

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 141**

As Amended by Senate Committee on Public  
Health and Welfare

**Brief\***

SB 141 would prohibit persons from performing or inducing abortions or attempting to perform or induce abortions in instances where the person has knowledge the pregnant woman is seeking an abortion solely on account of the sex of the unborn child.

The bill also would allow the following persons, unless the pregnancy resulted from the plaintiff's criminal conduct, to obtain appropriate relief in a civil action:

- A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion (in violation of the law that would be enacted by the bill);
- The father, if married to the woman at the time of the abortion; and
- The parents or custodial guardian of the woman, if she has not attained the age of 18 at the time of the abortion.

Relief as applied in the bill would include:

- Money damages for all injuries, psychological and physical, occasioned by the violation;
- Statutory damages equal to three times the cost of the abortion;

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\*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>

- Injunctive relief; and
- Reasonable attorney fees.

The bill further would provide that a woman upon whom an abortion is performed cannot be prosecuted under the provisions created by the bill for a conspiracy to violate these provisions pursuant to KSA 2012 Supp. 21-5302. The bill also states nothing in these provisions is to be construed to create a right to an abortion. Notwithstanding any provision of the section (of law) created by the bill, a person would not be allowed to perform an abortion that is prohibited by law.

The bill would provide that upon a first conviction for violation of the section of law created by the bill, a person would be guilty of a class A person misdemeanor. Upon a second or subsequent provision, a person would be guilty of a severity level 10, person felony.

The bill would include a severability clause, should any provision or clause of this act be held invalid.

“Abortion,” as used in the bill, means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes *in utero*, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

## **Background**

The bill was introduced by Senators Pilcher-Cook, Abrams, Apple, Arpke, Donovan, Fitzgerald, Holmes, Kerschen, Knox, LaTurner, Love, Lynn, Masterson, O'Donnell, Olson, Ostmeyer, Petersen, Powell, Pyle, Smith,

and Tyson. Proponents of the bill present at the Senate Committee hearing included representatives of the Kansas Catholic Conference, Kansans for Life, and the Population Research Institute. Additional proponent testimony was submitted by a family practice physician and a representative of Concerned Women for America. Proponents stated concerns about increasing technologies used to determine gender *in utero* and pointed to studies and reports on the prevalence of sex-selective abortions.

There were no opponents present at the Senate Committee hearing.

The Senate Committee on Public Health and Welfare recommended a technical amendment.

The fiscal note prepared by the Division of the Budget on the original bill states the Office of Judicial Administration indicates the bill has the potential for increasing the number of cases related to abortions based on gender filed in district and appellate courts. This would increase the time spent by district court and appellate court judicial and non-judicial personnel in processing, researching, and hearing cases. Likewise, the additional cases also could result in the collection of added revenue from docket fees and penalties. However, the fiscal note indicates, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

A prison bed statement from the Kansas Sentencing Commission was not available at the time the fiscal note on the original bill was prepared. A revised note will be sent if specific information is provided. Because the bill adds a new felony, there may be some effect on prison capacity. As of January 14, 2013, the available bed capacity was 9,564. Based upon the Sentencing Commission projections, it is

estimated, by the end of FY 2014 and FY 2015, the number of inmates will exceed available capacity by 325 beds and 590 beds, respectively. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.