

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 3:50 P.M. on April 28, 2006 in Room 241-N of the Capitol.

All members were present except:

Phil Journey

Committee staff present:

Emalene Correll, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Diana Lee, Office of Revisor of Statutes

Morgan Dreyer, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

**Discussion and Action on Substitute HB 2088—An act concerning abandonment of certain infants; making certain conduct unlawful and providing penalties**

Upon calling the meeting to order, Chairman Barnett asked for Norm Furse to review and give the new language on **Substitute HB 2088**. Norm passed out a balloon for the Committee. (A copy of the balloon is (Attachment 1) attached hereto and incorporated into the Minutes as referenced. Norm also passed out the new language of the bill to the Committee. A copy of the new language is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

Questions for Norm Furse came from Senators Haley, Wagle, and Barnett regarding bodily harm, severity of punishment, current law, definition of great bodily harm and death, difference and/or distinction of safe harbor law in 2000 and what is being proposed today, number of days a baby is considered an infant.

The Chair recognized Representative Peggy Mast who gave a further explanation of the bill and the reasoning for it being proposed and stated where and how an occurrence happened that this legislation would pertain to.

Questions for Representative Mast came from Senators Haley, V. Schmidt, Barnett, and Brungardt regarding language from the House on this bill, if the bill included any provisions currently held, how the bill tracks and/or finds the mother, determining if the baby was a stillborn or live birth, did the House hold a hearing on **HB 2088**, if this bill would change the mind set of future mothers, child abandonment, and mental state of mother.

The Chair recognized Bill Halvorson, Kansas Bureau of Investigation, Emporia. Questions for Bill Halvorson came from Senators Wagle, V. Schmidt, Haley, and Emalene Correll regarding abandonment of child being a crime, level five prosecution, inconsistent prosecutions for offense with level five and level two prosecutions in the language of the bill, number of days child is considered an infant, intent of mother to seek care for her child, action to be taken if child is abandoned and found alive, and law mostly reflecting whether the child is found alive.

There was a discussion between Senator Wagle and conferees Bill Halvorson and Representative Mast regarding a commitment of work on the bill from Senator Journey, language as compared to the House bill, and level two prosecution if abandonment of a child results in death.

The motion was made by Senator Haley to include the language as Norm Furse presented as shown in Attachment 2.

There was a discussion between Senators Barnett, V. Schmidt, Brungardt, Haley, Norm Furse, and conferees Bill Halvorson, Representative Mast, and Dr. Lorne Phillips with Kansas Department of Health and Welfare

## CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:00 P.M. on April 28, 2006 in Room 241-N of the Capitol.

birth to a stillborn, denial of pregnancy, mothers ability to afford medical attention, abandonment, policy relating toward knowledge of Judiciary Committee, law enforcement involvement, mother's knowledge of causing harm to baby, all cases going through the court system and not just an automatic prosecution, use of word stillborn, level two prosecution of stillborn, a live delivery, trimester and weight of baby born, target decomposed bodies, whether abandonment always results in death, and clarification of understanding if mother abandons baby and baby dies would there be a different prosecution.

Norm Furse gave the Committee a review of the additional language for the original motion.

A substitute motion was made by Senator V. Schmidt to include "to a live infant." The motion was seconded by Senator Burngardt and the substitute motion failed.

After review of the additional language changes again by Norm Furse on the original motion made by Senator Haley. It was seconded by Senator Wagle.

There was discussion with Senators v. Schmidt, Barnett, Haley, Brungardt, Wagle, and Norm Furse regarding the abandoning an infant, reason for death of an infant, would the mother always receive the level two prosecution, how does the mother prove that the baby was stillborn, current law mandates the state to prove that the infant was alive, and comments that this Committee is not qualified enough to justify this issue alone.

The Chair asked the Committee to vote on the original motion. The motion carried.

The motion was made by Senator Haley to advance the bill favorably. It was seconded by Senator Gilstrap and the motion carried.

### **Adjournment**

As there was no further business, the meeting was adjourned at 5:37 p.m.

April 28, 2006

PHW

# Sign In

LORNA A. PHILLIPS

KDHE

Beggy Mast

Legis.

Gill Halvorsen

KBI

Jeff Newsom

KBI

Ken Seeber

Hein Law Firm

Dan Morin

Kansas Medical Society

Chip Whelen

Asn of Osteopathic Med.

