

SENATE BILL No. 165

By By Senators Pilcher-Cook, Abrams, Bruce, Kelsey, Love, Lynn, Marshall,
Masterson, Merrick, Olson, Ostmeyer, Petersen, Pyle, Taddiken and Wagle

2-9

1 AN ACT concerning abortion; relating to licensure of abortion clinics.

2
3 *Be it enacted by the Legislature of the State of Kansas:*

4 New Section 1. As used in sections 1 through 12, and amendments
5 thereto:

6 (a) "Abortion" has the same meaning ascribed thereto in K.S.A. 65-
7 6701, and amendments thereto.

8 (b) "Ambulatory surgical center" means an ambulatory surgical
9 center as defined in K.S.A. 65-425, and amendments thereto.

10 (c) "Clinic" means any facility, other than a hospital or ambulatory
11 surgical center, in which any second or third trimester, or five or more
12 first trimester abortions are performed in a month.

13 (d) "Department" means the department of health and environment.

14 (e) "Facility" means any clinic, hospital or ambulatory surgical
15 center, in which any second or third trimester, or five or more first
16 trimester abortions are performed in a month.

17 (f) "Gestational age" has the same meaning ascribed thereto in
18 K.S.A. 65-6701, and amendments thereto, and shall be determined
19 pursuant to K.S.A. 65-6703, and amendments thereto.

20 (g) "Hospital" means a hospital as defined in subsection (a) or (b) of
21 K.S.A. 65-425, and amendments thereto.

22 (h) "Physician" has the same meaning ascribed thereto in K.S.A. 65-
23 6701, and amendments thereto.

24 (i) "Secretary" means the secretary of the department of health and
25 environment.

26 New Sec. 2. (a) A facility shall be licensed in accordance with
27 sections 1 through 12, and amendments thereto.

28 (b) Any facility seeking licensure for the performance of abortions
29 shall submit an application for such license to the department on forms
30 and in the manner required by the secretary. Such application shall
31 contain such information as the secretary may reasonably require,
32 including affirmative evidence of the ability of the applicant to comply
33 with such reasonable standards and rules and regulations adopted
34 pursuant to section 9, and amendments thereto.

35 (c) Upon receipt of such application and verification by the

1 department that the applicant is in compliance with all applicable laws
2 and rules and regulations, the secretary shall issue a license to the
3 applicant.

4 (d) A license issued under this section shall be posted in a
5 conspicuous place in a public area within the facility. The issuance of a
6 license does not guarantee adequacy of individual care, treatment,
7 personal safety, fire safety or the well-being of any occupant of such
8 facility. A license is not assignable or transferable.

9 (e) A license shall be effective for one year following the date of
10 issuance. A license issued under this section shall apply only to the
11 premises described in the application and in the license issued thereon,
12 and only one location shall be described in each license.

13 (f) At the time application for a license is made the applicant shall
14 pay a license fee in the amount of \$500. Fees paid pursuant to this
15 section shall not be refunded by the secretary.

16 (g) The secretary may make exceptions to the standards set forth in
17 law or in rules and regulations when it is determined that the health and
18 welfare of the community require the services of the hospital or
19 ambulatory surgical center and that the exceptions, as granted, will have
20 no significant adverse impact on the health, safety or welfare of the
21 patients of such hospital or ambulatory surgical center.

22 New Sec. 3. Applicants for an annual license renewal shall file an
23 application with the department and pay the license fee in accordance
24 with section 2, and amendments thereto. Applicants for an annual license
25 renewal shall also be subject to a licensing inspection in accordance with
26 section 5, and amendments thereto.

27 New Sec. 4. (a) No proposed facility shall be named, nor may any
28 existing facility have its name changed to, the same or similar name as
29 any other facility licensed pursuant to sections 1 through 12, and
30 amendments thereto. If the facility is affiliated with one or more other
31 facilities with the same or similar name, then the facility shall have the
32 geographic area in which it is located as part of its name.

