

**HOUSE BILL No. 2337**

By By Committee on Federal and State Affairs

2-14

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

2

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) Upon receipt of such application and verification by the  
36 department that the applicant is in compliance with all applicable laws

1 and rules and regulations, the secretary shall issue a license to the  
2 applicant.

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

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

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

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

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

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

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

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

37 New Sec. 5. (a) The secretary shall make or cause to be made such  
38 inspections and investigations of each facility at least twice each calendar  
39 year and at such other times as the secretary determines necessary to  
40 protect the public health and safety and to implement and enforce the  
41 provisions of sections 1 through 12, and amendments thereto, and rules  
42 and regulations adopted pursuant to section 9, and amendments thereto.  
43 At least one inspection shall be made each calendar year without

1 providing prior notice to the facility. For that purpose, authorized agents  
2 of the secretary shall have access to a facility during regular business  
3 hours.

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

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

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

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

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

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

43 (1) Specific conditions and their impact or potential impact on the

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

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

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

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

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

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

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

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

27 (2) dressing rooms for staff and patients;

28 (3) appropriate lavatory areas;

29 (4) areas for preprocedure hand washing;

30 (5) private procedure rooms;

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

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

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

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

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

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

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

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

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

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

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

17 (5) require ultrasound equipment in facilities; and

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

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

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

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

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

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

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

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

40 (7) volunteers receive training in the specific responsibilities of the  
41 services the volunteers provide, including counseling and patient  
42 advocacy as provided in the rules and regulations adopted by the director  
43 for different types of volunteers based on their responsibilities.

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

4 (1) A medical history including the following:

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

6 (B) obstetric and gynecologic history; and

7 (C) past surgeries;

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

10 (3) the appropriate laboratory tests including:

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

14 (B) a test for anemia as indicated;

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

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

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

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

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

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

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

43 (3) appropriate use of local anesthesia, analgesia and sedation if

1 ordered by the physician;

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

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

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

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

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

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

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

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

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

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

41 (8) the physician assures that a licensed health professional from the  
42 facility makes a good faith effort to contact the patient by telephone, with  
43 the patient's consent, within 24 hours after surgery to assess the patient's

1 recovery; and

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

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

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

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

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

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

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

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

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

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

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

43 (B) measures to minimize the occurrence of reportable incidents and

1 the resulting injuries within the facility; and

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

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

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

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

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

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

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

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

43 (b) The physician inducing the abortion, or a person acting on behalf

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

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

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

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

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