

HOUSE BILL No. 2751

By Representatives Long-Mast, Barbieri-Lightner, Brunk, Burgess, Campbell, Carter, Dahl, DeCastro, Decker, Faber, Freeborn, Gatewood, Goering, Goico, Grant, Henry, Howell, Huebert, Hutchins, Huy, E. Johnson, Kauffman, Landwehr, Larkin, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Novascone, O'Neal, Osborne, Ostmeyer, Patterson, Pauls, Phelps, Powell, Powers, Reardon, Ruff, Schwab, Shriver, Shultz, Siegfried, Svaty, Swenson, Thimesch, Vickrey, Wilk and J. Williams

2-6

16 AN ACT concerning abortion clinics; providing for regulation, licensing
17 and standards for the operation thereof; providing penalties for viola-
18 tions and authorizing injunctive actions.

19

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

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

22 (1) "Secretary" means the secretary of health and environment.

23 (2) "Abortion clinic" means a facility, other than an accredited hos-
24 pital, in which five or more first trimester surgical abortions in any month
25 or any second or third trimester abortions are performed.

26 (3) "Department" means the department of health and environment.

27 (4) "Physician" means a person licensed to practice medicine and
28 surgery in this state.

29 (5) "Gestational age" shall have the meaning ascribed to such term
30 under K.S.A. 65-6701 and amendments thereto.

31 (6) "Viable" shall have the meaning ascribed to such term under
32 K.S.A. 65-6701 and amendments thereto.

33 (b) The secretary shall adopt rules and regulations for an abortion
34 clinic's physical facilities. At a minimum these rules and regulations shall
35 prescribe standards for:

36 (1) Adequate private space that is specifically designated for inter-
37 viewing, counseling and medical evaluations.

38 (2) Dressing rooms for staff and patients.

39 (3) Appropriate lavatory areas.

40 (4) Areas for preprocedure hand washing.

41 (5) Private procedure rooms.

42 (6) Adequate lighting and ventilation for abortion procedures.

43 (7) Surgical or gynecologic examination tables and other fixed

1 equipment.

2 (8) Postprocedure recovery rooms that are supervised, staffed and
3 equipped to meet the patients' needs.

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

5 (10) Areas for cleaning and sterilizing instruments.

6 (11) Adequate areas for the secure storage of medical records and
7 necessary equipment and supplies.

8 (12) The display in the abortion clinic, in a place that is conspicuous
9 to all patients, of the clinic's current license issued by the department.

10 (c) The secretary shall adopt rules and regulations to prescribe abor-
11 tion clinic supplies and equipment standards, including supplies and
12 equipment that are required to be immediately available for use or in an
13 emergency. At a minimum these rules and regulations shall:

14 (1) Prescribe required equipment and supplies, including medica-
15 tions, required for the conduct, in an appropriate fashion, of any abortion
16 procedure that the medical staff of the clinic anticipates performing and
17 for monitoring the progress of each patient throughout the procedure
18 and recovery period.

19 (2) Require that the number or amount of equipment and supplies
20 at the clinic is adequate at all times to assure sufficient quantities of clean
21 and sterilized durable equipment and supplies to meet the needs of each
22 patient.

23 (3) Prescribe required equipment, supplies and medications that shall
24 be available and ready for immediate use in an emergency and require-
25 ments for written protocols and procedures to be followed by staff in an
26 emergency, such as the loss of electrical power.

27 (4) Prescribe required equipment and supplies for required labora-
28 tory tests and requirements for protocols to calibrate and maintain lab-
29 oratory equipment at the abortion clinic or operated by clinic staff.

30 (5) Require ultrasound equipment in those facilities that provide
31 abortions after 12 weeks gestational age of the fetus.

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

35 (d) The secretary shall adopt rules and regulations relating to abortion
36 clinic personnel. At a minimum these rules and regulations shall require
37 that:

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

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

- 1 (3) A physician with admitting privileges at an accredited hospital in
2 this state is available.
- 3 (4) Another individual is present in the room during a pelvic exami-
4 nation or during the abortion procedure and if the physician is male then
5 the other individual shall be female.
- 6 (5) A registered nurse, nurse practitioner, licensed practical nurse or
7 physician assistant is present and remains at the clinic when abortions are
8 performed to provide postoperative monitoring and care until each pa-
9 tient who had an abortion that day is discharged.
- 10 (6) Surgical assistants receive training in the specific responsibilities
11 of the services the surgical assistants provide.
- 12 (7) Volunteers receive training in the specific responsibilities of the
13 services the volunteers provide, including counseling and patient advo-
14 cacy as provided in the rules and regulations adopted by the director for
15 different types of volunteers based on their responsibilities.
- 16 (e) The secretary shall adopt rules and regulations relating to the
17 medical screening and evaluation of each abortion clinic patient. At a
18 minimum these rules and regulations shall require:
- 19 (1) A medical history including the following:
- 20 (A) Reported allergies to medications, antiseptic solutions or latex.
- 21 (B) Obstetric and gynecologic history.
- 22 (C) Past surgeries.
- 23 (2) A physical examination including a bimanual examination esti-
24 mating uterine size and palpation of the adnexa.
- 25 (3) The appropriate laboratory tests including:
- 26 (A) For an abortion in which an ultrasound examination is not per-
27 formed before the abortion procedure, urine or blood tests for pregnancy
28 performed before the abortion procedure.
- 29 (B) A test for anemia as indicated.
- 30 (C) Rh typing, unless reliable written documentation of blood type is
31 available.
- 32 (D) Other tests as indicated from the physical examination.
- 33 (4) An ultrasound evaluation for all patients who elect to have an
34 abortion after 12 weeks gestational age of the fetus. The rules shall require
35 that if a person who is not a physician performs an ultrasound examina-
36 tion, that person shall have documented evidence that the person com-
37 pleted a course in the operation of ultrasound equipment as prescribed
38 in rules and regulations. The physician or other health care professional
39 shall review, at the request of the patient, the ultrasound evaluation re-
40 sults with the patient before the abortion procedure is performed, in-
41 cluding the probable gestational age of the fetus.
- 42 (5) That the physician is responsible for estimating the gestational
43 age of the fetus based on the ultrasound examination and obstetric stan-

1 dards in keeping with established standards of care regarding the esti-
2 mation of fetal age as defined in rules and regulations and shall verify the
3 estimate in the patient's medical history. The physician shall keep original
4 prints of each ultrasound examination of a patient in the patient's medical
5 history file.

6 (f) The secretary shall adopt rules and regulations relating to the
7 abortion procedure. At a minimum these rules and regulations shall
8 require:

9 (1) That medical personnel is available to all patients throughout the
10 abortion procedure.

11 (2) Standards for the safe conduct of abortion procedures that con-
12 form to obstetric standards in keeping with established standards of care
13 regarding the estimation of fetal age as defined in rules and regulations.

14 (3) Appropriate use of local anesthesia, analgesia and sedation if or-
15 dered by the physician.

16 (4) The use of appropriate precautions, such as the establishment of
17 intravenous access at least for patients undergoing second or third tri-
18 mester abortions.

19 (5) The use of appropriate monitoring of the vital signs and other
20 defined signs and markers of the patient's status throughout the abortion
21 procedure and during the recovery period until the patient's condition is
22 deemed to be stable in the recovery room.

23 (g) The secretary shall adopt rules and regulations that prescribe min-
24 imum recovery room standards. At a minimum these rules and regulations
25 shall require that:

26 (1) Immediate postprocedure care consists of observation in a super-
27 vised recovery room for as long as the patient's condition warrants.

28 (2) The clinic arrange hospitalization if any complication beyond the
29 management capability of the staff occurs or is suspected.

30 (3) A licensed health professional who is trained in the management
31 of the recovery area and is capable of providing basic cardiopulmonary
32 resuscitation and related emergency procedures remains on the premises
33 of the abortion clinic until all patients are discharged.

34 (4) A physician or a nurse who is advanced cardiovascular life support
35 certified shall remain on the premises of the abortion clinic until all pa-
36 tients are discharged and to facilitate the transfer of emergency cases if
37 hospitalization of the patient or viable fetus is necessary. A physician or
38 nurse shall be readily accessible and available until the last patient is
39 discharged.

40 (5) A physician or trained staff member discusses Rho(d) immune
41 globulin with each patient for whom it is indicated and assures it is offered
42 to the patient in the immediate postoperative period or that it will be
43 available to her within 72 hours after completion of the abortion proce-

1 dure. If the patient refuses, a refusal form approved by the department
2 shall be signed by the patient and a witness and included in the medical
3 record.

4 (6) Written instructions with regard to postabortion coitus, signs of
5 possible problems and general aftercare are given to each patient. Each
6 patient shall have specific instructions regarding access to medical care
7 for complications, including a telephone number to call for medical
8 emergencies.

9 (7) There is a specified minimum length of time that a patient re-
10 mains in the recovery room by type of abortion procedure and gestational
11 age of the fetus.

12 (8) The physician assures that a licensed health professional from the
13 abortion clinic makes a good faith effort to contact the patient by tele-
14 phone, with the patient's consent, within 24 hours after surgery to assess
15 the patient's recovery.

16 (9) Equipment and services are located in the recovery room to pro-
17 vide appropriate emergency resuscitative and life support procedures
18 pending the transfer of the patient or viable fetus to the hospital.

19 (h) The secretary shall adopt rules and regulations that prescribe
20 standards for follow-up visits. At a minimum these rules and regulations
21 shall require that:

22 (1) A postabortion medical visit is offered and, if requested, sched-
23 uled within four weeks after the abortion, including a medical examina-
24 tion and a review of the results of all laboratory tests.

