

SESSION OF 2013

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2253**

As Agreed to April 4, 2013

Brief*

HB 2253 would prohibit certain abortions related to the gender of the unborn child, revise the general and late-term abortion statutes, and declare the life of each human being begins at fertilization.

***Abortion Solely on Account of the Unborn Child's Sex
(Provisions from SB 141)***

The bill (in New Sec. 10) would prohibit persons from performing or inducing abortions or attempting to perform or induce abortions in instances where the person has knowledge the pregnant woman is seeking an abortion solely on account of the sex of the unborn child.

The bill also would allow the following persons, unless the pregnancy resulted from the plaintiff's criminal conduct, to obtain appropriate relief in a civil action:

- A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion (in violation of the law that would be enacted by the bill);
- The father, if married to the woman at the time of the abortion; and

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- The parents or custodial guardian of the woman, if she has not attained the age of 18 at the time of the abortion.

Relief as applied in the bill would include:

- Money damages for all injuries, psychological and physical, occasioned by the violation;
- Statutory damages equal to three times the cost of the abortion;
- Injunctive relief; and
- Reasonable attorney fees.

The bill further would provide that a woman upon whom an abortion is performed cannot be prosecuted under the provisions created by the bill for a conspiracy to violate these provisions pursuant to KSA 2012 Supp. 21-5302. The bill also would provide that nothing in these provisions is to be construed to create a right to an abortion. Notwithstanding any provision of the section (of law) created by the bill, a person would not be allowed to perform an abortion that is prohibited by law.

The bill would provide that upon a first conviction for violation of the section of law created by the bill, a person would be guilty of a class A person misdemeanor. Upon a second or subsequent provision, a person would be guilty of a severity level 10, person felony.

“Abortion,” as used in the bill, means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes *in utero*, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

Revise Abortion Statutes; Declare Life Begins at Fertilization (Provisions from HB 2253)

The bill also would revise the general and late-term abortion statutes, the Woman's-Right-To-Know Act, and the state tax statutes. In addition, the bill would add a new statutory provision that would declare the life of each human being begins at fertilization, with all state laws to be interpreted and construed to protect the rights, privileges, and immunities of the unborn child, subject only to the *U.S. Constitution* and the judicial decisions and interpretations of the U.S. Supreme Court.

The bill would provide that nothing in the new provisions shall apply to an abortion that is necessary to preserve the life of the pregnant woman.

The bill would prohibit the use of public funding, tax credits, tax preferences, and state-provided public health care services from being used in any manner to facilitate abortions or in facilities where abortions are performed. The bill would clarify a restriction in the tax credit laws regarding health care deductions and would limit a prohibition to include only expenses paid or incurred for abortion coverage. Provisions referring to a small employer health benefit plan available from 1999 to 2005 would be restored and the date of 1999 also would be restored in the bill.

The bill would prohibit any school district, its employees, agents, and education service providers from offering abortion services. The bill would restrict school districts from allowing an abortion services provider, its employees, agents, and volunteers, from offering, sponsoring or furnishing any course materials or instruction related to human sexuality or sexually transmitted diseases.

The bill would redefine one term currently used in statute, "medical emergency," regarding a pregnant woman, and would add two new definitions, for the terms "bodily function" and "fertilization" in the general abortion statutes.

Additionally, a statute applying to late-term restrictions would be amended to include attempts to perform or induce an abortion.

The bill would provide new definitions for the following terms:

- “Medical emergency” regarding a pregnant woman would mean “a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert the death of the woman or for which a delay necessary to determine gestational age will credit serious risk of substantial and irreversible physical impairment of a major bodily function.” The concluding new language would state that “no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.”
- “Bodily function” would mean physical functions only. The term “bodily function” would not include mental or emotional functions.
- “Fertilization” would mean the fusion of a human spermatozoon with a human ovum.

The Secretary of the Department of Health and Environment (KDHE) would be required to provide information about Down Syndrome and other prenatally or postnatally diagnosed conditions and would be permitted to authorize and oversee certain activities, including the awarding of grants, contracts or cooperative agreements to eligible entities. Information about counseling assistance for medically challenging pregnancies and perinatal hospice services would be required as an addition to a KDHE listing of

websites for national perinatal assistance. The Secretary would be required to submit a report on or before January 12, 2015, to the Legislature and the Governor on the effectiveness of the grants, contracts and cooperative agreements.