33 (b) Within 30 days after the occurrence of any of the following, a
34 facility shall apply for an amended license by submitting such application
35 to the department:

- 36 (1) A change of ownership either by purchase or lease; or
- 37 (2) a change in the facility's name or address.

38 New Sec. 5. (a) The secretary shall make or cause to be made such
39 inspections and investigations of each facility at least twice each calendar
40 year and at such other times as the secretary determines necessary to
41 protect the public health and safety and to implement and enforce the
42 provisions of sections 1 through 12, and amendments thereto, and rules
43 and regulations adopted pursuant to section 9, and amendments thereto.

1 At least one inspection shall be made each calendar year without
2 providing prior notice to the facility. For that purpose, authorized agents
3 of the secretary shall have access to a facility during regular business
4 hours.

5 (b) Information received by the secretary through filed reports,
6 inspections or as otherwise authorized under sections 1 through 12, and
7 amendments thereto, shall not be disclosed publicly in such manner as to
8 identify individuals. Under no circumstances shall patient medical or
9 other identifying information be made available to the public, and such
10 information shall always be treated by the department as confidential.

11 New Sec. 6. (a) When the secretary determines that a facility is in
12 violation of any applicable law or rule and regulation relating to the
13 operation or maintenance of such facility, the secretary, upon proper
14 notice, may deny, suspend or revoke the license of such facility, or assess
15 a monetary penalty after notice and an opportunity for hearing has been
16 given to the licensee in accordance with the provisions of the Kansas
17 administrative procedure act. Violations of sections 1 through 12, and
18 amendments thereto, or of any rules and regulations adopted thereunder
19 shall be deemed one of the following:

20 (1) Class I violations are those that the secretary determines to
21 present an imminent danger to the health, safety or welfare of the patients
22 of the facility or a substantial probability that death or serious physical
23 harm could result therefrom. A physical condition or one or more
24 practices, means, methods or operations in use in a facility may constitute
25 such a violation. The condition or practice constituting a class I violation
26 shall be abated or eliminated immediately unless a fixed period of time,
27 as stipulated by the secretary, is required for correction. Each day such
28 violation shall exist after expiration of such time shall be considered a
29 subsequent violation.

30 (2) Class II violations are those, other than class I violations, that the
31 secretary determines to have a direct or immediate relationship to the
32 health, safety or welfare of the facility's patients. The citation of a class II
33 violation shall specify the time within which the violation is required to
34 be corrected. Each day such violation shall exist after expiration of such
35 time shall be considered a subsequent violation.

36 (3) Class III violations are those that are not classified as class I or
37 II, or those that are against the best practices as interpreted by the
38 secretary. The citation of a class III violation shall specify the time
39 within which the violation is required to be corrected. Each day such
40 violation shall exist after expiration of such time shall be considered a
41 subsequent violation.

42 (b) The secretary shall consider the following factors when
43 determining the severity of a violation:

- 1 (1) Specific conditions and their impact or potential impact on the
2 health, safety or welfare of the facility's patients;
- 3 (2) efforts by the facility to correct the violation;
- 4 (3) overall conditions of the facility;
- 5 (4) the facility's history of compliance; and
- 6 (5) any other pertinent conditions that may be applicable.
- 7 (c) Any monetary penalty assessed by the secretary shall be assessed
8 in accordance with the following fine schedule:
- 9 (1) For class I violations the following number of violations within a
10 24-month period shall result in the corresponding fine amount:
- 11 (A) One violation, a fine of not less than \$200 and not more than
12 \$1,000;
- 13 (B) two violations, a fine of not less than \$500 and not more than
14 \$2,000;
- 15 (C) three violations, a fine of not less than \$1,000 and not more than
16 \$5,000; and
- 17 (D) four or more violations, a fine of \$5,000;
- 18 (2) for class II violations the following number of violations within a
19 24-month period shall result in the corresponding fine amount:
- 20 (A) One violation, a fine of not less than \$100 and not more than
21 \$200;
- 22 (B) two violations, a fine of not less than \$200 and not more than
23 \$1,000;
- 24 (C) three violations, a fine of not less than \$500 and not more than
25 \$2,000;
- 26 (D) four violations, a fine of not less than \$1,000 and not more than
27 \$5,000; and
- 28 (E) five or more violations, a fine of \$5,000;
- 29 (3) for class III violations the following number of violations within
30 a 24-month period shall result in the corresponding fine amount:
- 31 (A) One violation, there shall be no fine;
- 32 (B) two violations, a fine of not less than \$100 and not more than
33 \$500;
- 34 (C) three violations, a fine of not less than \$200 and not more than
35 \$1,000;
- 36 (D) four violations, a fine of not less than \$500 and not more than
37 \$2,000;
- 38 (E) five violations, a fine of not less than \$1,000 and not more than
39 \$5,000; and
- 40 (F) six or more violations, a fine of \$5,000.
- 41 New Sec. 7. Except in the case of a medical emergency, as defined
42 in K.S.A. 65-6701, and amendments thereto, an abortion performed when
43 the gestational age of the unborn child is 22 weeks or more shall be

