" directly undermines the measures that Plaintiffs take to ensure that their patients are certain about their decision to terminate their pregnancy before an abortion is performed. Indeed, the 2023 Reversal Amendment forces ~~providersto~~providers to muddle that critical message by conveying false and misleading information that can lead a patient to take mifepristone before they are certain of their decision.

129. The Reason Mandate conscripts patients to serve as unwitting participants in the State's research without safeguards for ensuring that their participation is consensual or that they are treated ethically. Legal and ethical standards govern research involving human subjects. *See,*

e.g., 45 C.F.R. § 46 *et seq.* These standards universally require obtaining informed consent from individuals before involving them in research.[22] Obtaining informed consent to participate in research requires, at minimum, ensuring that the prospective participant understands what the research is and to what they are consenting. The Reason Mandate does neither. Instead, it mandates that providers interrogate each patient with government-scripted questions without informing patients of how their responses will be used, much less procedures in place to ensure that they understand that their responses will be collected and used by the government for unknown purposes.

130. Legal and ethical standards for human subjects research also ensure that such research is conducted ethically and that appropriate steps are taken to protect the rights and the welfare of the people participating. Human subjects research must be approved by a monitoring body called an institutional review board, which reviews research protocols and related materials to assess whether they adequately protect participants from physical and psychological harm, whether they promote fully informed and voluntary participation, and whether the benefits of the research outweigh the risks to participants. Institutional review boards must give special consideration to protecting the welfare of particularly vulnerable subjects, including pregnant people. *See* 45 C.F.R. §§ 46.201–.207.

131. The Reason Mandate compels providers to ask abortion patients for deeply personal information that is not clinically necessary using government-scripted questions that have not undergone institutional review board vetting, and to report data regarding patients' responses to the State. Accordingly, the Reason Mandate conscripts pregnant people seeking abortion to serve

[22] *See* The Nat'l Comm'n for the Prot. of Hum. Subjects of Biomedical and Behav. Rsch., The Belmont Report (Apr. 18, 1979), https://www.hhs.gov/ohrp/sites/default/files/the-belmont-report-508c_FINAL.pdf (last visited May 20, 2024).

as unwitting participants in the State's human subjects research without any of the safeguards required by federal regulations and the principles of medical ethics.

E. The Biased Counseling Scheme ~~Harms~~and the Reason Mandate Harm Patient Health

~~121.~~132. Not only does the Biased Counseling Scheme lack any medical benefit, it undermines the health and safety of people seeking abortion by delaying time-sensitive health care, requiring providers to force potentially traumatizing information on their patients, and requiring providers to convey medically inaccurate information that poses threats to patients' safety.

~~122.~~133. Research shows that mandatory delay periods can be detrimental to the mental health of people who wish to end their pregnancy. Patients may experience psychological and emotional harm from being forced to remain pregnant against their will, when they have already made the decision to end their pregnancies. In addition to the anxiety many patients experience from unnecessary, state-imposed delays, some patients might be pushed beyond Kansas's 22-week LMP limit or become ineligible for the abortion method they prefer (for example, delays can prevent some patients from accessing medication abortion).

~~123.~~134. The Biased Counseling Scheme and the Reason Mandate also ~~forces~~force abortion providers to inflict psychological and emotional harm on their patients. For example, ~~it~~the Biased Counseling Scheme forces providers to inform a patient with a wanted pregnancy who has received a lethal fetal diagnosis that "[m]edical assistance benefits may be available" for neonatal care—even though the fetus has no chance of survival after birth. Similarly, ~~it~~the Biased Counseling Scheme requires providers to suggest to victims of intimate partner violence or incest that they consider approaching the "father" for child support rather than have an abortion. Further, ~~it~~the Biased Counseling Scheme requires providers to tell every patient—regardless of their values, religious or moral beliefs, or cultural background—that abortion terminates the life of a "whole,

separate, unique, living human being" when there is no universal consensus on the moral status of a pregnancy.

135. Likewise, the Reason Mandate compels providers to interrogate patients using stigmatizing language that may inflict psychological or emotional distress. For instance, a patient seeking an abortion because they would not be able to provide and care for another child in addition to their existing children may feel shamed by H.B. 2749 because the "reason[]" that most closely reflects the "most important factor" in their decision to seek an abortion—"the patient already has enough, or too many, children"—implies that they regret having their existing children. The government-scripted "reason[]" that "the child would have a disability" may be traumatizing to patients seeking abortion because their pregnancy has been diagnosed with a lethal or life-limital fetal condition.

136. In addition, H.B. 2749 compels people seeking abortion to disclose whether they have received services, financial assistance, or other assistance from "a nonprofit organization that supports pregnant women," whether they have "experienced domestic violence in the 12 months prior to the abortion," and whether they live in a place that they consider "to be safe, stable, and affordable." In light of extremist attempts by anti-abortion politicians and other actors to prohibit, investigate, and take enforcement action against assistance provided to help people travel from states where abortion is illegal to obtain abortion in states where it is legal, H.B. 2749 may cause patients to fear exposing themselves to scrutiny and their loved ones or other supports to liability. Moreover, H.B. 2749 may cause patients who have experienced domestic violence to fear collateral consequences. For example, those who have existing children may be afraid that disclosing abuse could trigger a report to child protective services and create the risk that their existing children will be removed from their care or that an investigation will provoke retaliation

from their abuser.

