

Approved April 30, 1992

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on March 16, 1992 in Room 254-E of the Capitol.

All members were present

Committee staff present:

Mary Galligan, Legislative Research Department  
Mary Torrence, Office of Revisor of Statutes  
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

None

Others attending: See attached list

Sen. Reilly called the meeting to order and welcomed the overflow crowd and asked people outside in the hall if they could hear and tested the speakers to make sure they were functioning. He explained there were no larger meeting rooms available, so the committee had to meet in its regular meeting room.

Sen. Reilly recognized Sen. Vidricksen, who called attention to a proposal (Attachment 1) requested by horsemen in his district and said he hoped the committee could hold hearings, if not this year, next year. Sen. Vidricksen moved the committee introduce this proposal, and the motion was seconded by Sen. McClure. The motion passed.

Sen. Strick requested the committee introduce another proposal (Attachment 2) relating to the lottery and excursion boat entertainment games. Sen. Strick moved it be introduced as a committee bill, and Sen. Vidricksen seconded the motion. The motion passed. Sens. Daniels and McClure asked to be recorded as voting "No".

Sen. Reilly called the committees' attention to HB 2778 and asked Mary Galligan to brief the committee on the bill, and she went over the Supplemental Note (Attachment 3) to HB 2778. She also reviewed the law relating to abortion - K.S.A. 21-3407 (Attachment 4). Sen. Reilly asked Mary Torrence for clarification of the definitions of pregnancy and abortion, and she pointed out the use of birth control pills and IUDs could fall within the definition of an abortion. Sen. Reilly asked the status of the Pennsylvania case, and she responded that case is to come before the Supreme Court in April.

Sen. Reilly pointed out the committees' options in regard to this bill and commented this issue has been emotional and a divisive one and asked the committee for action on the bill. Sen. Webb moved the committee report the bill adversely, and it was seconded by Sen. Daniels. A substitute motion was made by Sen. Walker that the committee report the bill to the Senate floor without recommendation. Sen. Morris seconded the motion. A division was called, and the motion passed with Yes - 6 and No - 4. The bill will be reported to the Senate without recommendation.

The meeting adjourned at 11:25.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: MARCH 16, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gayle Osterberg		Univ. Daily Kansan
Maat Truell	Topeka	AP
M. Hawver	"	Cardon
J. Thomas	"	Eagle
John Butler	"	SGW
Randy Tobias	"	Eagle
Ricki Blum	Topeka	KSNT
Paul Day	Lantern	KSNT
Lawrence	LAWRENCE	KAWC
DON BROWN	TOPEKA	WIBN
KARL FRONT	TOPEKA	KTKA
MIKE TURNER	TOP	KTKA
Tom Novak	Topeka	KMAJ
Amy (Cramer)	Topeka	NOW
Madsen Collins	Wichita	Planned Parenthood
Martha Jenkins	Topeka	AIA
Bill Warrick	Topeka	
Kevin Yowell	Overland Park	KCCV Radio
Mary McGrath	Lawson Ks	Pro Life
Judith Hill	Lawson, Ks	Pro-Life
Judy Thomas	Lawson KS	Pro-life
Dale Jamison	Lawson Ks	Pro Life
Robert Shankman	Topeka	Topeka Kansas
Shirley M. Robertson	Lawson Pro Life	Pro Life
Edward Shaw	Lawson	Pro-Life



For Senator  
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ATTACH 1  
1 RS 2807

SENATE BILL NO. \_\_\_\_\_

AN ACT enacting the Kansas equine professional liability exemption act; declaring an exemption for equine professionals and equine activity sponsors from civil liability for injuries or deaths of participants resulting from the inherent risks of equine activities and requiring the posting of warning notices regarding the exemption.

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

Section 1. The legislature recognizes that persons who participate in equine activities may incur injuries as a result of the risks involved in such activities. The legislature also finds that the state and its citizens derive numerous economic and personal benefits from such activities. It is, therefore, the intent of the legislature to encourage equine activities by limiting the civil liability of those involved in such activities.

Sec. 2. This act shall be known as and may be cited as the Kansas equine professional liability exemption act.

Sec. 3. As used in this act, unless the context otherwise requires:

(a) "Engages in an equine activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine or in or on a vehicle pulled or pushed by an equine, whether mounted or unmounted or any person assisting a participant or show management. The term engages in an equine activity does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(b) "Equine" means a horse, pony, mule, donkey or hinny.

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(c) "Equine activity" means:

(1) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equine and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, English and western performance riding, endurance trail riding and western games, and hunting;

(2) equine training or teaching activities or both;

(3) boarding equine;

(4) Riding, inspecting or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

(5) rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; and

(6) placing or replacing horseshoes on an equine.

(d) "Equine activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes or provides the facilities for, an equine activity, including but not limited to: Pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, pony ride strings, fairs and arenas at which the activity is held.

(e) "Equine professional" means a person engaged for compensation:

(1) In instructing a participant or renting to a participant an equine for the purpose of riding, driving or being a passenger upon the equine, or a passenger in or on a vehicle pulled or

pushed by an equine; or

(2) in renting equipment or tack to a participant.

(f) "Inherent risks of equine activities" means those dangers or conditions which are an integral part of equine activities, including, but not limited to:

(1) The propensity of an equine to behave in ways that may result in injury, harm or death to persons on or around them;

(2) the unpredictability of an equine's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals;

(3) certain hazards such as surface and subsurface conditions;

(4) collisions with other equine or objects;

(5) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

(g) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

Sec. 4. Except as provided in section 5 of this act, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities, and, except as provided in section 5 of this act, no participant nor participant's representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage or death of the participant resulting from any of the inherent risks of equine activities.

