

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at  
Chairperson

1:30 ~~xxx~~/p.m. on Wednesday, February 26, 1992 in room 526-S of the Capitol.

All members were present except:

- Representative Diane Gjerstad - Excused
- Representative Ruby Gilbert - Excused

Committee staff present:

- Lynne Holt, Kansas Legislative Research Department
- Mary Galligan, Kansas Legislative Research Department
- Mary Torrence, Office of the Revisor
- Connie Craig, Committee Secretary

Conferees appearing before the committee:

Chair Sebelius opened the meeting.

Representative Tom Thompson requested the Committee to introduce a bill concerning the establishment of the canoeing industry in Kansas.

Representative Elizabeth Baker made a motion to establish canoeing as an industry in Kansas. Representative Clyde Graeber made a second to the motion, which passed on a voice vote.

HB 2778

Mary Torrence began discussion on HB 2778 by handing out information to the Committee, Attachment #1.

Questions from Committee members:

- What exactly does Roe v. Wade say about our current abilities to limit abortion?
- Would the current bill meet with Roe v. Wade standards?
- What would be the result in Kansas law if Roe v. Wade is overturned and HB 2778 is not passed? Would we go back to K.S.A. 21-3407 (the 1969 law)?

The Committee discussion centered on the 1972 Poe v. Mandini case which struck the restrictions of the three physicians licensed to practice medicine or surgery, and struck the hospital certification, but left the rest of the statute in place. One Committee member asked does this law spring back into place? Another Committee member explained there is some recent case law on the books which would require some sort of a notice provision to reactivate a law which has been unused for a period of time; it doesn't automatically spring into life again. There is some uncertainty about what that notice provision is. Once the Webster decision came down, states that had passed parental notification which did not meet the court standards pre-Webster, but met them after Webster, went ahead and passed new legislation essentially reactivating that statute. There seems to be fairly strong legal opinion that even if Roe v. Wade is somehow overturned, and HB 2778 does not pass, that some subsequent legislative action would have to be taken to revive the remaining portions of the 1969 law.

Another Committee member stated this would not be the case because the 1969 statute has not been overturned, but held in abeyance by Roe v. Wade; and once Roe v. Wade is overturned, the 1969 statute would continue. Staff found that there is conflicting authority as to whether the statute is reactivated or not in a situation like this. In light of this, one Committee member stated that, in essence, if the statute is not reactivated, Kansas would have no restrictions, whatsoever. Staff agreed with this statement.

Chair Sebelius turned the Committee's attention to a balloon drafted at her request, Attachment #2. Mary Torrence explained the various changes made in the balloon amendment.

Representative Robert Krehbiel moved to adopt the balloon amendment, Attachment #2. Representative Wagnon made a second to the motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

room 526-S, Statehouse, at 1:30 ~~a.m.~~ p.m. on Wednesday, February 26, 1991

Discussion on the motion:

One Committee member expressed concern about paragraph c on the first page of the balloon amendment, Attachment #2. The viability question would be left totally to the person performing the abortion, and it was also thought the counselor section should be broadened to include ordained priest, minister or member of the clergy of any religious denomination.

Upon a voice vote on the motion to adopt the balloon amendment, Attachment #2, the motion passes.

One Committee member felt that the viability question should be also submitted to another physician who is not in any way associated with that clinic or the person who is to perform the abortion.

Representative Graeber moved to adopt a balloon amendment, Attachment #3, concerning the question of viability and the counselor. Representative Smith made a second to the motion.

One Committee member asked would the referring physician qualify as someone who is not in any way associated with the clinic or doctor who performs the abortion? Another Committee member asked about the situation where there are not a lot of physicians in the area, such as in rural areas?

Representative Graeber replied that if we are going to allow third trimester abortions, we don't do it on a wholesale basis, and then if there is viability, we owe it to that fetus to have a second opinion.

One Committee member expressed concern with what the term associated meant, because, practically every doctor in Wichita knows every other doctor and is associated with in some loosely formed manner. They are all members of Kansas Medical Society or other various organizations.

