

[As Amended by House Committee of the Whole]

As Amended by House Committee

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 106

By Committee on Public Health and Welfare

1-30

14 AN ACT relating to the public health and welfare of all Kansans; iden-
15 tifying major health care issues ~~and establishing~~; **including public**
16 **health**] objectives and priorities [**and abortion clinic issues**].
17

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

19 Section 1. (a) This act is intended to build on the efforts and activ-
20 ities of the many Kansans who were involved in the project Healthy Kan-
21 sans 2000 and to work within the parameters of the national initiative,
22 Healthy People 2010, to (1) establish a limited number of major health
23 care issues which are most pertinent to the citizens of Kansas and (2) to
24 establish objectives and priorities intended to ameliorate the adverse ef-
25 fects of such conditions and to develop action plans to accomplish such
26 goals.

27 ~~Sec. 2.~~ (b) The state is concerned with the health of all Kansans,
28 including issues relating to care and staffing (particularly in underserved
29 areas of the state), financing, insurance (including the problems of the
30 uninsured and underinsured), the role of the state and local government
31 in the development and delivery of health services, and the role of edu-
32 cation and technology in health care. The term health care includes men-
33 tal health care.

34 ~~Sec. 3.~~ (c) The ~~Kansas Department of Health and Environment~~ **de-**
35 **partment of health and environment** is ~~complemented~~ **complimented**
36 on its role in the planning and implementation of the project Healthy
37 ~~Kansas~~ **Kansan** 2000. There is a need to continue such efforts. The ~~Kan-~~
38 ~~sas Department of Health and Environment~~ **department of health and**
39 **environment** is tasked to follow through with its earlier activities in light
40 of the new national initiative, Healthy People 2010, to identify major
41 health issues pertinent to this decade and to formulate needed objectives
42 and priorities. Such efforts should be the collective actions of government
43 agencies, professional and nonprofit health organizations and the render-

1 ing health care community, integrated with local communities, under the
2 direction of the ~~Secretary of the Kansas Department of Health and En-~~
3 ~~vironment~~ **secretary of health and environment**.

4 ~~Sec. 4. (d)~~ These endeavors are to be undertaken subject to available
5 appropriations. The ~~Secretary of the Kansas Department of Health and~~
6 ~~Environment~~ **secretary of health and environment** is encouraged to
7 seek out alternative funding resources.

8 ~~Sec. 5. (e)~~ The ~~Secretary of the Kansas Department of Health and~~
9 ~~Environment~~ **secretary of health and environment** is to report to the
10 governor and legislature the actions taken pursuant to this act prior to
11 the commencement of the 2007 legislative session.

12 [Sec. 2. (a) As used in this section:

13 [(1) “Secretary” means the secretary of health and
14 environment.

15 [(2) “Abortion clinic” means a facility, other than an accredited
16 hospital, in which five or more first trimester surgical abortions in
17 any month or any second or third trimester abortions are
18 performed.

19 [(3) “Department” means the department of health and
20 environment.

21 [(4) “Physician” means a person licensed to practice medicine
22 and surgery in this state.

23 [(5) “Gestational age” shall have the meaning ascribed to such
24 term under K.S.A. 65-6701 and amendments thereto.

25 [(6) “Viable” shall have the meaning ascribed to such term un-
26 der K.S.A. 65-6701 and amendments thereto.

27 [(b) The secretary shall adopt rules and regulations for an
28 abortion clinic’s physical facilities. At a minimum these rules and
29 regulations shall prescribe standards for:

30 [(1) Adequate private space that is specifically designated for
31 interviewing, counseling and medical evaluations.

32 [(2) Dressing rooms for staff and patients.

33 [(3) Appropriate lavatory areas.

34 [(4) Areas for preprocedure hand washing.

35 [(5) Private procedure rooms.

36 [(6) Adequate lighting and ventilation for abortion procedures.

37 [(7) Surgical or gynecologic examination tables and other fixed
38 equipment.

39 [(8) Postprocedure recovery rooms that are supervised, staffed
40 and equipped to meet the patients’ needs.

41 [(9) Emergency exits to accommodate a stretcher or gurney.

42 [(10) Areas for cleaning and sterilizing instruments.

43 [(11) Adequate areas for the secure storage of medical records

1 and necessary equipment and supplies.

2 [(12) The display in the abortion clinic, in a place that is con-
3 spicuous to all patients, of the clinic's current license issued by the
4 department.