Sec. 5. (a) This section shall not apply to the horse racing industry as it may be separately regulated.

(b) Nothing in section 4 of this act shall prevent or limit

the liability of an equine activity sponsor, an equine professional or any other person if the equine activity sponsor, equine professional or person:

(1) (A) Provided the equipment or tack, and knew or should have known the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

(B) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely manage the particular equine based on the participant's representations of his ability;

(2) owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to the equine activity sponsor, equine professional or person and for which warning signs have not been conspicuously posted;

(3) commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury;

(4) intentionally injures the participant.

(c) Nothing in section 4 of this act shall prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions set forth in the products liability laws.

Sec. 6. (a) Every equine professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this section. Such signs shall be placed in a clearly visible location on or near stables, corrals, boarding areas, or arenas where the equine professional conducts equine activities if such stables, corrals, boarding areas or arenas are owned, managed or controlled by the equine professional. The warning notice specified in paragraph (b) of this section shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered

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into by an equine professional for the providing of professional services, instruction or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this section.

(b) The signs and contracts described in paragraph (a) of this section shall contain the following warning notice:

WARNING

Under Kansas law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to K.S.A. \_\_\_\_\_.

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



## SENATE BILL NO. 772

By xx

AN ACT concerning the state lottery; relating to the conduct of excursion boat entertainment games; amending K.S.A. 1991 Supp. 74-8711 and repealing the existing section.

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

New Section 1. Sections 1 through 19 shall be known as and may be cited as the Kansas lottery excursion boat entertainment act and, except as otherwise provided by this act, shall be subject to the provisions of the Kansas lottery act.

New Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Commission," "executive director," "Kansas lottery," "lottery," "state lottery" and "person" have the meanings provided by K.S.A. 1991 Supp. 74-8702 and amendments thereto.

(b) "Adjusted gross receipts" means the gross receipts less winnings paid to wagerers.

(c) "Applicant" means any person applying for a certificate to engage in an occupation on an excursion entertainment boat, a certificate to operate an excursion entertainment boat, a certificate to conduct excursion boat entertainment games on an excursion boat, a certificate to be a distributor or a certificate to be a manufacturer.

(d) "Cheat" means to alter the selection of criteria which determine the result of an excursion boat game or the amount or frequency of payment in such game.

(e) "Distributor" means a person who sells, markets or otherwise distributes, to a contractor authorized to conduct games pursuant to this act, games or implements of gambling which are usable in the lawful conduct of games pursuant to this act.

(f) "Dock" means the location where an excursion

entertainment boat moors for the purpose of embarking passengers for and disembarking passengers from an excursion.

(g) "Excursion" means the time during which entertainment games may be operated on an excursion entertainment boat whether docked or during a cruise.

(h) "Excursion boat entertainment game" or "games" means any games played with cards, dice or equipment, or any mechanical, electromechanical or electronic device or machine, for money, checks, credit or any representative of value. Excursion boat entertainment games do not include bingo, as defined by K.S.A. 79-4701 and amendments thereto.

(i) "Excursion boat entertainment gaming devices" or "gaming devices" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of wager by determining win or loss.

(j) "Excursion entertainment boat" means a self-propelled excursion vessel, including a barge and boat combination: (1) Which is certified and licensed by the United States coast guard; (2) which, prior to retrofitting for games, has an authorized capacity of 500 or more persons; (3) which is not continuously docked; and (4) on which lawful gaming is authorized as provided in this act.

(k) "Gross receipts" means the total sums wagered under this act.

(l) "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product of any gaming device usable in the lawful conduct of excursion boat entertainment games pursuant to this act.

(m) "Minor" means any person under 21 years of age.

(n) "Port of call" means any port where an excursion entertainment boat may dock.

(o) "Slot machines" means any mechanical, electrical or

other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner.

New Sec. 3. (a) The Kansas lottery may provide for the operation and conduct of excursion boat entertainment games on excursion boats in this state as provided by law. The Kansas lottery may directly operate and conduct such games or, to the extent allowed by law, may enter into contracts for facilities, equipment, products and services for the operation and conduct of such games. Any such contract shall be subject to the provisions of K.S.A. 1991 Supp. 74-8705 and amendments thereto.

(b) Video lottery games, slot machines and other electronic games operated and conducted on an excursion boat pursuant to this act shall pay out an average of not less than 85% of all wagers on such games and machines.

(c) The system of wagering on an excursion boat entertainment game as provided by this act is legal, when conducted by a person holding a certificate authorizing the conduct of excursion boat entertainment games on an excursion entertainment boat at authorized locations as provided in this act.

(d) Excursion entertainment boats operating pursuant to this act shall be authorized only upon the Missouri River and the lower five miles of the Kansas River within the state of Kansas. Such excursion entertainment boats must be primarily headquartered and based in Wyandotte County.

(e) The Kansas lottery shall not authorize more than one

person to operate an excursion entertainment boat during the period of time when any certificate to operate an excursion entertainment boat is in effect.

New Sec. 4. The commission shall adopt rules and regulations:

(a) Identifying occupations which require certification to be performed on an excursion entertainment boat and prescribing fees, standards and procedures for such certification.

(b) Establishing standards under which all excursion entertainment boat operations shall be held and standards for the facilities where the operations are to be held, which may authorize the conduct of games on an excursion entertainment boat where alcoholic beverages are sold and consumed.

(c) Establishing the payouts from excursion boat entertainment games, taking into consideration factors that provide entertainment opportunities which are beneficial to certificate holders and the general public and subject to the provisions of subsection (b) of section 3.