25 (2) A urine pregnancy test is obtained at the time of the follow-up
26 visit to rule out continuing pregnancy. If a continuing pregnancy is sus-
27 pected, the patient shall be evaluated and a physician who performs abor-
28 tions shall be consulted.

29 (i) The secretary shall adopt rules and regulations to prescribe min-
30 imum abortion clinic incident reporting. At a minimum these rules and
31 regulations shall require that:

32 (1) The abortion clinic records each incident resulting in a patient's
33 or viable fetus' serious injury occurring at an abortion clinic and shall
34 report them in writing to the department within 10 days after the incident.
35 For the purposes of this paragraph, "serious injury" means an injury that
36 occurs at an abortion clinic and that creates a serious risk of substantial
37 impairment of a major body organ.

38 (2) If a patient's death occurs, other than a fetal death properly re-
39 ported pursuant to law, the abortion clinic shall report such death to the
40 department of health and environment not later than the next department
41 business day.

42 (3) Incident reports are filed with the department of health and en-
43 vironment and appropriate professional regulatory boards.

1 (j) (1) The secretary shall adopt rules and regulations requiring each
2 abortion clinic to establish and maintain an internal risk management
3 program which, at a minimum, shall consist of: (A) A system for investi-
4 gation and analysis of the frequency and causes of reportable incidents
5 within the clinic; (B) measures to minimize the occurrence of reportable
6 incidents and the resulting injuries within the clinic; and (C) a reporting
7 system based upon the duty of all health care providers staffing the clinic
8 and all agents and employees of the clinic directly involved in the delivery
9 of health care services to report reportable incidents to the chief of the
10 medical staff, chief administrative officer or risk manager of the clinic.

11 (2) As used in this subsection (j), “reportable incident” means an act
12 by a health care provider which: (A) Is or may be below the applicable
13 standard of care and has a reasonable probability of causing injury to a
14 patient; or (B) may be grounds for disciplinary action by the appropriate
15 licensing agency.

16 (k) The secretary shall make or cause to be made such inspections
17 and investigations of abortion clinics at such intervals as the secretary
18 determines necessary to protect the public health and safety and to im-
19 plement and enforce the provisions of this act and rules and regulations
20 adopted hereunder. For that purpose, authorized agents of the secretary
21 shall have access to an abortion clinic during reasonable business hours.

22 (l) Information received by the secretary through filed reports, in-
23 spections or as otherwise authorized under this act shall not be disclosed
24 publicly in such manner as to identify individuals. Under no circum-
25 stances shall patient medical or other identifying information be made
26 available to the public, and such information shall always be treated by
27 the department as confidential.

28 (m) (1) No person shall operate an abortion clinic in this state unless
29 such clinic holds a currently valid license as an abortion clinic under this
30 act. Each such clinic shall be required annually to obtain a license from
31 the department. The secretary shall adopt rules and regulations providing
32 for the issuance of such licenses. At a minimum such rules and regulations
33 shall require compliance with the standards adopted pursuant to this act.
34 The secretary shall establish by rules and regulations the fee for such
35 licenses in the amount required to cover costs of implementation and
36 enforcement of this act.

37 (2) The department shall deny, suspend or revoke a license in any
38 case in which it finds that there has been a substantial failure to comply
39 with the requirements established under this act and rules and regulations
40 adopted pursuant thereto, a failure to report any information required to
41 be reported under subsections (i) and (j) or a failure to maintain a risk
42 management program as required under subsection (j), after notice and
43 an opportunity for hearing to the applicant or licensee in accordance with

1 the provisions of the Kansas administrative procedure act.

2 (n) The rules and regulations adopted by the secretary pursuant to
3 this section do not limit the ability of a physician or other health care
4 professional to advise a patient on any health issue. The secretary peri-
5 odically shall review and update current practice and technology stan-
6 dards under this act and based on current practice or technology adopt
7 by rules and regulations alternative practice or technology standards
8 found by the secretary to be as effective as those enumerated in this act.

9 (o) The provisions of this act and the rules and regulations adopted
10 pursuant thereto shall be in addition to any other laws and rules and
11 regulations which are applicable to facilities defined as abortion clinics
12 under this section.

13 (p) In addition to any other penalty provided by law, whenever in the
14 judgment of the secretary of health and environment any person has en-
15 gaged, or is about to engage, in any acts or practices which constitute, or
16 will constitute, a violation of this section, or any rules and regulations
17 adopted under the provisions of this section, the secretary shall make
18 application to any court of competent jurisdiction for an order enjoining
19 such acts or practices, and upon a showing by the secretary that such
20 person has engaged, or is about to engage, in any such acts or practices,
21 an injunction, restraining order or such other order as may be appropriate
22 shall be granted by such court without bond.

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