5 [(c) The secretary shall adopt rules and regulations to pre-
6 scribe abortion clinic supplies and equipment standards, including
7 supplies and equipment that are required to be immediately avail-
8 able for use or in an emergency. At a minimum these rules and
9 regulations shall:

10 [(1) Prescribe required equipment and supplies, including
11 medications, required for the conduct, in an appropriate fashion,
12 of any abortion procedure that the medical staff of the clinic an-
13 ticipates performing and for monitoring the progress of each pa-
14 tient throughout the procedure and recovery period.

15 [(2) Require that the number or amount of equipment and sup-
16 plies at the clinic is adequate at all times to assure sufficient quan-
17 tities of clean and sterilized durable equipment and supplies to
18 meet the needs of each patient.

19 [(3) Prescribe required equipment, supplies and medications
20 that shall be available and ready for immediate use in an emer-
21 gency and requirements for written protocols and procedures to
22 be followed by staff in an emergency, such as the loss of electrical
23 power.

24 [(4) Prescribe required equipment and supplies for required
25 laboratory tests and requirements for protocols to calibrate and
26 maintain laboratory equipment at the abortion clinic or operated
27 by clinic staff.

28 [(5) Require ultrasound equipment in those facilities that pro-
29 vide abortions after 12 weeks gestational age of the fetus.

30 [(6) Require that all equipment is safe for the patient and the
31 staff, meets applicable federal standards and is checked annually
32 to ensure safety and appropriate calibration.

33 [(d) The secretary shall adopt rules and regulations relating to
34 abortion clinic personnel. At a minimum these rules and regula-
35 tions shall require that:

36 [(1) The abortion clinic designate a medical director of the
37 abortion clinic who is licensed to practice medicine and surgery in
38 Kansas.

39 [(2) Physicians performing surgery in an abortion clinic are li-
40 censed to practice medicine and surgery in Kansas, demonstrate
41 competence in the procedure involved and are acceptable to the
42 medical director of the abortion clinic.

43 [(3) A physician with admitting privileges at an accredited hos-

1 pital in this state is available.

2 [(4) Another individual is present in the room during a pelvic
3 examination or during the abortion procedure and if the physician
4 is male then the other individual shall be female.

5 [(5) A registered nurse, nurse practitioner, licensed practical
6 nurse or physician assistant is present and remains at the clinic
7 when abortions are performed to provide postoperative monitor-
8 ing and care until each patient who had an abortion that day is
9 discharged.

10 [(6) Surgical assistants receive training in the specific respon-
11 sibilities of the services the surgical assistants provide.

12 [(7) Volunteers receive training in the specific responsibilities
13 of the services the volunteers provide, including counseling and
14 patient advocacy as provided in the rules and regulations adopted
15 by the director for different types of volunteers based on their
16 responsibilities.

17 [(e) The secretary shall adopt rules and regulations relating to
18 the medical screening and evaluation of each abortion clinic pa-
19 tient. At a minimum these rules and regulations shall require:

20 [(1) A medical history including the following:

21 [(A) Reported allergies to medications, antiseptic solutions or
22 latex.

23 [(B) Obstetric and gynecologic history.

24 [(C) Past surgeries.

25 [(2) A physical examination including a bimanual examination
26 estimating uterine size and palpation of the adnexa.

27 [(3) The appropriate laboratory tests including:

28 [(A) For an abortion in which an ultrasound examination is not
29 performed before the abortion procedure, urine or blood tests for
30 pregnancy performed before the abortion procedure.

31 [(B) A test for anemia as indicated.

32 [(C) Rh typing, unless reliable written documentation of blood
33 type is available.

34 [(D) Other tests as indicated from the physical examination.

35 [(4) An ultrasound evaluation for all patients who elect to have
36 an abortion after 12 weeks gestational age of the fetus. The rules
37 shall require that if a person who is not a physician performs an
38 ultrasound examination, that person shall have documented evi-
39 dence that the person completed a course in the operation of ul-
40 trasound equipment as prescribed in rules and regulations. The
41 physician or other health care professional shall review, at the re-
42 quest of the patient, the ultrasound evaluation results with the
43 patient before the abortion procedure is performed, including the