(d) Establishing the duration of excursions for a period of not less than two hours and limiting the hours of operation of excursion entertainment boats.

(e) Establishing the hours during which excursion boat entertainment games may be conducted, which may be limited to not less than the hours during which alcoholic liquor may be sold by a drinking establishment.

(f) Establishing minimum charges for admissions to excursion entertainment boats and regulating the number of free admissions.

(g) Prescribing the form and content of applications for certificates pursuant to this act.

(h) As otherwise necessary to administer and enforce the provisions of this act.

New Sec. 5. (a) The executive director shall have full jurisdiction over and shall supervise all gaming operations governed by this act.

(b) The executive director shall have power to:

(1) Investigate and determine the eligibility of applicants and select among competing applicants the applicants which best serve the interests of the citizens of Kansas.

(2) Certify persons to engage in those occupations on excursion entertainment boats which require certification, certify persons to conduct excursion boat entertainment games on excursion boats and certify the operators of excursion boats.

(3) Regulate the wagering structure for excursion games.

(4) Enter the office, excursion entertainment boat, facilities or other places of business of a certificate holder to determine compliance with this act.

(5) Investigate alleged violations of this act or commission rules and regulations or orders and take appropriate action against a holder of a certificate for such a violation or institute appropriate legal action for enforcement, or both, including revocation or suspension of a certificate.

(6) Require a certificate holder or employee of a certificate holder to remove a person violating a provision of this act or commission rules and regulations or orders, or other person deemed to be undesirable, from an excursion entertainment boat.

(7) Require the removal from an excursion entertainment boat of a certificate holder or employee of a certificate holder for violating this act or a commission rule and regulation or order or engaging in a fraudulent practice.

(8) Require a certificate holder to file an annual balance sheet and profit and loss statement pertaining to the certificate holder's gaming activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the gaming activities of such certificate holder.

(9) Take any other action which may be reasonable or appropriate to enforce this act and commission rules and regulations.

(10) Require all holders of certificates to conduct excursion boat entertainment games to utilize cashless wagering systems whereby all players' money is converted to tokens, electronic cards or chips which only can be used for wagering on the excursion entertainment boat.

(11) Provide for adequate security aboard each excursion entertainment boat and at each port of call.

(c) The executive director shall require periodic drug testing in accordance with standards provided by regulations of the United States department of transportation.

New Sec. 6. (a) The executive director shall contract for the conduct of excursion boat entertainment games and the operation of excursion entertainment boats. Any person contracted with shall be issued a certificate to conduct excursion boat entertainment games or a certificate to operate an excursion entertainment boat, as applicable.

(b) Any person seeking to conduct excursion boat entertainment games or to operate an excursion entertainment boat shall file an application with the executive director not less than 90 days before the date of the first excursion and shall identify the excursion entertainment boat upon which games will be authorized, shall specify the exact location where the excursion entertainment boat will be docked and shall be in such form and contain such information as the commission prescribes.

(c) Certification to conduct excursion boat entertainment games and certification to operate an excursion entertainment boat shall be for a period established by rules and regulations of the commission, but not to exceed three years. Such certification shall be renewable.

(d) Annual fees for certification to conduct excursion boat entertainment games shall be in an amount prescribed by rules and regulations of the commission. Annual fees for certification to operate an excursion entertainment boat shall be based on the passenger-carrying capacity, including crew, for which the

excursion entertainment boat is registered and shall be \$5 per person of capacity.

(e) All moneys collected from annual certification fees provided for by this section shall be remitted by the executive director to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the lottery operating fund.

New Sec. 7. (a) A person shall not be issued a certificate to conduct excursion boat entertainment games or a certificate to operate an excursion entertainment boat unless the person has completed and signed an application on the form prescribed and provided by the executive director. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any record of conviction of a felony, addiction to alcohol or a controlled substance or a history of mental illness. It is the burden of the applicant to show by a preponderance of the evidence the applicant's suitability as to character, experience and adequacy of funds.

(b) An applicant for a certificate to conduct excursion boat entertainment games or a certificate to operate an excursion entertainment boat shall submit to the commission, in the manner prescribed on the application forms, pictures, fingerprints and descriptions of physical characteristics of:

(1) The applicant, if the applicant is a natural person.

(2) Each partner, if the applicant is a partnership.

(3) Each officer or director, and each stockholder who owns 5% or more of the stock of the corporation, if the applicant is a corporation.

(4) Each officer or director of the association, if the applicant is an unincorporated association.

(c) Before a certificate to conduct excursion boat entertainment games or a certificate to operate an excursion

entertainment boat is granted, the division of lottery security or Kansas bureau of investigation shall conduct a thorough background investigation of the applicant, including each person whose picture, fingerprints and description are required to be submitted pursuant to subsection (b). The applicant shall provide information on a form as required by the division of lottery security.

(d) The executive director shall charge the applicant an application fee to defray the costs associated with the search and classification of fingerprints required and background investigations required by this section. Such fee shall be in addition to any other certificate fee charged by the commission.

New Sec. 8. (a) If the executive director is satisfied that all applicable provisions of this act and commission rules and regulations adopted under this act have been or will be complied with, the executive director shall issue a certificate for a period of not more than three years to an applicant for a certificate to conduct excursion boat entertainment games or a certificate to operate an excursion entertainment boat. The commission by rule and regulation shall specify which games authorized under this act will be authorized and the number, location and type of excursion boats to be certified under this act. The certificate shall set forth the name of the certificate holder, the type of certificate granted, the place where the excursion entertainment boats will operate and dock and the time and number of days when gaming may be conducted. The executive director shall not allow a certificate holder to conduct excursion boat entertainment games on an excursion entertainment boat while docked if the certificate holder does not operate excursions for a minimum number of days as specified by rules and regulations adopted by the commission.

