

SESSION OF 2008

**SUPPLEMENTAL NOTE ON HOUSE  
SUBSTITUTE FOR SENATE BILL NO. 389**

As Amended by House Committee of the Whole

**Brief\***

House Sub. for SB 389 would make several amendments dealing with late-term abortions.

The bill would authorize information obtained by the Secretary of the Department of Health and Environment (Secretary), including identification of physicians and medical care facilities reporting to the Secretary, to be disclosed to the district and county attorneys in addition to the Board of Healing Arts and the Attorney General.

Under the bill, annual public reports issued by the Secretary on abortions performed would have to contain the number of pregnancies terminated, the type of medical facility and other information required to be reported to the Secretary except for information deemed to be confidential.

The bill would require the Department of Social and Rehabilitation Services (SRS) to publish an annual report of child sexual abuse cases received by SRS from abortion providers. The name of the child and any other identifying information would be kept confidential and would not be included in the report.

In addition, the bill would require that at least 30 minutes prior to an abortion a written copy of the documented referral and the abortion-performing physician's determination that the abortion is necessary to preserve the life of the woman or prevent substantial and irreversible impairment of a major

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

bodily function must be provided to the woman except in the case of a medical emergency. The name of the referring physician would have to be included in the report to the Secretary.

The bill would provide a civil cause of action for injunctive relief and monetary damages against any person who violated the Act. The following people would have standing to seek an injunction against an abortion provider:

- The woman upon whom the abortion was preformed;
- A spouse, sibling, parent or grandparent of the woman;
- The parent or legal guardian of the woman if she is a minor; and
- Any public official with appropriate jurisdiction to prosecute or enforce the laws of the State.

The bill would allow a woman upon whom an abortion was preformed, a father if married to the woman, and the parents or custodial guardian of a minor to have standing to bring a lawsuit for monetary damages for violations to the Act. The statutory damages for injuries suffered would be equal to three times the cost of the abortion and reasonable attorney fees.

Prosecution of violations may be brought by the Attorney General, the district attorney, or county attorney where the violation occurred. Prosecution of violations would be authorized to the maximum extent permitted by the *Kansas Constitution*.

The bill would require a minor receiving counseling to provide proof of identification and verification of such minor's state of residence. In addition, any individual accompanying the minor also must provide proof of identification and make a written declaration as to such individual's relationship to the minor and to the known or probable father of the fetus. Medical records of counseling would have to be retained for at least ten years.

Under the bill, if an unemancipated minor objects to giving notice of intent to have an abortion to such minor's custodial parents, the minor would be required to petition the courts prior to the abortion for a waiver of the notice requirement. No notice would be required if the pregnant minor declares the father of the fetus is one of the persons whom notice is given and the minor is granted a waiver of notice by the court. Neither the counselor nor any person employed by the abortion provider would be allowed to accompany or assist the minor in any court proceedings.

In addition, the judicial record of the courts would have to be given to the minor or adult chosen by the minor and a second copy would have to be sent to the abortion provider to be included in the medical records of the minor. The judicial record would have to remain in the minor's medical records and kept by the abortion provider for at least ten years. The chief justice of each judicial district would be required to send annual reports to the Department of Health and Environment disclosing in a non-identifiable manner, the following:

- The number of minors seeking bypass of parental notification;
- The number of petitions granted;
- The reasons for granting such petitions;
- Any actions taken to protect the minor from domestic or predator abuse;
- Each minor's state of residence, age and disability status; and
- The gestational age of the fetus if the petition is granted.

Under the bill, if during the judicial hearing on a petition, the court suspects physical, mental, emotional, or sexual abuse, the court would be required to report those suspicions to the appropriate authority while providing anonymity or confidentiality of the judicial waiver proceedings. The bill would require agents acting within the scope of their employment with persons providing medical or treatment to file reports of abuse. At least 24 hours before the abortion, the physician would have

to inform the woman in writing that contact information for free counseling assistance, free perinatal hospice service, and services from medical specialists are available.

Finally, the bill would require that the abortion provider, at least 30 minutes prior to the abortion, provide the woman with the opportunity to view the ultrasound image of the fetus if ultrasound equipment is used in performing the abortion, and an opportunity to listen to the heartbeat of the fetus if heart monitoring equipment is used. The physician is required to certify that such offer was made and whether they were accepted or rejected by the woman. Such certification would have to be kept in the woman's medical records for at least ten years.

## **Background**

Proponents of the bill included Representative Lance Kinzer, a licensed psychologist, the Director of Abortion Recovery Center, Founder of the Alexandra's House Perinatal Hospice, Kansans for Life, and a concerned citizen.

Written testimony in support of the bill was provided by the Kansas Catholic Conference and Concerned Women of America.

The House Committee deleted the provisions of SB 389 and replaced them with provisions of HB 2736.

The House Committee of the Whole amended the bill to expand the venue for prosecutions to the maximum extent permitted by the *Kansas Constitution*.

According to the fiscal note, the Board of Healing Arts, the Department of Social and Rehabilitation Services and the Office of Judicial Administration indicated that passage of the bill would have no fiscal effect. The Division of Budget estimates that the passage of the bill would increase expenditures for the

Kansas Department of Health and Environment by \$73,950  
from the State General Fund for FY 2009.