1 **probable gestational age of the fetus.**

2 **[(5) That the physician is responsible for estimating the ges-**
3 **tational age of the fetus based on the ultrasound examination and**
4 **obstetric standards in keeping with established standards of care**
5 **regarding the estimation of fetal age as defined in rules and reg-**
6 **ulations and shall verify the estimate in the patient's medical his-**
7 **tory. The physician shall keep original prints of each ultrasound**
8 **examination of a patient in the patient's medical history file.**

9 **[(f) The secretary shall adopt rules and regulations relating to**
10 **the abortion procedure. At a minimum these rules and regulations**
11 **shall require:**

12 **[(1) That medical personnel is available to all patients through-**
13 **out the abortion procedure.**

14 **[(2) Standards for the safe conduct of abortion procedures that**
15 **conform to obstetric standards in keeping with established stan-**
16 **dards of care regarding the estimation of fetal age as defined in**
17 **rules and regulations.**

18 **[(3) Appropriate use of local anesthesia, analgesia and sedation**
19 **if ordered by the physician.**

20 **[(4) The use of appropriate precautions, such as the establish-**
21 **ment of intravenous access at least for patients undergoing second**
22 **or third trimester abortions.**

23 **[(5) The use of appropriate monitoring of the vital signs and**
24 **other defined signs and markers of the patient's status throughout**
25 **the abortion procedure and during the recovery period until the**
26 **patient's condition is deemed to be stable in the recovery room.**

27 **[(g) The secretary shall adopt rules and regulations that pre-**
28 **scribe minimum recovery room standards. At a minimum these**
29 **rules and regulations shall require that:**

30 **[(1) Immediate postprocedure care consists of observation in**
31 **a supervised recovery room for as long as the patient's condition**
32 **warrants.**

33 **[(2) The clinic arrange hospitalization if any complication be-**
34 **yond the management capability of the staff occurs or is suspected.**

35 **[(3) A licensed health professional who is trained in the man-**
36 **agement of the recovery area and is capable of providing basic**
37 **cardiopulmonary resuscitation and related emergency procedures**
38 **remains on the premises of the abortion clinic until all patients are**
39 **discharged.**

40 **[(4) A physician or a nurse who is advanced cardiovascular life**
41 **support certified shall remain on the premises of the abortion**
42 **clinic until all patients are discharged and to facilitate the transfer**
43 **of emergency cases if hospitalization of the patient or viable fetus**

1 is necessary. A physician or nurse shall be readily accessible and
2 available until the last patient is discharged.

3 [(5) A physician or trained staff member discusses Rho(d) im-
4 mune globulin with each patient for whom it is indicated and as-
5 sures it is offered to the patient in the immediate postoperative
6 period or that it will be available to her within 72 hours after com-
7 pletion of the abortion procedure. If the patient refuses, a refusal
8 form approved by the department shall be signed by the patient
9 and a witness and included in the medical record.

10 [(6) Written instructions with regard to postabortion coitus,
11 signs of possible problems and general aftercare are given to each
12 patient. Each patient shall have specific instructions regarding ac-
13 cess to medical care for complications, including a telephone num-
14 ber to call for medical emergencies.

15 [(7) There is a specified minimum length of time that a patient
16 remains in the recovery room by type of abortion procedure and
17 gestational age of the fetus.

18 [(8) The physician assures that a licensed health professional
19 from the abortion clinic makes a good faith effort to contact the
20 patient by telephone, with the patient's consent, within 24 hours
21 after surgery to assess the patient's recovery.

22 [(9) Equipment and services are located in the recovery room
23 to provide appropriate emergency resuscitative and life support
24 procedures pending the transfer of the patient or viable fetus to
25 the hospital.

26 [(h) The secretary shall adopt rules and regulations that pre-
27 scribe standards for follow-up visits. At a minimum these rules and
28 regulations shall require that:

29 [(1) A postabortion medical visit is offered and, if requested,
30 scheduled within four weeks after the abortion, including a med-
31 ical examination and a review of the results of all laboratory tests.

32 [(2) A urine pregnancy test is obtained at the time of the follow-
33 up visit to rule out continuing pregnancy. If a continuing preg-
34 nancy is suspected, the patient shall be evaluated and a physician
35 who performs abortions shall be consulted.

36 [(i) The secretary shall adopt rules and regulations to prescribe
37 minimum abortion clinic incident reporting. At a minimum these
38 rules and regulations shall require that:

39 [(1) The abortion clinic records each incident resulting in a
40 patient's or viable fetus' serious injury occurring at an abortion
41 clinic and shall report them in writing to the department within
42 10 days after the incident. For the purposes of this paragraph,
43 "serious injury" means an injury that occurs at an abortion clinic

1 and that creates a serious risk of substantial impairment of a major
2 body organ.