(b) A certificate shall be granted to an applicant only upon the express conditions that:

(1) The applicant shall not, by lease, contract,



understanding or arrangement of any kind, grant, assign or turn over to a person the operation of an excursion entertainment boat or the conduct of excursion boat entertainment games. This section does not prohibit a management contract approved by the executive director; and

(2) the applicant shall not in any manner permit a person other than the applicant to have a share, percentage or proportion of the money received for admissions to the excursion entertainment boat.

(c) In issuing a certificate to operate an excursion entertainment boat, the Kansas lottery may give preference to a Kansas resident who operates an existing excursion boat.

(d) The Kansas lottery shall require that an applicant utilize Kansas resources, goods and services in the operation of an excursion entertainment boat. The lottery shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion entertainment boat come from Kansas and that a substantial amount of all services and entertainment be provided by Kansans.

(e) The Kansas lottery shall, as a condition of granting a certificate, require an applicant to provide written documentation that the applicant will:

(1) Provide an area reserved solely for activities and interests of minors and is staffed to provide adequate supervision;

(2) work with the Kansas department of commerce to promote tourism throughout Kansas; and

(3) provide an area reserved for promotion and sale of arts, crafts and gifts native to and made in Kansas.

(f) No person employed in the operation of an excursion entertainment boat or in the conduct of excursion boat entertainment games shall be paid less than the federal minimum wage level.

(g) A certificate shall not be granted if there is

substantial evidence that any of the following applies:

(1) The applicant has been suspended from conducting gaming in another jurisdiction by a board or commission of that jurisdiction;

(2) the applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed;

(3) the applicant is not the true owner of the enterprise proposed;

(4) the applicant is not the sole owner and other persons have ownership in the enterprise, which fact has not been disclosed;

(5) the applicant is a corporation and 10% or more of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the certificate is to be issued, unless the contract or option was disclosed to the lottery and the lottery approved the sale or transfer during the period of the certificate;

(6) the applicant has knowingly made a false statement of a material fact to the lottery;

(7) the applicant has failed to meet a monetary obligation in connection with an excursion entertainment boat;

(8) the applicant is not of good repute and moral character or has entered a plea of guilty to, or has been convicted of, a felony; or

(9) the applicant has loaned to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

(h) An excursion entertainment boat is subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate is issued by the lottery under this act.

(i) If an excursion entertainment boat stops at more than one port and travels past a county without stopping at any port

in that county, the executive director may require the excursion boat operator to develop a schedule for ports of call in such county which have the necessary facilities to handle the boat. The executive director may limit the schedule to only one port of call per county.

(j) Upon a violation of any of the conditions listed in this section, the executive director may immediately revoke the certificate after a thorough and complete investigation.

New Sec. 9. (a) Except as otherwise provided by law, the holder of a certificate to conduct excursion boat entertainment games shall permit no form of wagering on such games.

(b) The commission may adopt rules and regulations allowing additional wagers consistent with generally accepted wagering options in the games of twenty-one and dice.

(c) The certificate holder may receive wagers only from a person present on an excursion authorized pursuant to this act.

(d) The certificate holder shall exchange the money of each wagerer for tokens, chips or other forms of credit to be wagered on the games. The certificate holder shall exchange the tokens, chips or other forms of wagering credit for money at the request of the wagerer.

(e) Wagering shall not be conducted with money or other negotiable currency.

(f) A minor shall not make a wager on an excursion entertainment boat and shall not be allowed in the area of the excursion entertainment boat where gaming is being conducted.

(g) A certificate holder shall not conduct games while the excursion entertainment boat is docked unless it is temporarily docked for embarking or disembarking passengers, crew or supplies during the course of an excursion, for mechanical problems, adverse weather or other conditions adversely affecting safe navigation, during the duration of the problem or condition, or as authorized by the lottery.

(h) (1) The holder of a certificate to engage in an

occupation on an excursion entertainment boat, conduct excursion boat entertainment games or operate an excursion entertainment boat shall consent to the search, without a warrant, by agents of the division of lottery security or Kansas lottery employees designated by the executive director, of the holder's person, personal property and effects, and premises which are located on the excursion entertainment boat or adjacent facilities under control of the certificate holder, in order to inspect or investigate for violations of this act or rules and regulations adopted by the commission pursuant to this act.

(2) Nothing in subsection (h)(1) shall be construed to permit a warrantless inspection of living quarters or sleeping rooms on an excursion entertainment boat if:

(A) The certificate holder has specifically identified to the lottery in writing those areas which are to be used as living quarters or sleeping rooms;

(B) gaming is not permitted in the living quarters or sleeping rooms, and gaming devices, records or other items relating to the gaming operations are not stored, kept or maintained in the living quarters or sleeping rooms; and

(C) neither cereal malt beverages nor alcoholic liquors are stored, kept or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or rooms.

(3) The commission shall adopt rules and regulations to enforce this subsection (h).

New Sec. 10. (a) There is hereby imposed a fee of \$1 on each admission to an excursion entertainment boat. The fee imposed by this subsection shall be remitted to the executive director by the operator of the excursion entertainment boat not more than 10 days after the day on which the admission was paid or, if free or complimentary, was used. The executive director shall promptly remit any moneys received pursuant to this subsection to the state treasurer, who shall deposit the entire amount in the state

treasury and credit it to the lottery operating fund.

