

As Amended by House Committee

Session of 2011

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 first
12 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 K.S.A.
18 65-6701, and amendments thereto, and shall be determined pursuant to
19 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 and
30 in the manner required by the secretary. Such application shall contain
31 such information as the secretary may reasonably require, including
32 affirmative evidence of the ability of the applicant to comply with such
33 reasonable standards and rules and regulations adopted pursuant to section
34 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 and

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

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

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

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

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

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

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

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

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

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

1 secretary shall have access to a facility during regular business hours.

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

8 New Sec. 6. (a) When the secretary determines that a facility is in
9 violation of any applicable law or rule and regulation relating to the
10 operation or maintenance of such facility, the secretary, upon proper
11 notice, may deny, suspend or revoke the license of such facility, or assess a
12 monetary penalty after notice and an opportunity for hearing has been
13 given to the licensee in accordance with the provisions of the Kansas
14 administrative procedure act.

15 **(b) Either before or after formal charges have been filed, the**
16 **secretary and the facility may enter into a stipulation which shall be**
17 **binding upon the secretary and the facility entering into such**
18 **stipulation and the secretary may enter its findings of fact and**
19 **enforcement order based upon such stipulation without the necessity**
20 **of filing any formal charges or holding hearings in the case. An**
21 **enforcement order based upon a stipulation may order any**
22 **disciplinary action authorized by this section, against the facility**
23 **entering into such stipulation.**

24 (c) **The secretary may temporarily suspend or temporarily limit**
25 **the license of any facility in accordance with the emergency**
26 **adjudicative proceedings under the Kansas administrative procedure**
27 **act if the secretary determines that there is cause to believe that**
28 **grounds exist under this section for immediate action authorized by**
29 **this section against the facility and that the facility's continuation in**
30 **operation would constitute an imminent danger to the public health**
31 **and safety.**

32 (d) Violations of sections 1 through 12, and amendments thereto, or
33 of any rules and regulations adopted thereunder shall be deemed one of the
34 following:

35 (1) Class I violations are those that the secretary determines to
36 present an imminent danger to the health, safety or welfare of the patients
37 of the facility or a substantial probability that death or serious physical
38 harm could result therefrom. A physical condition or one or more
39 practices, means, methods or operations in use in a facility may constitute
40 such a violation. The condition or practice constituting a class I violation
41 shall be abated or eliminated immediately unless a fixed period of time, as
42 stipulated by the secretary, is required for correction. Each day such
43 violation shall exist after expiration of such time shall be considered a

1 subsequent violation.

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

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

13 ~~(b)~~ (e) The secretary shall consider the following factors when
14 determining the severity of a violation:

15 (1) Specific conditions and their impact or potential impact on the
16 health, safety or welfare of the facility's patients;

17 (2) efforts by the facility to correct the violation;

18 (3) overall conditions of the facility;

19 (4) the facility's history of compliance; and

20 (5) any other pertinent conditions that may be applicable.

21 ~~(e)~~ (f) Any monetary penalty assessed by the secretary shall be
22 assessed in accordance with the following fine schedule:

23 (1) For class I violations the following number of violations within a
24 24-month period shall result in the corresponding fine amount:

25 (A) One violation, a fine of not less than \$200 and not more than
26 \$1,000;

27 (B) two violations, a fine of not less than \$500 and not more than
28 \$2,000;

29 (C) three violations, a fine of not less than \$1,000 and not more than
30 \$5,000; and

31 (D) four or more violations, a fine of \$5,000;

32 (2) for class II violations the following number of violations within a
33 24-month period shall result in the corresponding fine amount:

34 (A) One violation, a fine of not less than \$100 and not more than
35 \$200;

36 (B) two violations, a fine of not less than \$200 and not more than
37 \$1,000;

38 (C) three violations, a fine of not less than \$500 and not more than
39 \$2,000;

40 (D) four violations, a fine of not less than \$1,000 and not more than
41 \$5,000; and

42 (E) five or more violations, a fine of \$5,000;

43 (3) for class III violations the following number of violations within a

1 24-month period shall result in the corresponding fine amount:

2 (A) One violation, there shall be no fine;

3 (B) two violations, a fine of not less than \$100 and not more than
4 \$500;

5 (C) three violations, a fine of not less than \$200 and not more than
6 \$1,000;

7 (D) four violations, a fine of not less than \$500 and not more than
8 \$2,000;

9 (E) five violations, a fine of not less than \$1,000 and not more than
10 \$5,000; and

11 (F) six or more violations, a fine of \$5,000.