The bill would amend the Woman's Right to Know Act to prescribe additional new language for signage to be posted in an office, clinic, or other facility in which abortions are performed. Additional new language would be required in certain printed materials to inform pregnant women about the development of an unborn child, legal responsibilities for the unborn child, a link to the KDHE website materials, and organizations to assist the pregnant woman.

The bill would address the University of Kansas Hospital Authority. The bill would amend current law regarding abortions to allow for an abortion to be performed at the hospital in the case of a medical emergency as defined in the bill. In addition, the bill would allow any member of the physician faculty of the University of Kansas School of Medicine to perform abortions whenever an abortion is performed outside the scope of any member's employment and on property not controlled by the University of Kansas Hospital Authority.

The bill would include a severability clause, should any provision or clause be held invalid.

Second Conference Committee Action

The second Conference Committee agreed to combine the contents of SB 141 with HB 2253. Provisions stricken from HB 2253 by the Senate Committee of the Whole in KSA 2012 Supp. 40-2246 (section 11) regarding small employer health benefit plans were restored, a date was changed from 2004 to the original 1999 (current law), and the addition of the word "expenditures" in the Senate language was retained.

The Conference Committee also added clarifying language to references in the tax statutes regarding “when such expenses were paid or incurred for abortion coverage” by a taxpayer for health care to narrow the exclusion to only abortion-related expenses.

Background

Two bills were included in the Conference Committee report on HB 2253. The first, underlying, bill is HB 2253 and the second bill is SB 141, which was inserted as New Sec. 10. Background information on each is presented separately below.

HB 2253. Proponents testifying in support of the HB 2253 in the House Committee on Federal and State Affairs included Representative Kinzer and representatives of the Kansas Catholic Conference and Kansans for Life.

Opponents testifying against the bill included representatives of the Trust Women Foundation, Inc.; the South Wind Women’s Center, LLC; the Wichita Chapter of the National Organization for Women; the Kansas Chapter of the National Organization for Women; the American Cancer Society; a medical doctor; and two private citizens.

Those who presented written only testimony in opposition to the bill included three private citizens; representatives of Planned Parenthood of Kansas and Mid-Missouri, the MainStream Coalition, the Commission on the Status of Women at the University of Kansas; and a certified birth doula.

According to the fiscal note provided by the Division of the Budget for HB 2253, as introduced, the Department of Revenue could not determine whether any additional costs or revenue reductions would result from the proposed legislation, based on responses from the Department of Health and Environment, the Board of Healing Arts, and the

Kansas Department of Revenue. The Department of Health and Environment indicated that destroying current versions of printed materials and replacing them with new editions would require \$28,650 in agency fee funds due to the proposed changes in the bill.

SB 141. SB 141 was introduced by Senators Pilcher-Cook, Abrams, Apple, Arpke, Donovan, Fitzgerald, Holmes, Kerschen, Knox, LaTurner, Love, Lynn, Masterson, O'Donnell, Olson, Ostmeyer, Petersen, Powell, Pyle, Smith, and Tyson. Proponents of the bill present at the Senate Committee hearing included representatives of the Kansas Catholic Conference, Kansans for Life, and the Population Research Institute. Additional proponent testimony was submitted by a family practice physician and a representative of Concerned Women for America. Proponents stated concerns about increasing technologies used to determine gender *in utero* and pointed to studies and reports on the prevalence of sex-selective abortions.

There were no opponents present at the Senate Committee hearing.

The revised fiscal note prepared by the Division of the Budget on SB 141, as introduced, states the Office of Judicial Administration indicates the bill has the potential for increasing the number of cases related to abortions based on gender filed in district and appellate courts. This would increase the time spent by district court and appellate court judicial and non-judicial personnel in processing, researching, and hearing cases. Likewise, the additional cases also could result in the collection of added revenue from docket fees and penalties. However, the fiscal note indicates, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. The Kansas Sentencing Commission estimated the bill would have no

effect on prison bed capacity. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

abortion; abortion services; fertilization; Down Syndrome; prenatally diagnosed conditions; postnatally diagnosed conditions; prenatal test; tax credits; bodily function; websites; gender abortion.

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