~~124.~~137. The 2023 Reversal Amendment may cause patients emotional harm by forcing them to receive confusing, medically inaccurate information that their physician objects to as false and misleading.

~~125.~~138. The 2023 Reversal Amendment also requires providers to direct patients to "resources" regarding an experimental practice that does not comport with the standard of care. In doing so, the 2023 Reversal Amendment forces providers to endorse an experimental practice that is potentially dangerous.

F. The Biased Counseling Scheme ~~Stigmatizes~~and the Reason Mandate Stigmatize Abortion and ~~Discriminates~~Discriminate Against Pregnant People Seeking Abortion Care.

~~126.~~139. By singling out abortion for overregulation, arbitrarily requiring people seeking abortion to wait both 24 hours prior to an appointment and 30 minutes during an appointment before their consent to treatment is considered valid, and wedging the State's value judgment into their decision-making, the Biased Counseling Scheme stigmatizes abortion and perpetuates the demeaning view that people seeking abortion are uniquely incapable of making informed health care decisions. Likewise, the Reason Mandate also stigmatizes abortion and perpetuates such stereotypes by asking abortion patients to justify their decision to terminate their pregnancy by way of a government-prescribed menu of "reasons" that use shaming language.

~~127.~~140. By reflecting the State's bias in favor of childbirth and against abortion, the Biased Counseling Scheme also perpetuates the discriminatory stereotype that motherhood is the appropriate role for women and people capable of becoming pregnant and that they cannot decide what is best for themselves and their families without the State's paternalistic intervention.

~~128.~~141. Kansas law does not actively hinder others from making their own reproductive

decisions. For example, people who are not pregnant may consent to use contraception or to have a vasectomy to prevent pregnancy, or to use assisted reproductive technologies to become pregnant, without having to first comply with any of the requirements in the Biased Counseling Scheme. or the Reason Mandate.

129.142. Similar classifications based on a person's capacity for pregnancy and childbearing have long been a means by which the government enforces inequality. But, as the Kansas Supreme Court has recognized: "We no longer live in a world of separate spheres for men and women." *Hodes & Nauser*, 309 Kan. at 659, 440 P.3d at 491. Indeed, "[t]rue equality of opportunity in the full range of human endeavor is a Kansas constitutional value, and it cannot be met if the ability to seize and maximize opportunity is tethered to prejudices from two centuries ago." *Id*.

130.143. Plaintiffs' patients know better than anyone what is best for their lives and are fully capable of taking the time they need to make the decision to terminate a pregnancy. Research demonstrates that most people seeking abortion are certain of their decision and strongly prefer to obtain abortion care without delay.

131.144. The Biased Counseling Scheme is designed to dissuade Kansans seeking abortion from obtaining this health care by imposing arbitrary and demeaning waiting periods and bureaucratic requirements and forcing Plaintiffs to place their imprimatur on government-scripted materials that reflect the State's preference for choosing childbirth, which is all but guaranteed to generate feelings of alienation, guilt, stigma, and shame for the patient. Because it manipulates patients' decision-making in this way, the Biased Counseling Scheme undermines patient autonomy and contravenes the basic requirement that truly informed consent be voluntary and uncoerced.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Fundamental Right to Abortion)

~~132.~~145. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 129 above.

~~133.~~146. The Biased Counseling Scheme ~~violates~~and the Reason Mandate violate Section 1 of the Kansas Constitution Bill of Rights because it infringes Plaintiffs' patients' fundamental right to abortion by singling out abortion care for unique and additional regulation and interfering with patients' decisions about pregnancy.

SECOND CLAIM FOR RELIEF

(Right to Free Speech)

~~134.~~147. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 129 above.

~~135.~~148. The Biased Counseling Scheme ~~violates~~and the Reason Mandate violate Section 11 of the Kansas Constitution Bill of Rights because it infringes Plaintiffs' right to free speech by targeting their speech for unique restriction based solely on their provision of abortion care and compelling them to communicate government-mandated messages that alter the content of their speech and are contrary to their views.

THIRD CLAIM FOR RELIEF
(Denial of Equal Protection—Fundamental Right)

~~136.~~149. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 129 above.

~~137.~~150. The Biased Counseling Scheme ~~violates~~and the Reason Mandate violate Section 2 of the Kansas Constitution Bill of Rights by denying equal protection of laws to Plaintiffs'

patients because it discriminates against them based on their exercise of the fundamental right to abortion.

FOURTH CLAIM FOR RELIEF

(Denial of Equal Protection—Sex Discrimination)

~~138.~~151. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 129 above.

~~139.~~152. The Biased Counseling Scheme violates Section 2 of the Kansas Constitution Bill of Rights by denying equal protection of laws to Plaintiffs' patients because it singles out women and people capable of becoming pregnant, and it 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.