~~Anna Mackee~~  
~~[Signature]~~

~~Wend~~  
~~[Signature]~~

Norm Furse

38-15,100

Chapter 38.--MINORS

Article 15.--KANSAS CODE FOR CARE OF CHILDREN

38-15,100. Title of act; to whom physical custody may be surrendered; relinquishment of medical records. (a) This section shall be known and may be cited as the newborn infant protection act.

(b) A parent or other person having lawful custody of an infant which is 45 days old or younger and which has not suffered bodily harm may surrender physical custody of the infant to any employee who is on duty at a fire station, city or county health department or medical care facility as defined by K.S.A. 65-425, and amendments thereto. Such employee shall take physical custody of an infant surrendered pursuant to this section.

(d) As soon as possible after a person takes physical custody of an infant under this section, such person shall notify a local law enforcement agency that the person has taken physical custody of an infant pursuant to this section. Upon receipt of such notice a law enforcement officer from such law enforcement agency shall take custody of the infant as an abandoned child. The law enforcement agency shall deliver the infant to a facility or person designated by the secretary of the department of social and rehabilitation services pursuant to K.S.A. 38-1528, and amendments thereto.

(e) Any person, city or county or agency thereof or medical care facility taking physical custody of an infant surrendered pursuant to this section shall perform any act necessary to protect the physical health or safety of the infant, and shall be immune from liability for any injury to the infant that may result therefrom.

(f) Upon request, all medical records of said infant shall be made available to the department of social and rehabilitation services and given to person awarded custody of said infant. The medical facility providing such records shall be immune from liability for their release.

History: L. 2000, ch. 174, § 11; July 1.

"It shall be unlawful to give birth outside a medical institution and abandon the infant with no intent to care for or seek care for the child. The act of abandonment with no intent to care for or seek care for the child is a severity level 2 person felony."

Senate Public Health & Welfare Committee

Date: April 28, 2006

Attachment #1

002

VITAL STATISTICS

04/26/2006 WED 09:43 FAX 7852968869

Norm Furse

**21-3604. Abandonment of a child.** (a) Abandonment of a child is the leaving of a child under the age of 16 years, in a place where such child may suffer because of neglect, by the parent, guardian or other person to whom the care and custody of such child shall have been entrusted, when done with intent to abandon such child.

Abandonment of a child is a severity level 8, person felony.

(b) No parent or other person having lawful custody of an infant shall be prosecuted for a violation of this section, if such parent or person surrenders custody of an infant in the manner provided by K.S.A. 38-15,100, and amendments thereto, and if such infant has not suffered bodily harm.

**21-3604a. Aggravated abandonment of a child.** Aggravated abandonment of a child is abandonment of a child, as defined by K.S.A. 21-3604 and amendments thereto, which results in great bodily harm. Aggravated abandonment of a child is a severity level 5, person felony.

**38-15,100. Title of act; to whom physical custody may be surrendered; relinquishment of medical records.** (a) This section shall be known and may be cited as the newborn infant protection act.

(b) A parent or other person having lawful custody of an infant which is 45 days old or younger and which has not suffered bodily harm may surrender physical custody of the infant to any employee who is on duty at a fire station, city or county health department or medical care facility as defined by K.S.A. 65-425, and amendments thereto. Such employee shall take physical custody of an infant surrendered pursuant to this section.

(c) As soon as possible after a person takes physical custody of an infant under this section, such person shall notify a local law enforcement agency that the person has taken physical custody of an infant pursuant to this section. Upon receipt of such notice a law enforcement officer from such law enforcement agency shall take custody of the infant as an abandoned child. The law enforcement agency shall deliver the infant to a facility or person designated by the secretary of the department of social and rehabilitation services pursuant to K.S.A. 38-1528, and amendments thereto.

(d) Any person, city or county or agency thereof or medical care facility taking physical custody of an infant surrendered pursuant to this section shall perform any act necessary to protect the physical health or safety of the infant, and shall be immune from liability for any injury to the infant that may result therefrom.

(e) Upon request, all medical records of said infant shall be made available to the department of social and rehabilitation services and given to person awarded custody of said infant. The medical facility providing such records shall be immune from liability for their release.

Senate Public Health & Welfare  
Committee  
Date: April 28, 2008  
Attachment #2