1 performed in a licensed hospital or ambulatory surgical center. All other
2 abortions shall be performed in a licensed hospital, ambulatory surgical
3 center or facility.

4 New Sec. 8. (a) It shall be unlawful to operate a facility within
5 Kansas without possessing a valid license issued annually by the
6 secretary pursuant to section 2, and amendments thereto, with no
7 requirement of culpable mental state.

8 (b) It shall be unlawful for a person to perform or induce an abortion
9 in a facility unless such person is a physician, with clinical privileges at a
10 hospital located within 30 miles of the facility, with no requirement of
11 culpable mental state.

12 (c) Violation of subsection (a) or (b) is a class A nonperson
13 misdemeanor and shall constitute unprofessional conduct under K.S.A.
14 65-2837, and amendments thereto.

15 New Sec. 9. (a) The secretary shall adopt rules and regulations for
16 the licensure of facilities for the performance of abortions.

17 (b) The secretary shall adopt rules and regulations concerning
18 sanitation, housekeeping, maintenance, staff qualifications, emergency
19 equipment and procedures to provide emergency care, medical records
20 and reporting, laboratory, procedure and recovery rooms, physical plant,
21 quality assurance, infection control, information on and access to patient
22 follow-up care and any other areas of medical practice necessary to carry
23 out the purposes of sections 1 through 12, and amendments thereto, for
24 facilities for the performance of abortions. At a minimum these rules and
25 regulations shall prescribe standards for:

26 (1) Adequate private space that is specifically designated for
27 interviewing, counseling and medical evaluations;

28 (2) dressing rooms for staff and patients;

29 (3) appropriate lavatory areas;

30 (4) areas for preprocedure hand washing;

31 (5) private procedure rooms;

32 (6) adequate lighting and ventilation for abortion procedures;

33 (7) surgical or gynecologic examination tables and other fixed
34 equipment;

35 (8) postprocedure recovery rooms that are supervised, staffed and
36 equipped to meet the patients' needs;

37 (9) emergency exits to accommodate a stretcher or gurney;

38 (10) areas for cleaning and sterilizing instruments; and

39 (11) adequate areas for the secure storage of medical records and
40 necessary equipment and supplies.

41 (c) The secretary shall adopt rules and regulations to prescribe
42 facility supplies and equipment standards, including supplies and
43 equipment, that are required to be immediately available for use or in an

1 emergency. At a minimum these rules and regulations shall:

2 (1) Prescribe required equipment and supplies, including
3 medications, required for the conduct, in an appropriate fashion, of any
4 abortion procedure that the medical staff of the facility anticipates
5 performing and for monitoring the progress of each patient throughout
6 the procedure and recovery period;

7 (2) require that the number or amount of equipment and supplies at
8 the facility is adequate at all times to assure sufficient quantities of clean
9 and sterilized durable equipment and supplies to meet the needs of each
10 patient;

11 (3) prescribe required equipment, supplies and medications that shall
12 be available and ready for immediate use in an emergency and
13 requirements for written protocols and procedures to be followed by staff
14 in an emergency, such as the loss of electrical power;

15 (4) prescribe required equipment and supplies for required
16 laboratory tests and requirements for protocols to calibrate and maintain
17 laboratory equipment at the facility or operated by facility staff;

18 (5) require ultrasound equipment in facilities; and

19 (6) require that all equipment is safe for the patient and the staff,
20 meets applicable federal standards and is checked annually to ensure
21 safety and appropriate calibration.