Representative Graeber clarified that associated would mean "working in concert with as a team effort to accomplish this". Representative Graeber also added that it isn't just a financial association, either, but that the viability question is one of the most important parts of this bill, and the decision should not be left up to the physician who will be hired to perform the abortion.

One Committee member expressed concern that getting a second opinion from a physician may cause a longer delay which might threaten the life of the mother.

Representative Graeber expressed willingness to modify this in some way to read a second opinion from a physician not employed or on a full time basis associated with that clinic.

Committee members discussed the Poe v. Mandini case which struck down the three physician requirement in relation to the amendment which would require a second physician opinion.

Representative Graeber closed by saying his amendment would safeguard against the wholesale operation of abortion.

Upon voting on Representative Graeber's amendments, the motion failed on a voice vote.

Representative Sprague made a conceptual motion to remove the new section 5 (old section 4) which is the clinic blockade section. Receiving no second, the motion fails.

Representative Douville made a motion to report HB 2778 favorable for passage. Representative Wagnon made a second to the motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

room 526-S, Statehouse, at 1:30 ~~am~~ p.m. on Wednesday, February 26, 1992

One Committee member asked staff if this would only include the person who performs the abortion in the Class A misdemeanor. Staff replied this possibly could apply to the patient. One Committee member explained that new section 3 begins with, on line 39, "no person shall perform an abortion", isn't section B applicable only to the person performing an abortion? Staff replied a self-induced abortion might fall within that, and suggested saying "no person shall perform an abortion on another person". Another Committee member suggested that the wording should be "perform on another person".

The mover(Representative Douville) and the seconder(Representative Wagnon) agreed to add the language "perform on another person" to the motion. The motion to report HB 2778 favorable ~~was~~ passed on a voice vote. Representative Barbara Lawrence and Representative J.C. Long requested to be recorded as voting no.

Chair Sebelius adjourned the meeting.

To: Representative Kathleen Sebelius  
From: Mary Torrence, Assistant Revisor of Statutes  
Date: February 5, 1992  
Re: Summary of House Bill No. 2778

Section 1

Defines terms.

Section 2

Codifies Roe v. Wade and provides that political subdivisions have no power to interfere with a woman's right to terminate pregnancy.

Prohibits post-viability abortion unless necessary to protect the woman's life or health or the fetus is affected by a serious deformity or abnormality. Requires person performing an abortion to be a physician and prohibits self-induced abortion. Defines viability to exclude cases where application of extraordinary medical measures is required to sustain life.

Section 3

Requires a minor under 16 years of age to receive counseling before undergoing an abortion. Allows counseling to be furnished by any one of a number of professionals. Sets out generally what the counseling must include and provides an exception for emergencies. Modeled after Connecticut law.

Section 4

Prohibits interference with access to any health care facility or health care provider's office or disruption of the functioning of such a facility or office. Provides both criminal and civil penalties. Includes other miscellaneous provisions. Taken from 1990 Washington bill.

Section 5

Provides for severability.

Section 6

Repeals current criminal abortion statute.