12 New Sec. 7. Except in the case of a medical emergency, as defined in
13 K.S.A. 65-6701, and amendments thereto, an abortion performed when the
14 gestational age of the unborn child is 22 weeks or more shall be performed
15 in a licensed hospital or ambulatory surgical center. All other abortions
16 shall be performed in a licensed hospital, ambulatory surgical center or
17 facility.

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

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

26 (c) Violation of subsection (a) or (b) is a class A nonperson
27 misdemeanor and shall constitute unprofessional conduct under K.S.A. 65-
28 2837, and amendments thereto.

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

31 (b) The secretary shall adopt rules and regulations concerning
32 sanitation, housekeeping, maintenance, staff qualifications, emergency
33 equipment and procedures to provide emergency care, medical records and
34 reporting, laboratory, procedure and recovery rooms, physical plant,
35 quality assurance, infection control, information on and access to patient
36 follow-up care and any other areas of medical practice necessary to carry
37 out the purposes of sections 1 through 12, and amendments thereto, for
38 facilities for the performance of abortions. At a minimum these rules and
39 regulations shall prescribe standards for:

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

42 (2) dressing rooms for staff and patients;

43 (3) appropriate lavatory areas;

- 1 (4) areas for preprocedure hand washing;
- 2 (5) private procedure rooms;
- 3 (6) adequate lighting and ventilation for abortion procedures;
- 4 (7) surgical or gynecologic examination tables and other fixed
- 5 equipment;
- 6 (8) postprocedure recovery rooms that are supervised, staffed and
- 7 equipped to meet the patients' needs;
- 8 (9) emergency exits to accommodate a stretcher or gurney;
- 9 (10) areas for cleaning and sterilizing instruments; and
- 10 (11) adequate areas for the secure storage of medical records and
- 11 necessary equipment and supplies.

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

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

21 (2) require that the number or amount of equipment and supplies at
22 the facility is adequate at all times to assure sufficient quantities of clean
23 and sterilized durable equipment and supplies to meet the needs of each
24 patient;

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

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

32 (5) require ultrasound equipment in facilities; and

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

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

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

40 (2) physicians performing surgery in a facility are licensed to practice
41 medicine and surgery in Kansas, demonstrate competence in the procedure
42 involved and are acceptable to the medical director of the facility;

43 (3) a physician with admitting privileges at an accredited hospital

1 located within 30 miles of the facility is available;

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

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

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

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

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

18 (1) A medical history including the following:

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

20 (B) obstetric and gynecologic history; and

21 (C) past surgeries;

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

24 (3) the appropriate laboratory tests including:

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

28 (B) a test for anemia as indicated;

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

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

32 (4) an ultrasound evaluation for all patients who elect to have an
33 abortion of an unborn child. The rules shall require that if a person who is
34 not a physician performs an ultrasound examination, that person shall have
35 documented evidence that the person completed a course in the operation
36 of ultrasound equipment as prescribed in rules and regulations. The
37 physician or other health care professional shall review, at the request of
38 the patient, the ultrasound evaluation results with the patient before the
39 abortion procedure is performed, including the probable gestational age of
40 the unborn child; and

41 (5) that the physician is responsible for estimating the gestational age
42 of the unborn child based on the ultrasound examination and obstetric
43 standards in keeping with established standards of care regarding the

1 estimation of fetal age as defined in rules and regulations and shall verify
2 the estimate in the patient's medical history. The physician shall keep
3 original prints of each ultrasound examination of a patient in the patient's
4 medical history file.

