



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

**Testimony of the Office of Attorney General in Support of Revisions to
Senate Substitute for House Bill 2228**

**Presented to the Senate Federal and State Affairs Committee
By Chief Deputy Attorney General Jeff Chanay**

May 20, 2015

Chairman Ostmeyer and members of the Committee, thank you for this opportunity to testify in support of modifying the language in Senate Substitute for House Bill 2228.

On May 13, this Committee recommended favorably the substitute measure, which is identical to Senate Bill 304 as introduced. At that time, I submitted written testimony about the Office of the Attorney General's support for this legislation. A copy of my testimony from that hearing is attached, and it remains the view of the Office regarding this legislation.

Unfortunately, we subsequently discovered that the language of Senate Bill 304 (and, thus, of Senate Substitute for House Bill 2228) was not identical to what we previously had reviewed prior to Senate Bill 304's introduction. The intervening change in the language was the result of good-faith drafting choices; however, because the provisions of law that would be amended by this bill are the subject of pending litigation, the precise wording of this legislation is particularly important at this time. I regret that we did not identify this problem sooner.

Attached to this testimony is a balloon amendment we recommend for Senate Substitute for House Bill 2228. This amendment, if adopted, would restore the language to a form that satisfies the State's interest in narrowing the pending litigation. We respectfully request you adopt the revised language and again recommend the amended bill favorably.

Thank you for your consideration of this matter.

###



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

**Testimony of the Office of Attorney General in Support of Senate Bill 304
Presented to the Senate Federal and State Affairs Committee
By Chief Deputy Attorney General Jeff Chanay
May 13, 2015**

Chairman Ostmeyer and members of the Committee, thank you for this opportunity to present written testimony on behalf of the Office of Attorney General in favor of the passage of Senate Bill 304.

The intent behind K.S.A. 2014 Supp. 65-4a10 was to prevent so-called “Webcam Abortions,” where a physician would prescribe abortion pills for patients via remote videoconference without ever seeing the patient in person. In those cases, a physician will explain from a remote location the process and then push a button, opening a drawer in front of the woman containing the two abortion pills. Sometimes another person (such as a physician’s assistant, nurse, or other individual) will hand the woman the drugs at the physician’s direction.

In attempting to keep the language broad enough to include abortifacient medications similar to RU-486, the legislature provided that the restriction applies to “any drug ... used for the purpose of inducing an abortion.” This language, however, is so broad that it could include some drugs that are used to treat ectopic pregnancies (a medical emergency) and the intravenous treatment of previability premature rupture of membranes (another medical emergency). The legislature did not intend the statute to be read so broadly as to include medications used in true situations of a medical emergency.

Unlike other abortion statutes, the K.S.A. 2014 Supp. 65-4a10 medication-in-person requirement does not contain a medical-emergency exception. Because K.S.A. 2014 Supp. 65-4a10 utilizes broad statutory language without any exceptions, the State has been required to defend challenges that the statute is unconstitutionally overbroad and violates patient privacy rights.

The State is presently engaged in litigation over both the 2011 and 2013 abortion laws passed by the Kansas Legislature. In the 2011 case, the plaintiffs have filed claims based upon the lack of a medical-emergency provision in the statute and an undue burden claim based on the current medication-in-person requirement. Both claims assert that these provisions violate patient rights of privacy under the Kansas Constitution. An Order of

the Shawnee County District Court currently enjoins enforcement of 2011 House Substitute for Senate Bill 36 and the associated regulations.

Passage of Senate Bill 304 and the proposed clarifications of K.S.A. 2014 Supp. 65-4a10 will allow the State and the plaintiffs to resolve some contested issues and narrow the scope of the existing litigation. For this reason, the Office of Attorney General is supportive of SB 304 and requests its passage.

Thank you for your attention to this important matter.