(b) In addition to the fee imposed by subsection (a), there is hereby imposed on each admission to an excursion entertainment boat a fee of \$1. The fee imposed by this subsection shall be remitted to the executive director by the operator of the excursion entertainment boat not more than 10 days after the day on which the admission was paid or, if free or complimentary, was used. The executive director shall promptly remit any moneys received pursuant to this subsection to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the local excursion boat fee fund.

(c) Except as provided by subsection (d), the fees imposed by this section shall apply regardless of whether the admission is paid, free or complimentary.

(d) The fees imposed by this section shall not apply to admissions of employees of the operator of the excursion boat, or of officers or employees of the Kansas lottery, while such officers or employees are engaged in the duties of their office or employment.

New Sec. 11. The state's share of the adjusted gross receipts received annually from wagering on excursion boat entertainment games shall be an amount equal to 5% of the first \$1,000,000 of adjusted gross receipts, 10% of the next \$2,000,000 of adjusted gross receipts and 20% of any amount of adjusted gross receipts over \$3,000,000. Such amount shall be paid by the holder of the certificate to conduct the excursion boat entertainment games to the executive director within 10 days after the close of the day when the wagers were made. The executive director shall promptly remit any moneys received from such taxes to the state treasurer. On receipt of such moneys, the state treasurer shall deposit the entire amount in the state treasury and credit 5% thereof to the local excursion boat fee fund and the remainder to the lottery operating fund.

New Sec. 12. (a) There is hereby created in the state

treasury the local excursion boat fee fund.

(b) Moneys in the local excursion boat fee fund shall be expended only as authorized by this section.

(c) On or before the 10th day of each month, the holder of a certificate to operate an excursion entertainment boat shall certify to the executive director the number of passengers embarking on such boat at each port of call during the preceding calendar month. On or before the 15th day of each month, the executive director shall cause moneys credited to the fund pursuant to sections 10 and 11 from fees imposed or amounts wagered during the preceding calendar month to be paid to the treasurer of each city where passengers embark on an excursion entertainment boat, or, if passengers embark at a port of call not within a city, to the treasurer of the county where such passengers embark, in the same proportion that the number of passengers embarking on excursion entertainment boats at ports of call in such city or county during such month bears to the total number of passengers embarking on excursion entertainment boats at all ports of call in this state during such month.

(d) Upon receipt of moneys pursuant to this section, the city or county treasurer shall deposit the entire amount in the general fund of the respective city or county.

(e) All expenditures from the local excursion boat fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or the executive director's designee.

New Sec. 13. Before a certificate to operate an excursion entertainment boat or a certificate to conduct excursion boat entertainment games is issued, the applicant shall post a bond to the state of Kansas in a sum specified by the lottery in the contract, with sureties approved by the executive director. The bond shall be used to guarantee that the certificate holder will faithfully make all payments, keep its books and records, make

reports and operate excursion entertainment games, or conduct excursion boat entertainment games, in conformity with this act and rules and regulations adopted by the commission. The bond shall not be canceled by a surety on less than 30 days' notice in writing to the Kansas lottery. If a bond is canceled and the certificate holder fails to file a new bond with the Kansas lottery in the required amount on or before the effective date of cancellation, the certificate holder's certificate shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

New Sec. 14. (a) The holder of a certificate to operate an excursion entertainment boat shall keep its books and records so as to clearly show:

(1) The total number of admissions to excursions conducted by the contractor on each day, including the number of admissions upon free passes or complimentary tickets; and

(2) the amount received daily from admission fees.

(b) The holder of a certificate to conduct excursion boat entertainment games shall keep its books and records so as to clearly show the total amount of money wagered during each excursion day and the adjusted gross receipts for the day.

(c) The holder of a certificate to operate an excursion entertainment boat or a certificate to conduct excursion boat entertainment games shall furnish to the Kansas lottery such reports and information as the Kansas lottery may require with respect to its activities. The gross receipts and adjusted gross receipts from excursion boat entertainment games shall be separately handled and accounted for from all other moneys received from operation of an excursion entertainment boat. The Kansas lottery may designate representatives to board an excursion entertainment boat, who shall have full access to all places within the enclosure of the boat, shall directly operate or supervise the handling and accounting of all gross receipts and adjusted gross receipts from excursion boat entertainment

games, shall supervise and check admissions to the boat and shall directly operate or supervise all security relating to the boat.

New Sec. 15. Within 90 days after the end of each month, the holder of a certificate to operate an excursion entertainment boat or a certificate to conduct excursion boat entertainment games shall transmit to the lottery an audit of the financial transactions and condition of the certificate holder's operations conducted under this act. Additionally, within 90 days after the end of the certificate holder's fiscal year, the certificate holder shall transmit to the Kansas lottery an audit of the financial transactions and condition of the contractor's total operations. All audits shall be conducted by independent certified public accountants registered or licensed in the state of Kansas.

New Sec. 16. The executive director shall make an annual report to the governor for the period ending June 30 of each year. Included in the report shall be an account of the Kansas lottery's actions, its financial position and results of operation under this act, the practical results attained under this act and any recommendations for legislation which the Kansas lottery deems advisable.

New Sec. 17. (a) It is a class A misdemeanor to:

(1) Operate an excursion boat where wagering is used or to be used without a certificate issued by the lottery;

(2) act, or employ a person to act, aboard an excursion entertainment boat, as a shill or decoy to encourage participation in an excursion boat entertainment game, other than media marketing and work associated with the tourism industry;

(3) knowingly permit a minor to make a wager in an excursion boat entertainment game;

(4) wager or accept a wager on an excursion boat entertainment game at any location outside the excursion entertainment boat.

