

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 45**

As Recommended by House Committee on
Federal and State Affairs

Brief*

House Sub. for SB 45 would combine provisions from three different bills that address abortions.

First, the bill would provide for the licensing and regulation of abortion clinics by the Kansas Department of Health and Environment (KDHE). Any facility that performs any second or third trimester abortion, or five or more first trimester abortions within a month, would have to be licensed. The Secretary of KDHE would be required to adopt and enforce rules and regulations and would collect an initial fee of \$500 and subsequent annual fees of \$500 from each licensee. The Department also would have to establish classes of violations and corresponding fines for those violations. Inspections would be required twice per year.

Second, the bill would enact new statutory restrictions on certain late term abortions. The bill would add new provisions that address the capacity of an unborn child to feel pain.

The bill would define a "pain-capable child" as an unborn child that has reached the gestational age of 22 weeks or more, and would set restrictions and requirements for physicians performing abortions in cases involving a pain-capable unborn child. Except under statutorily defined circumstances permitted for certain abortions, the bill would

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

set criminal severity levels for violations under the bill's provisions that do not conform to the new requirements.

The bill would establish the circumstances and procedures to be followed for exceptions that would allow abortions where a pain-capable child is present, including cases where specific medical conditions would lead the physician to believe the death of a pregnant woman might result, or there might be a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

The Secretary of KDHE would be required to adopt rules and regulations to collect details about referrals, recording keeping, and reporting requirements for physicians performing such abortions. Medical care facilities would be required to keep specific records about procedures associated with such cases involving pain-capable unborn children, and to submit such data to KDHE.

The bill would conclude that "Nothing in this act shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes."

Third, the bill would modify current law regarding prohibitions on late-term and partial birth abortions; require parental consent with certain exceptions for abortions involving minors; expand and establish new abortion reporting requirements; and add a civil cause of action in certain abortion cases. Other changes would alter the terminology associated with abortion law, require the Secretary of KDHE to adopt new rules and regulations regarding partial birth abortions, and grant access by law enforcement to certain abortion reports if violations of the law are suspected.

The term "fetus" in current law would be changed to "unborn child" and a revised definition of "viability" and "partial birth abortion" would be included. A new definition of "human being" also would be included.

The bill would enhance the reporting requirements regarding the medical diagnosis in general for all cases and specifically, for those cases involving late-term abortions near or after viability and for those cases involving partial birth abortions. The criteria for who may obtain a partial birth abortion would be redefined by deleting the reference to mental function of a pregnant woman.

A civil cause of action would be created regarding late-term abortions, partial birth abortions, and parental consent. The Attorney General, district attorney, or county attorney would be authorized to prosecute criminal offenses. Disciplinary action by the Board of Healing Arts would continue to be an option regarding such violations.

Current law requiring parental notice would be deleted and a new requirement for parental consent would be added regarding minors. Procedures for court-waiver of consent would be established. The informed consent information currently required to be provided would be modified by requiring the additional statement that the abortion will terminate the life of a whole, separate, unique living human being.

Reporting of sexual abuse would be required; KDHE would be required to include additional information in its reporting; and law enforcement officials would be granted access to KDHE reports.

Background

SB 45, as passed by the Senate, would have removed the requirement that a trust certification must include the trust's taxpayer identification number.

The House Committee deleted the provisions in SB 45 and inserted the provisions from three other bills: HB 2035 as passed by the House, HB 2218 as passed by the House, and HB 2237 as amended by the House Committee on

Federal and State Affairs. In addition, the Committee added two other new provisions: the phrase that “the unborn child reacts to touch. By 20 weeks after fertilization” in a sentence about the age of eight weeks after fertilization to 20 weeks, and a requirement that an abortion must be performed by a licensed Kansas physician in the state.

The **first bill** added was HB 2337. Proponents for the bill included Representative Lance Kinzer and representatives of Kansans for Life and the Kansas Catholic Conference. Two other individuals also supported the bill. Opponents included Dr. Herbert Hodes and representatives of Trust Women and Planned Parenthood of Kansas and Mid-Missouri.

A revised fiscal note for HB 2337, as introduced, was submitted by the Director of the Budget. The Director disagreed with KDHE’s assessment of the fiscal effect of HB 2337, and estimated a fiscal effect of \$67,165 and 1.00 FTE position. The Director did not assume that 52 hospitals would need to be licensed, and assumed instead that three facilities would need to be licensed. There are currently three clinics in Kansas that perform abortions. Besides the three clinics, abortion procedures are performed in the extreme instance of saving a woman’s life at a small number of ambulatory surgical centers or hospitals. However, it is not likely that any of those facilities would perform five or more abortions per month. For that reason, the number of surveyor FTE positions needed should be reduced from 11.00 to zero. The Public Service Administrator I FTE position could handle survey responsibilities, and other duties required to implement the bill.

The **second bill** added was HB 2218. Proponents included Representative Lance Kinzer, three medical physicians, and a representative of Kansans for Life. Written testimony in support was provided by representatives of the Kansas Catholic Conference and Concerned Women for America of Kansas.

Opponents included representatives for Planned Parenthood of Kansas and Mid-America, Kansas National Organization for Women, and Trust Women. Written testimony in opposition to the bill was received from five other individuals.

The fiscal note on the original HB 2218 indicated that the Board of Healing Arts believed passage of the bill could increase the number of investigations and disciplinary cases assigned to the Board. According to the Board, any increased activity could be absorbed with the agency's budget. No response was available from the Department of Health and Environment when the Division of the Budget prepared the original fiscal note.

The **third bill** added was HB 2035. Conferees who appeared in support included the principal sponsor, Representative Lance Kinzer; the Executive Director of the Kansas Catholic Conference; a representative of Kansans for Life; and an individual.

Opponents included representatives of the Kansas National Organization of Women; Planned Parenthood of Kansas and Mid-Missouri; and Trust Women (written only).

The Board of Healing Arts indicated that passage of the bill could increase the number of complaints regarding practitioners not complying with the requirements of the bill, which, in turn, could increase the number of investigations and disciplinary cases that need to be performed. If there is an increase in the number of investigations and disciplinary cases, related operational expenses also would increase.

The Department of Health and Environment indicated that passage of the bill would increase expenditures by \$70,380 from all funding sources, including \$20,380 from the State General Fund and \$50,000 from agency special revenue funds.

The Office of the Attorney General estimated increased expenditures of \$220,000 from the State General Fund because the Attorney General would be authorized to prosecute any criminal offense related to the late-term abortion restrictions in the bill. This would include funding for the salaries of a lawyer, investigator, one part-time secretary, and expert witness fees.