3 [(2) If a patient's death occurs, other than a fetal death prop-
4 erly reported pursuant to law, the abortion clinic shall report such
5 death to the department of health and environment not later than
6 the next department business day.

7 [(3) Incident reports are filed with the department of health
8 and environment and appropriate professional regulatory boards.

9 [(j) (1) The secretary shall adopt rules and regulations requir-
10 ing each abortion clinic to establish and maintain an internal risk
11 management program which, at a minimum, shall consist of: (A) A
12 system for investigation and analysis of the frequency and causes
13 of reportable incidents within the clinic; (B) measures to minimize
14 the occurrence of reportable incidents and the resulting injuries
15 within the clinic; and (C) a reporting system based upon the duty
16 of all health care providers staffing the clinic and all agents and
17 employees of the clinic directly involved in the delivery of health
18 care services to report reportable incidents to the chief of the med-
19 ical staff, chief administrative officer or risk manager of the clinic.

20 [(2) As used in this subsection (j), "reportable incident" means
21 an act by a health care provider which: (A) Is or may be below the
22 applicable standard of care and has a reasonable probability of
23 causing injury to a patient; or (B) may be grounds for disciplinary
24 action by the appropriate licensing agency.

25 [(k) The secretary shall make or cause to be made such inspec-
26 tions and investigations of abortion clinics at such intervals as the
27 secretary determines necessary to protect the public health and
28 safety and to implement and enforce the provisions of this act and
29 rules and regulations adopted hereunder. For that purpose, au-
30 thorized agents of the secretary shall have access to an abortion
31 clinic during reasonable business hours.

32 [(l) Information received by the secretary through filed re-
33 ports, inspections or as otherwise authorized under this act shall
34 not be disclosed publicly in such manner as to identify individuals.
35 Under no circumstances shall patient medical or other identifying
36 information be made available to the public, and such information
37 shall always be treated by the department as confidential.

38 [(m) (1) No person shall operate an abortion clinic in this state
39 unless such clinic holds a currently valid license as an abortion
40 clinic under this act. Each such clinic shall be required annually
41 to obtain a license from the department. The secretary shall adopt
42 rules and regulations providing for the issuance of such licenses.
43 At a minimum such rules and regulations shall require compliance

1 with the standards adopted pursuant to this act. The secretary shall
2 establish by rules and regulations the fee for such licenses in the
3 amount required to cover costs of implementation and enforce-
4 ment of this act.

5 [(2) The department shall deny, suspend or revoke a license in
6 any case in which it finds that there has been a substantial failure
7 to comply with the requirements established under this act and
8 rules and regulations adopted pursuant thereto, a failure to report
9 any information required to be reported under subsections (i) and
10 (j) or a failure to maintain a risk management program as required
11 under subsection (j), after notice and an opportunity for hearing
12 to the applicant or licensee in accordance with the provisions of
13 the Kansas administrative procedure act.

14 [(n) The rules and regulations adopted by the secretary pur-
15 suant to this section do not limit the ability of a physician or other
16 health care professional to advise a patient on any health issue.
17 The secretary periodically shall review and update current prac-
18 tice and technology standards under this act and based on current
19 practice or technology adopt by rules and regulations alternative
20 practice or technology standards found by the secretary to be as
21 effective as those enumerated in this act.

22 [(o) The provisions of this act and the rules and regulations
23 adopted pursuant thereto shall be in addition to any other laws
24 and rules and regulations which are applicable to facilities defined
25 as abortion clinics under this section.

26 [(p) In addition to any other penalty provided by law, when-
27 ever in the judgment of the secretary of health and environment
28 any person has engaged, or is about to engage, in any acts or prac-
29 tices which constitute, or will constitute, a violation of this section,
30 or any rules and regulations adopted under the provisions of this
31 section, the secretary shall make application to any court of com-
32 petent jurisdiction for an order enjoining such acts or practices,
33 and upon a showing by the secretary that such person has engaged,
34 or is about to engage, in any such acts or practices, an injunction,
35 restraining order or such other order as may be appropriate shall
36 be granted by such court without bond.]

37 Sec. ~~6-2~~ [3]. This act shall take effect and be in force from and after
38 its publication in the statute book.