*House Federal & State Affairs  
February 26, 1992  
Attachment #1*

## ABORTION BILLS 1978-1992

<u>Year</u>	<u>Bill No.</u>	<u>General Description of Bill</u>	<u>Sponsor</u>	<u>Final Action</u>
1978	H.B. 2763	prohibits any money appropriated from state treasury from being used to pay for hospital, medical, or surgical procedures involving abortion	Rep. Laird	died in Committee
1978	H.B. 3053	requires registration of any "abortion service" and requires such place (including doctor's office) to meet a number of requirements	Reps. Douville, Bogina, Eddy, McCrum	died in House Committee
1978	H.B. 3059	see H.B. 2763	Reps. Laird, Adams, Ehrlich, Schmidt, Sutter	died in House Committee
1978	H.B. 3103	requires Secretary of SRS to pay for abortions if any of the conditions set out in the bill were met	Rep. Glover	died in House Committee
1978	H.B. 3251	see H.B. 3053	Committee on Calendar and Printing	stricken from Calendar in House
1978	S.B. 594	similar to H.B. 2763 and H.B. 3059	Sen. Winter	died in Senate Committee
1978	S.C.R. 1690	requests Congress to call a constitutional convention to proposing a right to life amendment to U.S. Constitution	Sens. Francisco, Mulich	reported adversely in Senate
1979	H.B. 2146	requires registration of "abortion services" and requires that such places meet requirements set out in bill	Reps. Douville, Bogina, Eddy	died in House Committee, 1980
1979	H.C.R. 5035	requests Congress to call a constitutional convention to propose a "right to life" amendment to U.S. Constitution	Rep. Laird	died in House Committee, 1980
1979	S.C.R. 1818	see H.C.R. 5035	Sens. Reilly, Francisco, McCray, Mulich, Parrish, Vermillion	died in Senate Committee
1979	S.C.R. 1625	see H.C.R. 5035 and S.C.R. 1818	Sens. Francisco, Mulich	died in Senate Committee, 1980
1980	H.B. 3164	prohibits abortion except to save life of mother if constitutionally permitted, otherwise regulates abortion and providers thereof as provided in bill	Rep. Ehrlich and 25 others	died in House Committee

Committee on House Federal and State Affairs  
 February 26, 1992  
 Attachment 1 - PG 2

<u>Year</u>	<u>Bill No.</u>	<u>General Description of Bill</u>	<u>Sponsor</u>	<u>Final Action</u>
1981	H.B. 2100	requires 24-hour waiting period and requires that physician provide information as stated in bill to woman seeking abortion	Rep. Roth and 23 others	died in House Committee, 1982
1981	H.B. 2180	requires registration of "abortion services" and regulation thereof as set out in bill	Rep. Douville	died in House Committee, 1982
1985	H.B. 2052	requires certain reports and records relating to abortions	Rep. Sutter and 24 others	reported adversely by House Committee, 1986
1985	H.B. 2204	prohibits the abortion of a viable fetus unless necessary to preserve the life of the mother and regulates abortions in the case of the latter	Rep. Laird	died in House Committee, 1986
1985	S.B. 343	see H.B. 2204 above	Senate Committee on Federal and State Affairs	died in Senate Committee, 1986
1985	Sub. for S.B. 130	makes a child born as a result of an attempted abortion a child in need of care under the Kansas Code for the Care of Children	Senate Committee on Public Health and Welfare	stricken from Senate Calendar, 1985
1986	Sub. for H.B. 2873	amends original bill to make a child born as a result of an attempted abortion a child in need of care	abortion amendment adopted by House Committee of the Whole	died in Senate Committee
1986	Sub. for H.B. 2874	amends original bill in same manner as Sub. for H.B. 2873	abortion amendment adopted by Senate on Final Action	vetoed
1986	H.B. 3065	see amendment to Sub. for H.B. 2873 and Sub. for H.B. 2874	House Committee on Public Health and Welfare	died in House Committee
1986	S.B. 537	amends bill to prohibit use of money appropriated to KU Medical Center from being used for abortion except to save life of mother	abortion amendment adopted by Senate Committee of the Whole	amendment deleted in Conference Committee
1986	S.B. 577	requires parental consent for abortions performed on minors or alternative district court consent	Senate Committee on Federal and State Affairs	died in House Committee
1986	S.B. 664	makes child born as result of attempted abortion a child in need of care	Senate Committee on Public Health and Welfare	died in Senate Committee
1986	S.C.R. 1642	creates a special committee to make a legislative study of pregnancy, prevention of pregnancy, and abortion among minors	Senate Committee on Federal and State Affairs	died in Senate Committee

