

SESSION OF 2009

**SUPPLEMENTAL NOTE ON  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 218**

As Recommended by House Committee on  
Federal and State Affairs

**Brief\***

House Sub. for SB 218 would revise current law regarding late-term abortions. The Kansas Department of Health and Environment (KDHE) would be required to adopt new forms as well as rules and regulations to collect certain information from physicians who perform abortions and to publish certain data annually. The Board of Healing Arts also would have additional duties. The changes to current law would be as follows:

- Reporting requirements for physicians performing late-term abortions would require noting the specific medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function of the mother. In addition, a sworn statement by the physician and the referring physician would be required indicating that there is no legal or financial affiliation between them. Another new requirement that the referring physician must be a Kansas resident would be added;
- KDHE would be required to adopt rules and regulations related to the change in reporting requirements and what information is required to be retained for a period of 10 years by physicians performing abortions. KDHE also would be required to include the new information in its annual public report on abortions performed in Kansas;
- The Board of Healing Arts would be required to revoke a physician's license following the conviction of any

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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>

misdemeanor under KSA 65-6703 occurring after July 1, 2009, unless a two-thirds majority of the Board determines that such licensee would not pose a threat to the public;

- The definition of what constitutes the viability of a fetus would be changed to match the definition used in another section of law;
- Except in the case of a medical emergency, a copy of the written referral and the physician's written determination would be required to be provided to the pregnant woman at least 30 minutes prior to the time scheduled for the abortion procedure;
- The husband of the pregnant woman who has a late-term abortion or the parents or guardians of the woman, if she is under the age of 18, could file a civil action against the physician performing a late-term abortion. The prosecution of criminal violations against a physician or physicians could be brought by the Attorney General, a district attorney, or a county attorney;
- At least 24 hours prior to an abortion, in addition to information currently required to be provided, the woman must be informed that the abortion will terminate the life of a whole, separate, unique, living human being, and language that continuing the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant women is added as one of two requisites for an abortion;
- A definition of partial birth abortion would be added to conform with a federal definition and language in conformance with federal law would be added as to when partial birth abortions may be performed, and written documentation would be required, based upon a medical judgement that would be made by a reasonable prudent physician who is knowledgeable in the field and the case as well as treatment possibilities of the case; and

- Physician protection from tort actions involving abortion reporting would be repealed.

## **Background**

The House Committee on Federal and State Affairs deleted all provisions in SB 218 as passed by the Senate and substituted provisions from HB 2206, as passed by the House. Technical amendments to KSA 65-6709, as amended by 2009 House Sub. for SB 238, also were recommended in House Sub. for SB 218.

The Senate Committee on Federal and State Affairs originally recommended SB 218, as amended, to allow wine licensees to sell wine produced and bottled by a wine licensee at a bona fide farmer's market located at a site approved by the Director of the Division of Alcoholic Beverage Control. The licensee would have been required to have an annual bona fide farmer's market sales permit. The licensee would have been restricted to selling wine one day per week in the original unopened container. The bill would have authorized the Secretary of Revenue to adopt rules and regulations to implement the provisions of the Act.

The proponents of the original SB 218 included representatives from the Department of Commerce; Smoky Hill Vineyards and Winery; Sommerset Ridge Vineyard and Winery; Wyldewood Cellars Winery; Kansas Department of Agriculture; Kansas Viticulture and Farm Winery Association; and the Kansas Licensed Beverage Association.

The House Committee on Federal and State Affairs recommended the original HB 2206. Proponents for HB 2206 included the sponsor, Representative Lance Kinzer, representatives from the Kansas Catholic Conference, Kansans for Life, Concerned Women for America of Kansas, and an individual citizen. Opponents included representatives of the Women's Health Care Services, ProKanDo, and Planned Parenthood of Kansas and Mid-Missouri.

A House floor amendment inserted additional language in HB 2206 regarding information to be provided at least 24 hours in advance of an abortion, and documentation to be provided by both physicians involved with a late-term abortion. The House passed HB 2206, as amended.

The Kansas Department of Health and Environment estimated increased State General Fund expenditures of \$104,700 in FY 2010 associated with HB 2206 for altering the online reporting system, medical consultation regarding the interpretation of new reporting requirements, and costs for an attorney to write rules and regulations and establish procedures.