

HOUSE BILL No. 2258

By Committee on Health and Human Services

2-8

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

3
4 WHEREAS, Family planning is basic healthcare for women, and
5 access to contraceptives helps women prevent unintended pregnancy and
6 control the timing of and spacing between planned births; and

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

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

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

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

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

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

28 Now, therefore:

29
30 *Be it enacted by the Legislature of the State of Kansas:*

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

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

35 (2) "Emergency contraception" means one or more drugs, used
36 separately or in combination, to prevent pregnancy within a medically

1 recommended amount of time after sexual intercourse.

2 (3) "Employee" means a person hired, by contract or any other form
3 of an agreement, by a pharmacy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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