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<u>Year</u>	<u>Bill No.</u>	<u>General Description of Bill</u>	<u>Sponsor</u>	<u>Final Action</u>
1987	H.B. 2007	amends original bill to require parental or judicial consent for abortion performed on minor and created new crime of aggravated abortion	abortion amendment adopted by Senate Committee of the Whole	killed in House Committee
1987	S.B. 86	requires persons licensed to practice medicine and surgery to keep records and report any abortion	Senate Committee on Public Health and Welfare	died in House Committee
1987	S.B. 225	requires parental or judicial consent for abortion performed on minor and creates new crime of aggravated abortion	Sen. Yost and 17 others	died in Senate Committee
1987	S.B. 228	prohibits use of public funds or public employees (includes political subdivisions) for any abortion or encouraging abortion	Sen. Yost	died in Senate Committee
1987	S.B. 409	see amendments to H.B. 2007 and S.B. 225	Senate Committee on Federal and State Affairs	died in Senate Committee
1988	H.B. 2950	requires parental or judicial consent for abortion performed on minor and creates new crimes relating to the termination of pregnancies	Rep. Amos and 22 others	reported adversely by House Committee
1989	S.B. 91	requires parental or judicial consent for an abortion performed on a minor and creates new crimes relating to termination of a pregnancy	Federal and State Affairs	reported adversely by House Committee, 1990
1989	H. Sub. S.B. 129	amends original bill to require parental notice 72 hours before abortion performed on a minor unless judicially waived or emergency exists; requires grandparent support if parent less than 18	House Committee on Transportation	killed by Senate on Final Action, 1990
1989	S.B. 264	makes a child born after an abortion attempt a child in need of care	Public Health and Welfare	died in Senate Committee, 1990
1989	H.B. 2297	prohibits abortion of a viable fetus except to preserve the life or health of the mother; viable would be defined as the stage of development when a fetus can live outside the womb	Rep. Crowell	died in House Committee, 1990
1989	H.B. 2348	restricts abortion when fetus is determined to be viable to cases in which the mother's life is threatened	Rep. Lucas and 9 others	died in House Committee, 1990
1989	H.B. 2446	makes a child born after an abortion attempt a child in need of care	Public Health and Welfare (by request)	died in House Committee, 1990

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<u>Year</u>	<u>Bill No.</u>	<u>General Description of Bill</u>	<u>Sponsor</u>	<u>Final Action</u>
1990	S.B. 557	prohibits use of public funds for abortion or abortion counseling and prohibits public employees from performing abortions or counseling or encouraging abortion	Sen. Montgomery and 13 others	died in Senate Committee
1990	S.B. 627	prohibits post-viability abortions except to preserve woman's health or if severe fetal abnormality provides criminal and civil enforcement	Sen. Winter	died in Senate Committee
1990	S.B. 778	prohibits abortion after 22 weeks except to preserve woman's health, if fetus has genetic defect, infectious disease or severe developmental anomaly or if pregnancy was result of rape or incest	Senate Committee on Federal and State Affairs	died in Senate Committee
1990	S.B. 789	requires parental notice 48 hours before abortion performed on minor unless judicially waived or emergency exists	Senate Committee on Ways and Means	died in Senate Committee
1990	H.B. 2663	requires parental notice 48 hours before abortion performed on minor or disabled person unless emergency exists; provides for criminal and civil enforcement	Rep. Lucas and 31 others	reported adversely by House Committee
1990	H.B. 2738	prohibits SRS from denying or limiting coverage of abortion for persons eligible for medical assistance	Rep. Cribbs	died in House Committee
1990	H.B. 2778	see S.B. 778, above	House Committee on Federal and State Affairs	died in House Committee
1990	H.B. 2779	requires parental notice before abortion performed on minor unless judicially waived or emergency exists	House Committee on Federal and State Affairs	reported adversely by House Committee
1990	H.B. 2923	provides health care personnel are not required to counsel on or refer persons for abortion	Rep. Lucas	died in House Committee
1990	H.B. 2924	requires woman undergoing abortion to be given access to information regarding the procedure and its effects	Rep. Lucas	died in House Committee
1990	S.B. 147	requires parental notice 24 hours before abortion performed on minor unless judicially waived or emergency exists	Senate Committee on Federal and State Affairs	reported adversely by House Committee
1991	S.B. 410	requires reports of abortions to be made to KDHE	Senate Committee on Federal and State Affairs	reported adversely by Senate Committee
1991	H.B. 2259	prohibits use of public funds or facilities for abortion	Rep. Love	in House Committee on Federal and State Affairs