153. The Reason Mandate violates Section 2 of the Kansas Constitution Bill of Rights by denying equal protection of laws to Plaintiffs' patients because it singles out women and people capable of becoming pregnant, and it perpetuates sex-based stereotypes that motherhood is the appropriate role for women and that women need to justify their decision to terminate a pregnancy.

FIFTH CLAIM FOR RELIEF
(Void for Vagueness)

~~140.~~154. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 129 above.

~~141.~~155. The Reversal Amendment violates Section 10 of the Kansas Constitution Bill of Rights because it is unconstitutionally vague. The Reversal Amendment requires providers to include information about "other relevant telephone and internet resources" on a "conspicuous sign," in the information that must be provided at least 24 hours prior to the abortion, and in a written notice after dispensing mifepristone, but the Amendment does not specify what constitutes

such resources or how to go about identifying them. Nor does it specify whether the information to be identified by the KDHE (within 90 days of July 1) satisfies this requirement.

~~142.~~156. The Reversal Amendment does not give fair warning regarding its requirements, and it does not adequately guard against arbitrary and unreasonable enforcement.

VI. REQUEST FOR RELIEF

WHEREFORE Plaintiffs request that the Court:

A. Issue a declaratory judgment that the Biased Counseling Scheme (K.S.A. §§ 65-6708 through 65-6715~~) and~~), the Reversal Amendment (H.B. 2264), and the Reason Mandate (H.B. 2749) are unconstitutional and therefore unenforceable.

B. Grant a temporary restraining order without bond restraining Defendants; their officers, agents, servants, and employees, and successors in office; and all other persons who are in concert or participation with them from enforcing the Reversal Amendment, should the Court be unable to rule on Plaintiffs' request for a temporary injunction before the Reversal Amendment's July 1, 2023, effective date.

C. Grant a temporary injunction without bond and a permanent injunction restraining Defendants; their officers, agents, servants, and employees, and successors in office; and all other persons who are in concert or participation with them, from enforcing the Biased Counseling Scheme or the Reversal Amendment.

D. Grant such other and further relief as the Court deems just, proper, and equitable, including an award of costs and attorneys' fees to Plaintiffs.

Respectfully submitted May ~~15~~20, 2024.

DATED: May ~~15~~20, 2024

Respectfully submitted,

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EXHIBIT A

2023 Kansas Statutes

65-6708. Citation of act. K.S.A. 65-6701 and K.S.A. 65-6708 through 65-6715, and amendments thereto, and K.S.A. 2023 Supp. 65-6716, and amendments thereto, shall be known and may be cited as the woman's-right-to-know act.
History: L. 1997, ch. 190, § 25; L. 2023, ch. 88, § 5; July 1.

2023 Kansas Statutes

65-6709. Same; abortion, informed consent required; information required to be given to women, certification of receipt; offer to view ultrasound image and hear heartbeat, certification of offer; required signage. 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 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.

History: L. 1997, ch. 190, § 27; L. 2009, ch. 28, § 1; L. 2011, ch. 44, § 6; L. 2013, ch. 119, § 14; L. 2014, ch. 87, § 6; L. 2017, ch. 88, § 1; July 1.

2023 Kansas Statutes

65-6710. Same; materials to be published and distributed by the department of health and environment; materials to be available at no cost. (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 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 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.

(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 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.

History: L. 1997, ch. 190, § 28; L. 2009, ch. 28, § 2; L. 2011, ch. 44, § 7; L. 2013, ch. 119, § 15; July 1.

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65-6711. Same; information where medical emergency compels performances of an abortion. Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.
History: L. 1997, ch. 190, § 29; July 1.

2023 Kansas Statutes

65-6712. Same; failure to provide informed consent and printed materials under act is unprofessional conduct. Any physician who intentionally, knowingly or recklessly fails to provide in accordance with K.S.A. 65-6709 and amendments thereto the printed materials described in K.S.A. 65-6710 and amendments thereto, whether or not an abortion is actually performed on the woman, is guilty of unprofessional conduct as defined in K.S.A. 65-2837 and amendments thereto.

History: L. 1997, ch. 190, § 30; L. 1998, ch. 142, § 16; July 1.

65-6714. Same; severability clause. The provisions of this act are declared to be severable, and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of the woman's-right-to-know act.
History: L. 1997, ch. 190, § 32; July 1.

2023 Kansas Statutes

65-6715. Same; act does not create or recognize a right to abortion or make lawful an abortion that is currently unlawful. (a) Nothing in the woman's-right-to-know act shall be construed as creating or recognizing a right to abortion.
(b) It is not the intention of the woman's-right-to-know act to make lawful an abortion that is currently unlawful.
History: L. 1997, ch. 190, § 33; July 1.

EXHIBIT B

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 $^{3}/_{4}$ 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 _____

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Governor.

EXHIBIT C

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 ~~(c)~~ *(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 ~~(c)~~ *(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

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Speaker of the House.

_____

Chief Clerk of the House.

Passed the SENATE _____

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President of the Senate.

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Secretary of the Senate.

APPROVED _____

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Governor.