22 (d) The secretary shall adopt rules and regulations relating to facility
23 personnel. At a minimum these rules and regulations shall require that:

24 (1) The facility designate a medical director of the facility who is
25 licensed to practice medicine and surgery in Kansas;

26 (2) physicians performing surgery in a facility are licensed to
27 practice medicine and surgery in Kansas, demonstrate competence in the
28 procedure involved and are acceptable to the medical director of the
29 facility;

30 (3) a physician with admitting privileges at an accredited hospital
31 located within 30 miles of the facility is available;

32 (4) another individual is present in the room during a pelvic
33 examination or during the abortion procedure and if the physician is male
34 then the other individual shall be female;

35 (5) a registered nurse, nurse practitioner, licensed practical nurse or
36 physician assistant is present and remains at the facility when abortions
37 are performed to provide postoperative monitoring and care until each
38 patient who had an abortion that day is discharged;

39 (6) surgical assistants receive training in the specific responsibilities
40 of the services the surgical assistants provide; and

41 (7) volunteers receive training in the specific responsibilities of the
42 services the volunteers provide, including counseling and patient
43 advocacy as provided in the rules and regulations adopted by the director

1 for different types of volunteers based on their responsibilities.

2 (e) The secretary shall adopt rules and regulations relating to the
3 medical screening and evaluation of each facility patient. At a minimum
4 these rules and regulations shall require:

5 (1) A medical history including the following:

6 (A) Reported allergies to medications, antiseptic solutions or latex;

7 (B) obstetric and gynecologic history; and

8 (C) past surgeries;

9 (2) a physical examination including a bimanual examination
10 estimating uterine size and palpation of the adnexa;

11 (3) the appropriate laboratory tests including:

12 (A) For an abortion in which an ultrasound examination is not
13 performed before the abortion procedure, urine or blood tests for
14 pregnancy performed before the abortion procedure;

15 (B) a test for anemia as indicated;

16 (C) rh typing, unless reliable written documentation of blood type is
17 available; and

18 (D) other tests as indicated from the physical examination;

19 (4) an ultrasound evaluation for all patients who elect to have an
20 abortion of an unborn child. The rules shall require that if a person who
21 is not a physician performs an ultrasound examination, that person shall
22 have documented evidence that the person completed a course in the
23 operation of ultrasound equipment as prescribed in rules and regulations.
24 The physician or other health care professional shall review, at the request
25 of the patient, the ultrasound evaluation results with the patient before the
26 abortion procedure is performed, including the probable gestational age
27 of the unborn child; and

28 (5) that the physician is responsible for estimating the gestational
29 age of the unborn child based on the ultrasound examination and obstetric
30 standards in keeping with established standards of care regarding the
31 estimation of fetal age as defined in rules and regulations and shall verify
32 the estimate in the patient's medical history. The physician shall keep
33 original prints of each ultrasound examination of a patient in the patient's
34 medical history file.

35 (f) The secretary shall adopt rules and regulations relating to the
36 abortion procedure. At a minimum these rules and regulations shall
37 require:

38 (1) That medical personnel is available to all patients throughout the
39 abortion procedure;

40 (2) standards for the safe conduct of abortion procedures that
41 conform to obstetric standards in keeping with established standards of
42 care regarding the estimation of fetal age as defined in rules and
43 regulations;

1 (3) appropriate use of local anesthesia, analgesia and sedation if
2 ordered by the physician;

3 (4) the use of appropriate precautions, such as the establishment of
4 intravenous access at least for patients undergoing second or third
5 trimester abortions; and

6 (5) the use of appropriate monitoring of the vital signs and other
7 defined signs and markers of the patient's status throughout the abortion
8 procedure and during the recovery period until the patient's condition is
9 deemed to be stable in the recovery room.