(b) It is a class D felony to:



(1) Offer, promise or give anything of value or benefit to a person who is connected with the holder of a certificate to operate an excursion entertainment boat or a certificate to conduct excursion boat entertainment games, including but not limited to an officer or employee of the certificate holder or the holder of a certificate to engage in an occupation on an excursion entertainment boat, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of an excursion boat entertainment game, or to influence official action of any employee of the Kansas lottery or a member of the commission, except as limited by K.S.A. 1991 Supp. 74-8716 and amendments thereto;

(2) solicit or knowingly accept or receive a promise of anything of value or benefit while the person is connected with the holder of a certificate to operate an excursion entertainment boat or a certificate to conduct excursion boat entertainment games, including but not limited to an officer or employee of the certificate holder or the holder of a certificate to engage in an occupation on an excursion entertainment boat, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of an excursion boat entertainment game, or to influence official action of any employee of the Kansas lottery or a member of the commission;

(3) cheat at an excursion boat entertainment game;

(4) manufacture, sell or distribute any cards, chips, dice, game or device which is intended to be used to violate any provision of this act;

(5) alter or misrepresent the outcome of an excursion boat entertainment game on which wagers have been made after the outcome is made sure but before it is revealed to the players;

(6) place a bet after acquiring knowledge, not available to all players, of the outcome of the excursion boat entertainment

game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

(7) claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from an excursion boat entertainment game, with intent to defraud, without having made a wager contingent on winning an excursion boat entertainment game, or claim, collect or take an amount of money or thing of value of greater value than the amount won;

(8) knowingly entice or induce a person to go to any place where an excursion boat entertainment game is being conducted or operated in violation of the provisions of this act with the intent that the other person plays or participates in such game;

(9) use counterfeit chips or tokens in an excursion boat entertainment game;

(10) knowingly use, other than chips, tokens, coin or other methods or credit approved by the commission, legal tender of the United States, or use a coin not of the same denomination as the coin intended to be used in an excursion boat entertainment game;

(11) have in one's possession any device intended to be used to violate a provision of this act;

(12) have in one's possession, unless one is a certificate holder or employee of a certificate holder acting in furtherance of the employee's employment, any key or device designed for the purpose of opening, entering or affecting the operation of an excursion boat entertainment game, drop box or an electronic or mechanical device connected with an excursion boat entertainment game or for removing coins, tokens, chips or other contents of an excursion boat entertainment game; or

(13) have in one's possession while on an excursion entertainment boat any firearm unless one is a law enforcement officer or an agent or employee of the Kansas lottery acting in such officer's, agent's or employee's official capacity.

(c) A person convicted of any act described in subsection

(b) shall be barred for life from excursion entertainment boats under the jurisdiction of the Kansas lottery.

(d) The possession of more than one of the devices described in subsection (b)(4), (11) or (12) permits a rebuttable presumption that the possessor intended to use the devices for cheating.

(e) Except for wagers on excursion boat entertainment games or exchanges for money as provided in section 9, it is a class A misdemeanor for the holder of a certificate to conduct excursion boat entertainment games to exchange tokens, chips or other forms of credit to be used on excursion boat entertainment games for anything of value.

New Sec. 18. (a) It is unlawful for any person to participate in an excursion boat entertainment game, or to share in the excursion boat entertainment game winnings of a person, knowing that such person is:

(1) The executive director, a member of the commission or an employee of the Kansas lottery;

(2) an officer or employee of a vendor contracting to supply excursion boat entertainment games or gaming equipment for use in the operation of any excursion boat entertainment game conducted pursuant to this act;

(3) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent of a person described by subsection (a)(1) or (2); or

(4) a person who resides in the same household as any person described by subsection (a)(1) or (2).

(b) Violation of subsection (a) is a class A misdemeanor upon conviction of the first offense and a class D felony upon conviction of a second or subsequent offense.

(c) Notwithstanding subsection (a), the executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to participate in an excursion boat entertainment game for the purposes of verifying the proper

operation of excursion boat entertainment games with respect to security, systems operation and contract compliance by certificate holders. Any prize awarded as a result of participating in such game shall become the property of the Kansas lottery and be paid into the state treasury and credited to the lottery operating fund.

(d) Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of an excursion boat entertainment game, may be prohibited, in accordance with rules and regulations adopted by the commission, from participating in an excursion boat entertainment game in which such supplies or services are used.

(e) Nothing in this section shall prohibit lottery retailers or their employees from participating in excursion boat entertainment games or from being paid a prize therefor.

(f) Each person who participates in an excursion boat entertainment game thereby agrees to be bound by rules and regulations adopted by the commission and by the provisions of this act.

New Sec. 19. (a) A manufacturer or distributor of excursion boat entertainment games or gaming devices shall apply annually to the executive director for a certificate upon a form prescribed by the Kansas lottery and shall submit the appropriate certification fee. An applicant shall provide such necessary information as the Kansas lottery requires. The annual certificate fee for a distributor is \$1,000 and the annual certificate fee for a manufacturer is \$250. The certification fees shall be deposited in the state treasury and credited to the lottery operating fund.

(b) A holder of a certificate to conduct excursion boat entertainment games shall acquire all excursion boat entertainment games or gaming devices from a distributor certified pursuant to this section.

(c) A holder of a certificate to conduct excursion boat

entertainment games shall not be a manufacturer or distributor of excursion boat entertainment games or gaming devices.

(d) The executive director may suspend or revoke the certificate of a distributor or manufacturer for a violation of this act or a rule and regulation adopted pursuant to this act committed by the distributor or manufacturer, or an officer, director, employee or agent of the manufacturer or distributor.