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<u>Year</u>	<u>Bill No.</u>	<u>General Description of Bill</u>	<u>Sponsor</u>	<u>Final Action</u>
1991	H.B. 2302	prohibits abortion of viable fetus except to preserve woman's life or health and requires attempt to save viable fetus unless endangers woman's life or health	Rep. Crowell	in House Committee on Federal and State Affairs
1991	H.B. 2444	requires woman undergoing abortion to be given access to information regarding the procedure and its effects	House Committee on Public Health and Welfare	in House Committee on Federal and State Affairs
1992	S.B. 462	prohibits post-viability abortions unless necessary to preserve woman's life or health or fetus has life-threatening abnormality	Sen. Francisco	in Senate Committee on Federal and State Affairs
1992	H.B. 2656	see S.B. 462	Rep. Gross	in House Committee on Federal and State Affairs
1992	H.B. 2689	creates the crime of blocking access to a medical care facility as a class D felony	Rep. Fuller and others	in House Committee on Judiciary
1992	H.B. 2778	codifies <u>Roe v. Wade</u> ; prohibits post-viability abortions unless woman's life or health is endangered or fetus has serious deformity or abnormality; requires pre-abortion counseling for minors; prohibits interference with access to or function of health care facility or health care provider's office; prohibits political subdivisions from regulating abortion	House Committee on Federal and State Affairs	in House Committee on Federal and State Affairs
1992	H.R. 6020	memorializes Congress to support availability of RU-486 for research and, if indicated, clinical practice	House Committee on Federal and State Affairs	in House Committee on Federal and State Affairs

## HOUSE BILL No. 2778

By Committee on Federal and State Affairs

1-27

8 AN ACT concerning health care; relating to abortion; prohibiting  
9 certain acts with regard to abortion and prescribing penalties  
10 therefor; requiring counseling before performance of abortions on  
11 certain minors; prohibiting certain acts with regard to certain  
12 health care facilities and providing penalties and remedies there-  
13 for; imposing certain prohibitions on political subdivisions; re-  
14 pealing K.S.A. 21-3407.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. (a) As used in this act:

18 (a) "Abortion" means the use of any means to intentionally ter-  
19 minate a pregnancy except for the purpose of causing a live birth.  
20 Abortion does not include the use of any drug or device that inhibits  
21 or prevents ovulation, fertilization or the implantation of an embryo.

22 (b) "Physician" means a person licensed to practice medicine and  
23 surgery in this state.

24 (c) "Viable" means that stage when, in the best medical judgment  
25 of the woman's physician, based on the particular facts of the case  
26 before the physician, there is a reasonable likelihood of sustained  
27 survival of the fetus outside the uterus without the application of  
28 extraordinary medical measures.

29 Sec. 2. (a) Except as provided by this act, the state shall not  
30 interfere with the right of a woman to terminate a pregnancy before  
31 fetal viability or at any time if the procedure is necessary to protect  
32 the life or health of the woman. The state may impose on termi-  
33 nations of pregnancy only those regulations that the state can prove  
34 are both necessary and the least intrusive way to protect the life or  
35 health of the woman and are not inconsistent with established med-  
36 ical practice.

37 (b) No political subdivision of the state shall interfere with the  
38 right of a woman to terminate a pregnancy.

39 ~~(c)~~ No person shall perform an abortion when the fetus is viable  
40 unless such person is a physician and such person determines that:  
41 (1) The abortion is necessary to preserve the life or health of the  
42 pregnant woman; or (2) the fetus is affected by serious deformity or  
43 abnormality.

Sec. 3. (a)

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Attachment # 2

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~~(d)~~ Violation of this section is a class A misdemeanor.

(b)

Sec. ~~3~~ (a) As used in this section:

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(1) "Counselor" means a person who is: (A) Licensed to practice medicine and surgery; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) registered to practice professional counseling; (E) licensed as a social worker; (F) the holder of a master's or doctor's degree from an accredited graduate school of social work; (G) registered to practice marriage and family therapy; ~~(H) a professional pregnancy counselor; or (I) an employee or agent of any of the foregoing persons in their professional capacity and under their supervision.~~

(H) a registered physician's assistant; or (I) a currently ordained member of the clergy or religious authority of any religious denomination or society

(2) "Minor" means a person less than 16 years of age.