5 (f) The secretary shall adopt rules and regulations relating to the
6 abortion procedure. At a minimum these rules and regulations shall
7 require:

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

10 (2) standards for the safe conduct of abortion procedures that
11 conform to obstetric standards in keeping with established standards of
12 care regarding the estimation of fetal age as defined in rules and
13 regulations;

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

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

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

23 (g) The secretary shall adopt rules and regulations that prescribe
24 minimum recovery room standards. At a minimum these rules and
25 regulations shall require that:

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

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

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

34 (4) a physician or a nurse who is advanced cardiovascular life support
35 certified shall remain on the premises of the facility until all patients are
36 discharged and to facilitate the transfer of emergency cases if
37 hospitalization of the patient or viable unborn child is necessary. A
38 physician or nurse shall be readily accessible and available until the last
39 patient is discharged;

40 (5) a physician or trained staff member discusses Rho(d) immune
41 globulin with each patient for whom it is indicated and assures it is offered
42 to the patient in the immediate postoperative period or that it will be
43 available to her within 72 hours after completion of the abortion

1 procedure. If the patient refuses, a refusal form approved by the
2 department shall be signed by the patient and a witness and included in the
3 medical record;

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

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

12 (8) the physician assures that a licensed health professional from the
13 facility makes a good faith effort to contact the patient by telephone, with
14 the patient's consent, within 24 hours after surgery to assess the patient's
15 recovery; and

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

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

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

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

29 (3) the physician performing or inducing the abortion, or a person
30 acting on behalf of the physician performing or inducing the abortion,
31 shall make all reasonable efforts to ensure that the patient returns for a
32 subsequent examination so that the physician can assess the patient's
33 medical condition. A brief description of the efforts made to comply with
34 this requirements, including the date, time and identification by name of
35 the person making such efforts, shall be included in the patient's medical
36 record.

37 (i) The secretary shall adopt rules and regulations to prescribe
38 minimum facility incident reporting. At a minimum these rules and
39 regulations shall require that:

40 (1) The facility records each incident resulting in a patient's or viable
41 unborn child's serious injury occurring at a facility and shall report them in
42 writing to the department within 10 days after the incident. For the
43 purposes of this paragraph, "serious injury" means an injury that occurs at

1 a facility and that creates a serious risk of substantial impairment of a
2 major body organ;

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

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

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

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

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

16 (C) a reporting system based upon the duty of all health care
17 providers staffing the facility and all agents and employees of the facility
18 directly involved in the delivery of health care services to report reportable
19 incidents to the chief of the medical staff, chief administrative officer or
20 risk manager of the facility.

21 (2) As used in this subsection, the term "reportable incident" means
22 an act by a health care provider which:

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

25 (B) may be grounds for disciplinary action by the appropriate
26 licensing agency.

27 (k) The rules and regulations adopted by the secretary pursuant to this
28 section do not limit the ability of a physician or other health care
29 professional to advise a patient on any health issue. The secretary
30 periodically shall review and update current practice and technology
31 standards under sections 1 through 12, and amendments thereto, and based
32 on current practice or technology adopt by rules and regulations alternative
33 practice or technology standards found by the secretary to be as effective
34 as those enumerated in sections 1 through 12, and amendments thereto.

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

39 (m) In addition to any other penalty provided by law, whenever in the
40 judgment of the secretary of health and environment any person has
41 engaged, or is about to engage, in any acts or practices which constitute, or
42 will constitute, a violation of this section, or any rules and regulations
43 adopted under the provisions of this section, the secretary shall make

1 application to any court of competent jurisdiction for an order enjoining
2 such acts or practices, and upon a showing by the secretary that such
3 person has engaged, or is about to engage, in any such acts or practices, an
4 injunction, restraining order or such other order as may be appropriate
5 shall be granted by such court without bond.

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

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

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

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

28 New Sec. 12. The provisions of sections 1 through 12, and
29 amendments thereto, are declared to be severable, and if any provision, or
30 the application thereof, to any person shall be held invalid, such invalidity
31 shall not affect the validity of the remaining provisions of sections 1
32 through 12, and amendments thereto.

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