10 (g) The secretary shall adopt rules and regulations that prescribe
11 minimum recovery room standards. At a minimum these rules and
12 regulations shall require that:

13 (1) Immediate postprocedure care consists of observation in a
14 supervised recovery room for as long as the patient's condition warrants;

15 (2) the facility arrange hospitalization if any complication beyond
16 the management capability of the staff occurs or is suspected;

17 (3) a licensed health professional who is trained in the management
18 of the recovery area and is capable of providing basic cardiopulmonary
19 resuscitation and related emergency procedures remains on the premises
20 of the facility until all patients are discharged;

21 (4) a physician or a nurse who is advanced cardiovascular life
22 support certified shall remain on the premises of the facility until all
23 patients are discharged and to facilitate the transfer of emergency cases if
24 hospitalization of the patient or viable unborn child is necessary. A
25 physician or nurse shall be readily accessible and available until the last
26 patient is discharged;

27 (5) a physician or trained staff member discusses Rho(d) immune
28 globulin with each patient for whom it is indicated and assures it is
29 offered to the patient in the immediate postoperative period or that it will
30 be available to her within 72 hours after completion of the abortion
31 procedure. If the patient refuses, a refusal form approved by the
32 department shall be signed by the patient and a witness and included in
33 the medical record;

34 (6) written instructions with regard to postabortion coitus, signs of
35 possible problems and general aftercare are given to each patient. Each
36 patient shall have specific instructions regarding access to medical care
37 for complications, including a telephone number to call for medical
38 emergencies;

39 (7) there is a specified minimum length of time that a patient
40 remains in the recovery room by type of abortion procedure and
41 gestational age of the unborn child;

42 (8) the physician assures that a licensed health professional from the
43 facility makes a good faith effort to contact the patient by telephone, with

1 the patient's consent, within 24 hours after surgery to assess the patient's
2 recovery; and

3 (9) equipment and services are located in the recovery room to
4 provide appropriate emergency resuscitative and life support procedures
5 pending the transfer of the patient or viable unborn child to the hospital.

6 (h) The secretary shall adopt rules and regulations that prescribe
7 standards for follow-up visits. At a minimum these rules and regulations
8 shall require that:

9 (1) A postabortion medical visit is offered and scheduled within four
10 weeks after the abortion, if accepted by the patient, including a medical
11 examination and a review of the results of all laboratory tests;

12 (2) a urine pregnancy test is obtained at the time of the follow-up
13 visit to rule out continuing pregnancy. If a continuing pregnancy is
14 suspected, the patient shall be evaluated and a physician who performs or
15 induces abortions shall be consulted; and

16 (3) the physician performing or inducing the abortion, or a person
17 acting on behalf of the physician performing or inducing the abortion,
18 shall make all reasonable efforts to ensure that the patient returns for a
19 subsequent examination so that the physician can assess the patient's
20 medical condition. A brief description of the efforts made to comply with
21 this requirements, including the date, time and identification by name of
22 the person making such efforts, shall be included in the patient's medical
23 record.

24 (i) The secretary shall adopt rules and regulations to prescribe
25 minimum facility incident reporting. At a minimum these rules and
26 regulations shall require that:

27 (1) The facility records each incident resulting in a patient's or
28 viable unborn child's serious injury occurring at a facility and shall report
29 them in writing to the department within 10 days after the incident. For
30 the purposes of this paragraph, "serious injury" means an injury that
31 occurs at a facility and that creates a serious risk of substantial
32 impairment of a major body organ;

33 (2) if a patient's death occurs, other than an unborn child's death
34 properly reported pursuant to law, the facility shall report such death to
35 the department of health and environment not later than the next
36 department business day; and

37 (3) incident reports are filed with the department of health and
38 environment and appropriate professional regulatory boards.