(b) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor's questions to be addressed. Such information and counseling shall include:

(1) ~~The alternatives available to the minor, including abortion and alternatives to abortion;~~

, adoption and other

(2) an explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;

(3) make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available; and

(4) discussion of the possibility of involving the minor's parents, other adult family members or guardian in the minor's decision-making.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsection (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of sub-

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1 section (b) and which is signed by the minor shall be presumed to  
2 be evidence of compliance with the requirements of this section.

3 (f) The requirements of this section shall not apply when, in the  
4 best medical judgment of the attending physician based on the facts  
5 of the case, a medical emergency exists that so complicates the  
6 pregnancy or threatens the health, safety or well-being of the minor  
7 as to require an abortion. A physician who does not comply with  
8 the requirements of this section by reason of this exception shall  
9 state in the medical record of the abortion the medical indications  
10 on which the physician's judgment was based.

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11 Sec. 4. (a) As used in this section:

12 (1) "Health care facility" means any licensed medical care facility,  
13 certificated health maintenance organization, licensed mental health  
14 center, or mental health clinic, licensed psychiatric hospital or other  
15 facility or office where services of a health care provider are provided  
16 directly to patients.

17 (2) "Health care provider" means any person: (A) Licensed to  
18 practice a branch of the healing arts; (B) licensed to practice psy-  
19 chology; (C) licensed to practice professional or practical nursing; (D)  
20 licensed to practice dentistry; (E) licensed to practice optometry; (F)  
21 licensed to practice pharmacy; (G) registered to practice podiatry;  
22 ~~or (H) registered to practice physical therapy.~~

(H) licensed as a social worker; or (I)

23 (b) It is unlawful for any person to willfully or recklessly interfere  
24 with access to or from a health care facility or willfully or recklessly  
25 disrupt the normal functioning of such facility by any of the following  
26 acts ~~or to intentionally aid, abet, advise, hire, counsel, procure,~~  
27 ~~command, encourage or request another person to interfere with~~  
28 ~~access to or from a health care facility or disrupt the normal func-~~  
29 ~~tioning of such facility by any of the following acts:~~

— strike bracketed language

30 (1) Physically obstructing, impeding or hindering the free passage  
31 of a person seeking to enter or depart from the facility or from the  
32 common areas of the real property upon which the facility is located;

33 (2) unreasonably disturbing the peace within the facility;

34 (3) trespassing on the facility or the common areas of the real  
35 property upon which the facility is located;

36 (4) telephoning the facility anonymously or repeatedly; threat-  
37 ening to inflict injury on the owners, agents, patients, employees or  
38 property of the facility ~~or knowingly permitting any telephone under~~  
39 ~~the person's control to be used for the purpose of such telephoning~~  
40 ~~or threatening.~~

— strike bracketed language

41 The provisions of this subsection shall not apply to the actions of  
42 any person who is: An agent, officer or employee of the health care  
43 facility, acting within the scope of the person's agency, office or

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1 employment; any collective bargaining representative of the owner  
2 or employees of the health care facility, acting within the scope of  
3 the representative's agency; or any law enforcement officer acting  
4 within the scope of the officer's office.

5 (c) Violation of subsection (b) is a class A misdemeanor for which  
6 the minimum sentence shall be:

7 (1) Upon the offender's first conviction, a fine of not less than  
8 \$250 and imprisonment or assignment to a house arrest program  
9 pursuant to K.S.A. 21-4603b and amendments thereto for not less  
10 than 24 consecutive hours;

11 (2) upon the offender's second conviction, a fine of not less than  
12 \$500 and imprisonment or assignment to a house arrest program  
13 pursuant to K.S.A. 21-4603b and amendments thereto for not less  
14 than seven consecutive days; and

15 (3) upon the offender's third or subsequent conviction, a fine of  
16 not less than \$1,000 and imprisonment or assignment to a house  
17 arrest program pursuant to K.S.A. 21-4603b and amendments thereto  
18 for not less than 30 consecutive days.

