AN ACT concerning health and healthcare; relating to pharmacies; requiring pharmacies to make contraceptives available to customers.

WHEREAS, Family planning is basic healthcare for women, and access to contraceptives helps women prevent unintended pregnancy and control the timing of and spacing between planned births; and

WHEREAS, Although the United States centers for disease control and prevention included family planning in its published list of the 10 great public health achievements in the 20th century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations; and

WHEREAS, Each year, nearly half of all pregnancies in the United States are unintentional; and

WHEREAS, Women rely on contraceptives for a range of medical purposes in addition to birth control, such as endometriosis and regulation of cycles; and

WHEREAS, After reviewing data and evidence, the United States food and drug administration determined that emergency contraceptives are a safe and effective method to prevent unintended pregnancy and approved over-the-counter access to some forms of emergency contraceptives for all individuals, regardless of age; and

WHEREAS, If taken soon after unprotected sex or primary contraceptive failure, emergency contraceptives can significantly reduce a woman's chance of unintended pregnancy; and

WHEREAS, Access to a full range of contraceptive methods is fundamental to women's healthcare and should not be impeded because of a refusal by a pharmacy.

Now, therefore:

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

Section 1. (a) As used in this section:

(1) "Contraception" or "contraceptive" means any drug or device approved by the United States food and drug administration to prevent pregnancy.

(2) "Emergency contraception" means one or more drugs, used separately or in combination, to prevent pregnancy within a medically recommended amount of time after sexual intercourse.
(3) "Employee" means a person hired, by contract or any other form of an agreement, by a pharmacy.

(4) "Pharmacy" means an entity that is licensed by the state board of pharmacy under the pharmacy act of the state of Kansas to engage in the business of selling prescription drugs at retail and that employs one or more employees.

(5) "Product" means a United States food and drug administration-approved drug or device.

(6) "Professional clinical judgment" means the use of professional knowledge and skills to form a clinical judgment, in accordance with prevailing medical standards.

(7) "Without delay," with respect to a pharmacy dispensing, providing a referral for or ordering contraception or transferring a prescription for contraception, means within the usual and customary time frame at the pharmacy for dispensing, providing a referral for or ordering other products or transferring a prescription for other products.

(b) (1) If a customer requests a contraceptive that is in stock, the pharmacy shall ensure that the contraceptive is provided to the customer without delay.

(2) If a customer requests a contraceptive that is not in stock, the pharmacy shall immediately inform the customer that the contraceptive is not in stock and offer the customer the following options without delay:

(A) If the customer prefers to obtain the contraceptive through a referral or transfer, the pharmacy shall locate a pharmacy of the customer's choice or the closest pharmacy confirmed to have the contraceptive in stock and refer the customer or transfer the prescription to such pharmacy; or

(B) if the customer prefers for the pharmacy to order the contraceptive, the pharmacy shall obtain the contraceptive under the pharmacy's standard procedure for expedited ordering of medication and notify the customer when the contraceptive is available.

(3) The pharmacy shall ensure that the pharmacy's employees do not:

(A) Intimidate, threaten or harass customers in the delivery of services relating to a request for contraception;

(B) interfere with or obstruct the delivery of services relating to a request for contraception;

(C) intentionally misrepresent or deceive customers about the availability of contraception or a contraceptive's mechanism of action;

(D) breach medical confidentiality with respect to a request for contraception or threaten to breach such confidentiality; or

(E) refuse to return a valid, lawful prescription for contraception upon customer request.

(4) This section shall not prohibit a pharmacy from refusing to
provide a contraceptive to a customer in accordance with any of the following:

(A) If it is unlawful to dispense the contraceptive to the customer without a valid, lawful prescription and no such prescription is presented;

(B) if the customer is unable to pay for the contraceptive; or

(C) if a licensed pharmacist refuses to provide the contraceptive on the basis of a professional clinical judgment.

(5) Pharmacies shall stock over-the-counter emergency contraception and make such contraception available for purchase without a prescription in accordance with United States food and drug administration protocol, as determined by the state board of pharmacy.

(c) The state board of pharmacy shall adopt rules and regulations as necessary to implement and administer the provisions of this section.

(d) Any person aggrieved as a result of a violation of this section may commence a civil action in a court of competent jurisdiction against the pharmacy violating this section to obtain appropriate legal and equitable relief, including, but not limited to, actual and punitive damages and injunctive relief. A prevailing plaintiff in such an action shall be entitled to recovery of costs and reasonable attorney fees.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.