39 (j) (1) The secretary shall adopt rules and regulations requiring each
40 facility to establish and maintain an internal risk management program
41 which, at a minimum, shall consist of:

42 (A) A system for investigation and analysis of the frequency and
43 causes of reportable incidents within the facility;

1 (B) measures to minimize the occurrence of reportable incidents and
2 the resulting injuries within the facility; and

3 (C) a reporting system based upon the duty of all health care
4 providers staffing the facility and all agents and employees of the facility
5 directly involved in the delivery of health care services to report
6 reportable incidents to the chief of the medical staff, chief administrative
7 officer or risk manager of the facility.

8 (2) As used in this subsection, the term “reportable incident” means
9 an act by a health care provider which:

10 (A) Is or may be below the applicable standard of care and has a
11 reasonable probability of causing injury to a patient; or

12 (B) may be grounds for disciplinary action by the appropriate
13 licensing agency.

14 (k) The rules and regulations adopted by the secretary pursuant to
15 this section do not limit the ability of a physician or other health care
16 professional to advise a patient on any health issue. The secretary
17 periodically shall review and update current practice and technology
18 standards under sections 1 through 12, and amendments thereto, and
19 based on current practice or technology adopt by rules and regulations
20 alternative practice or technology standards found by the secretary to be
21 as effective as those enumerated in sections 1 through 12, and
22 amendments thereto.

23 (l) The provisions of sections 1 through 12, and amendments thereto,
24 and the rules and regulations adopted pursuant thereto shall be in addition
25 to any other laws and rules and regulations which are applicable to
26 facilities defined as clinics under section 1, and amendments thereto.

27 (m) In addition to any other penalty provided by law, whenever in
28 the judgment of the secretary of health and environment any person has
29 engaged, or is about to engage, in any acts or practices which constitute,
30 or will constitute, a violation of this section, or any rules and regulations
31 adopted under the provisions of this section, the secretary shall make
32 application to any court of competent jurisdiction for an order enjoining
33 such acts or practices, and upon a showing by the secretary that such
34 person has engaged, or is about to engage, in any such acts or practices,
35 an injunction, restraining order or such other order as may be appropriate
36 shall be granted by such court without bond.

37 New Sec. 10. (a) No diagnostic or therapeutic professional service
38 involving an abortion procedure shall occur outside the physical presence
39 of a physician licensed in the state of Kansas. When RU-486
40 (mifepristone) or any drug is used for the purpose of inducing an
41 abortion, the drug must be administered by or in the same room and in the
42 physical presence of the physician who prescribed, dispensed or
43 otherwise provided the drug to the patient.

1 (b) The physician inducing the abortion, or a person acting on behalf
2 of the physician inducing the abortion, shall make all reasonable efforts to
3 ensure that the patient returns 12 to 18 days after the administration or
4 use of such drug for a subsequent examination so that the physician can
5 confirm that the pregnancy has been terminated and assess the patient's
6 medical condition. A brief description of the efforts made to comply with
7 this subsection, including the date, time and identification by name of the
8 person making such efforts, shall be included in the patient's medical
9 record.

10 (c) A violation of this section shall constitute unprofessional conduct
11 under K.S.A. 65-2837, and amendments thereto.

12 New Sec. 11. Nothing in sections 1 through 12, and amendments
13 thereto, shall be construed as creating or recognizing a right to abortion.
14 Notwithstanding any provision of this section, a person shall not perform
15 an abortion that is prohibited by law.

16 New Sec. 12. The provisions of sections 1 through 12, and
17 amendments thereto, are declared to be severable, and if any provision, or
18 the application thereof, to any person shall be held invalid, such invalidity
19 shall not affect the validity of the remaining provisions of sections 1
20 through 12, and amendments thereto.

21 Sec. 13. This act shall take effect and be in force from and after its
22 publication in the statute book.