19 (d) Upon an offender's third or subsequent conviction of a vio-  
20 lation of subsection (b):

21 (1) The offender shall not be eligible for probation, suspension  
22 or reduction of sentence or parole or other release until the offender  
23 has served the minimum term of imprisonment or house arrest pro-  
24 vided by this subsection; and

25 (2) the minimum fine provided by this subsection shall not be  
26 suspended or reduced, and payment of such minimum fine shall be  
27 a condition of any grant of probation, suspension of sentence, parole  
28 or other release, unless the court finds the offender indigent in the  
29 manner provided by K.S.A. 22-4504 and amendments thereto for  
30 determination of financial ability to counsel.

31 (e) In a criminal prosecution for a violation of this section, the  
32 court shall impose conditions on the pretrial release of the defendant  
33 that will reasonably assure that the defendant will not engage in  
34 further actions at any health care facility that violate this section  
35 pending trial.

36 (f) (1) A person or health care facility aggrieved by acts made  
37 unlawful by subsection (b) may seek civil damages from those who  
38 committed the unlawful acts. The court shall not allow multiple  
39 recovery by a plaintiff for the same harm. A person does not have  
40 to be criminally convicted of violating subsection (b) to be held civilly  
41 liable under this section.

42 (2) In a civil action brought under this subsection (e), an ag-  
43 grieved individual plaintiff shall be entitled to recover, in addition

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1 to the plaintiff's actual damages: (A) An amount equal to \$500 for  
2 each day that the acts occurred or, if the aggrieved plaintiff is a  
3 health care facility, an amount equal to \$5,000 for each day that the  
4 acts occurred; and (B) the costs of the action and reasonable attorney  
5 fees.

6 (g) A court having jurisdiction of a criminal or civil proceeding  
7 under this section shall take all steps reasonably necessary to safe-  
8 guard individual privacy and prevent harassment of a health care  
9 patient or health care provider who is a party or witness in the  
10 proceeding, including granting protective orders and orders in lim-  
11 ine. In civil actions under this section, upon showing of good cause,  
12 the court may permit health care patients to sue pseudonymously.

13 (h) Nothing in this section shall be construed to:

14 (1) Impair the right of any individual or group to engage in speech  
15 protected by the constitution of the United States or the constitution  
16 of the state of Kansas, including but not limited to peaceful and  
17 lawful picketing; or

18 (2) limit the right to seek other available criminal or civil reme-  
19 dies, the remedies provided herein being cumulative, not exclusive.

20 (i) It is the public policy and duty of this state and its subdivisions  
21 to cooperate to the maximum extent feasible with enforcing federal  
22 and state court injunctions that seek to protect against acts made  
23 unlawful by this section.

24 (i) A criminal justice agency shall release identifying information,  
25 including photographs of suspects, and any other information that  
26 will assist in obtaining civil redress under law to a victim when the  
27 suspected acts are alleged by the victim to be unlawful under sub-  
28 section (b), unless the agency determines that release of such in-  
29 formation will interfere with an ongoing criminal investigation.

strike bracketed language

30 Sec. ~~6~~ If any provision of this act or its application to any person  
31 or circumstance is held invalid, the remainder of the act or the  
32 application of the provision to other persons or circumstances is not  
33 affected.

34 Sec. ~~6~~ K.S.A. 21-3407 is hereby repealed.

35 Sec. ~~7~~ This act shall take effect and be in force from and after  
36 its publication in the statute book.

6

7

8

HOUSE BILL No. 2778

By Committee on Federal and State Affairs

1-27

8 AN ACT concerning health care; relating to abortion; prohibiting
9 certain acts with regard to abortion and prescribing penalties
10 therefor; requiring counseling before performance of abortions on
11 certain minors; prohibiting certain acts with regard to certain
12 health care facilities and providing penalties and remedies there-
13 for; imposing certain prohibitions on political subdivisions; re-
14 pealing K.S.A. 21-3407.