(e) A manufacturer or distributor of excursion boat entertainment games who has been granted a certificate under this section shall have a representative within this state to take delivery of excursion boat entertainment games or gaming devices prior to delivery to a certificate holder. The manufacturer or distributor shall provide the lottery with a copy of the invoice showing the items shipped and a copy of the bill of lading. When received, the games or gaming devices shall be stored in a public warehouse in this state until delivered to the certificate holder or, after delivery is complete, the shipment may be transferred to a certificate holder.

Sec. 20. K.S.A. 1991 Supp. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) The executive director shall remit at least weekly to the state treasurer: (1) All moneys collected from the sale of lottery tickets and shares and; (2) all moneys required to be credited to the fund pursuant to the Kansas lottery excursion boat entertainment act; and (3) any other moneys received by or on behalf of the Kansas lottery. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and credit it to the lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person

designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) The payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. ~~1988~~ 1991 Supp. 74-8712 and amendments thereto;

(4) transfers to the state general fund pursuant to K.S.A. ~~1988~~ 1991 Supp. 74-8713 and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) ~~of this section~~ and as otherwise provided by law; and

(6) the transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. ~~1988~~ 1991 Supp. 79-4801 and amendments thereto, on or before the 15th day of each month, ~~for fiscal years commencing on or after July 1, 1988~~ in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) ~~In~~ An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) an amount equal to not less than 30% of total monthly

revenues from the sales of lottery tickets and shares, less estimated returned tickets, and from moneys required to be credited to the fund pursuant to the Kansas lottery excursion boat entertainment act.

Sec. 21. K.S.A. 1991 Supp. 74-8711 is hereby repealed.

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

SESSION OF 1992

## SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2778

As Amended by House Committee on  
Federal and State Affairs

## Brief\*

H.B. 2778 would:

1. codify the U.S. Supreme Court decision on *Roe v. Wade* (1973) by prohibiting the state from interfering with a woman's right to terminate a pregnancy before fetal viability or at any time if the procedure is necessary to protect the woman's life or health (Sec. 2 (a));
2. define "viable" as "that stage when, in the best medical judgement of the woman's physician, based on the particular facts of the case before the physician, there is a reasonable likelihood of sustained survival of the fetus outside the uterus without the application of extraordinary medical measures" (Sec. 1 (c));
3. prohibit a political subdivision of the state from interfering with a woman's right to terminate her pregnancy (Sec. 2 (b));
4. require that, once a fetus is viable, a person performing an abortion on another person be a physician; and that the performance of the abortion be conditioned by the physician's determination that the abortion is necessary to preserve a pregnant woman's life or health or the fetus is affected by serious deformity or abnormality (Sec. 3 (a));
5. require a minor under 16 years of age to receive counseling before undergoing an abortion; define the term "counselor" to

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\* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.



- include any one of a number of professionals identified in the bill; outline the information to be provided to the minor, including such options as abortion, adoption, and other alternatives; and provide an exception for counseling requirements in the event of a medical emergency, as determined by the attending physician (Sec. 4);
6. prohibit activities of interference with access to any health care facility (defined in the bill), causing disturbances within the facility, trespassing on the facility or its property, and telephoning the facility anonymously or repeatedly or making threats via telephone; and impose civil and criminal penalties for violations of prohibited activities (Sec. 5);
  7. include a severability clause (Sec. 6); and
  8. repeal the existing abortion law (K.S.A. 21-3407), which was invalidated by *Roe v. Wade* (Sec. 7).

## Background

The House Committee on Federal and State Affairs was informed that: provisions of the bill conformed to provisions of *Roe v. Wade*; the provision in the bill prohibiting a political subdivision of the state from interfering with the right of a woman to terminate a pregnancy addressed Attorney General Opinion No. 90-107 (allowing cities to exercise their police power by regulating the performance of abortions subject to *Roe v. Wade* and any limitations imposed by the state and federal constitutions); three states (Connecticut, Maine, and Wisconsin) require a minor to receive mandatory counseling that includes the possibility of consulting her parents; five states have laws that impose criminal sanctions on violence and harassment of patients entering health care clinics that provide abortion services (the provisions in Sec. 4 of the bill are largely based on a 1990 Washington law); and 35 states have laws that specifically prohibit post-viability abortions under most circumstances.

Proponents of the bill included, among others, a representative of Planned Parenthood of Kansas, the Mayor of DeSoto, a member of the Wichita City Council, and representatives of the Kansas Choice Alliance, the Religious Coalition for Abortion Rights in Kansas, the League of Women Voters of Kansas, the ProChoice Action League, and Kansas NOW. Opponents of the bill include

among others, Representative Darlene Cornfield, several physicians and attorneys, a clergyman from Arkansas City, and representatives of Right to Life of Kansas, Concerned Women for America, the Kansas Catholic Conference, and the Central Kansas Pro-Family Political Action Committee.

The House Committee amended the bill to provide that: a self-induced abortion, when the fetus is viable, is not a crime; the definition of "counselor" should include, among others, a registered physician's assistant or a currently ordained member of a religious denomination or authority; information on alternatives, given to minors, should include adoptions; and the definition of "health care provider" should include, among others, a licensed social worker. Certain provisions related to interference with access to health care facilities or harassments connected with access were deleted in the amended version.