15
16 Be it enacted by the Legislature of the State of Kansas:

17 Section 1. (a) As used in this act:

18 (a) "Abortion" means the use of any means to intentionally ter-
19 minate a pregnancy except for the purpose of causing a live birth.
20 Abortion does not include the use of any drug or device that inhibits
21 or prevents ovulation, fertilization or the implantation of an embryo.

22 (b) "Physician" means a person licensed to practice medicine and
23 surgery in this state.

24 (c) "Viable" means that stage when, in the best medical judgment
25 of the woman's physician, based on the particular facts of the case
26 before the physician, there is a reasonable likelihood of sustained
27 survival of the fetus outside the uterus without the application of
28 extraordinary medical measures.

29 Sec. 2. (a) Except as provided by this act, the state shall not
30 interfere with the right of a woman to terminate a pregnancy before
31 fetal viability or at any time if the procedure is necessary to protect
32 the life or health of the woman. The state may impose on termi-
33 nations of pregnancy only those regulations that the state can prove
34 are both necessary and the least intrusive way to protect the life or
35 health of the woman and are not inconsistent with established med-
36 ical practice.

37 (b) No political subdivision of the state shall interfere with the
38 right of a woman to terminate a pregnancy.

39 (c) No person shall perform an abortion when the fetus is viable
40 unless such person is a physician and such person determines that:

41 (1) The abortion is necessary to preserve the life or health of the
42 pregnant woman; or (2) the fetus is affected by serious deformity or
43 abnormality.

a physician who is not the physician performing the
abortion and is completely independent of and not
associated in any way with the physician performing
the abortion

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February 26, 1992
Attachment 3

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3-2

1 (d) Violation of this section is a class A misdemeanor.

2 Sec. 3. (a) As used in this section:

3 (1) "Counselor" means a person who is: ~~[(A) Licensed to practice~~  
4 ~~medicine and surgery;]~~ (B) licensed to practice psychology; ~~[(C) li-~~  
5 ~~censed to practice professional or practical nursing;]~~ (D) registered  
6 to practice professional counseling; (E) licensed as a social worker;  
7 (F) the holder of a master's or doctor's degree from an accredited  
8 graduate school of social work; (G) registered to practice marriage  
9 and family therapy; (H) a professional pregnancy counselor; or ~~[(I) an~~  
10 ~~employee or agent of any of the foregoing persons in their profes-~~  
11 ~~sional capacity and under their supervision.]~~

12 (2) "Minor" means a person less than 16 years of age.

13 (b) Before the performance of an abortion upon a minor, a coun-  
14 selor shall provide pregnancy information and counseling in a manner  
15 that can be understood by the minor and allows opportunity for the  
16 minor's questions to be addressed. Such information and counseling  
17 shall include:

18 (1) ~~The alternatives available to the minor, including abortion~~  
19 ~~and alternatives to abortion;~~

20 (2) an explanation that the minor may change a decision to have  
21 an abortion at any time before the abortion is performed or may  
22 decide to have an abortion at any time while an abortion may be  
23 legally performed;

24 (3) make available to the minor information on agencies available  
25 to assist the minor and agencies from which birth control information  
26 is available; and

27 (4) discussion of the possibility of involving the minor's parents,  
28 other adult family members or guardian in the minor's decision-  
29 making.

30 (c) After the counselor provides information and counseling to a  
31 minor as required by this section, the counselor shall have the minor  
32 sign and date a statement setting forth the requirements of subsection  
33 (b) and declaring that the minor has received information and coun-  
34 seling in accordance with those requirements.

35 (d) The counselor shall also sign and date the statement and shall  
36 include the counselor's business address and business telephone  
37 number. The counselor shall keep a copy for the minor's medical  
38 record and shall give the form to the minor or, if the minor requests  
39 and if the counselor is not the attending physician, transmit the  
40 statement to the minor's attending physician. Such medical record  
41 shall be maintained as otherwise provided by law.

42 (e) The provision by a counselor of written materials which con-  
43 tain information and counseling meeting the requirements of sub-

strike (A), (C) and (I) and add

"an ordained priest, minister or member of the  
clergy of any religious denomination or sect"

, adoption and other