Attach. 4

MEMORANDUM

Kansas Legislative Research Department

Room 545-N – Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

March 18, 1992

Re: Kansas Criminal Abortion Statute K.S.A. 21-3407  
and *Poe v. Menghini* (339 F. Supp. 986 (1972))

K.S.A. 21-3407, which was enacted in 1969, defines criminal abortion to be the purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth unless a person licensed to practice medicine and surgery (doctor of medicine or doctor of osteopathic medicine) believes there is a substantial risk that continuation of the pregnancy would impair the physical or mental health of the mother, that the child would be born with a physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse. Prior to an abortion for one of these reasons, three persons licensed to practice medicine and surgery must have certified their belief in the justifying circumstances or an emergency must exist which requires an immediate abortion in order to save the mother's life.

The statute, as enacted, also required that the three doctors' certification of the justifying circumstances be filed in the hospital licensed by the State Board of Health (now Secretary of Health and Environment) and accredited by the Joint Commission on the Accreditation of Hospitals (now Commission on the Accreditation of Health Care Facilities) where the abortion was to be performed, or in such other place as may be designated by law. Pregnancy is defined for the purposes of the statute as that condition of a female from the date of conception to the birth of her child. Criminal abortion is a class D felony.

Two provisions of K.S.A. 21-3407 were held unconstitutional by the U.S. District Court in *Poe v. Menghini* in a civil action filed in 1972. In *Menghini*, the court held that the requirement that an abortion be performed in an accredited hospital and that three physicians attest to the necessity of terminations of pregnancies were unconstitutional. The court further held that the unconstitutional provisions were severable, thus preserving other provisions of the criminal statute. Less than a year later, the *Roe v. Wade* and *Doe v. Bolton* cases were decided and the general consensus of legal opinion has been that the Kansas criminal abortion statute was completely nullified. Although the U.S. Supreme Court held in *Roe v. Wade* that, in the stage subsequent to viability of a fetus, states may regulate or prohibit abortion unless the abortion is performed to preserve a woman's health or life, the Kansas criminal statute has not been amended since its enactment in 1969 and the possible applicability of the statute in the third trimester of a pregnancy has not been tested in a court of record.

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Att. 4  
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# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N -- Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

March 18, 1992

Re: *Roe v. Wade* (410 U.S. 113 (1973))

In the *Roe* case, the court determined women have a constitutional right to obtain an abortion. At the time *Roe* was decided, a substantial majority of states prohibited abortion unless done to save or preserve the life of the mother. Fourteen states, including Kansas, had adopted some form of the American Law Institute (ALI) model penal code provision on abortion. The ALI model statute permitted abortion by licensed physicians where "the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defects, or that the pregnancy resulted from rape, incest, or other felonious intercourse."

At issue in *Roe* was a Texas criminal statute prohibiting abortions except when the pregnancy endangered the mother's life. The state argued that its statute protected the unborn infant's due process rights as a "person" within the meaning of the 14th Amendment, and alternatively, that the state had a compelling interest in protecting life, which, the state felt, began at conception.

The Court, in a seven to two decision authored by Justice Blackmun, struck down the statute as an unwarranted intrusion into a privacy right protected by the Due Process Clause of the 14th Amendment. The Court recognized that the *Constitution* does not explicitly mention any right of privacy but a line of court decisions had recognized a right of personal privacy. The Court described the nature of the infringement in the following manner:

"The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medially diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved." (page 153)

The Court declared that only a compelling state interest would constitute sufficient justification for the statute. The Court found neither interest (*i.e.*, right of the unborn child or the state's interest in protecting life) advanced by the state was compelling throughout the term of pregnancy.

The Court went on to formulate the now familiar trimester division as follows:

A.H. 4  
2

# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N -- Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

March 18, 1992

Re: *Doe v. Bolton* (410 U.S. 179 (1973))

At issue in a companion case to *Roe v. Wade* (410 U.S. 113 (1973)) was a Georgia law (similar to K.S.A. 21-3407) which prohibited an abortion except as performed by a duly licensed Georgia physician when necessary in "his best clinical judgment" because continued pregnancy would endanger a pregnant woman's life or injure her health; the fetus would likely be born with a serious defect; or the pregnancy resulted from rape. In addition to a requirement that the patient be a Georgia resident and certain other requirements, the statutory scheme posed three procedural conditions: (1) the abortion be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH); (2) the procedure be approved by the hospital staff abortion committee; and (3) the performing physician's judgment be confirmed by independent examinations of the patient by two other licensed physicians.

The Court, in another seven to two decision authored by Justice Blackmun, concluded, among other things, the following:

- The three procedural conditions violated the 14th Amendment. Specifically, the JCAH-accreditation requirement was invalid, since the state had not shown that only hospitals (let alone those with JCAH accreditation) met its interest in fully protecting the patient; and further a hospital requirement for abortion failing to completely exclude the first trimester of pregnancy is invalid. The interposition of a hospital abortion committee on abortion, a procedure not applicable as a matter of state criminal law to other surgical situations, was unduly restrictive of the patient's rights, which are already safeguarded by her personal physician. Required acquiescence by two co-practitioners also had no rational connection with a patient's needs and unduly infringed on her physician's right to practice.
- Further, in regard to the consideration of health of the woman, factors to be considered by the attending physician include the woman's physical, emotional, and psychological health, familial situation, and the woman's age. This allows the attending physician the room he needs to make his best medical judgment for the benefit of the pregnant woman.
- Finally, the Court concluded that the Georgia residence requirement violated the Privileges and Immunities Clause of the 14th Amendment denying protection to persons who enter Georgia for medical services from out of state.

Justices White and Rehnquist dissented, arguing that nothing in the language or history of the *Constitution* lends support to this new-found right of privacy of pregnant women to have an abortion and that the Court had fashioned this right by raw judicial power.

92-1465/mkg

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