

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Tony Powell at 1:30 p.m. on March 27, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Mayans, excused.

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:

HB 3034 Proponents: Barbara Salvidar, Kansans for Life
Cleta Renyer, Right to Life of Kansas
Judy Smith, Concerned Women of America
Beatrice Swoopes, Kansas Catholic Conference
Joyce Moore, Kansas Christian Coalition
Dr. Norm Thoms, Topeka
Opponents: Eleanor Adams Harris

HB 2078 Proponents: Dr. Pat Herrick
Dr. Eugene Pearce
Opponents: Dr. Herbert Hodes
Erika Fox, Planned Parenthood
Barbara Duke, AAUW and Kansas Choice Alliance

HCR 5075 Proponents: Representative Lightner

Others attending: See attached list.

Without objection bill will be introduced as requested by Chairman Powell concerning bingo regulation and taxation. [HB 3048 introduced March 28.]

Without objection bill will be introduced as requested by Representative Edmonds to provide automatic cost of living increase for KPERS.

Hearing was opened on

HB 3034, Use of fetal tissue, restrictions

Representative Phill Kline presented testimony in support of the bill (Attachment #1). He referred to the ABC 20/20 News Special concerning violation of federal laws in Kansas relating to the purchase of fetal tissue for medical research. Representative Kline distributed copies of the Opening Lines Price List (Attachment #2) and Systemix, Inc. order (Attachment #3). He stated the bill under consideration addresses these issues by providing tracking procedures to allow auditing to ensure compliance with federal law and by defining costs as a specific amount per fetus to close a loophole in the federal law which allows the present practice of including such items as salaries and leasehold arrangements to be included in determining "reasonable cost". Broad definition makes the law impossible to enforce.

He asked that the Committee consider amending the bill to provide that employees of a company distributing fetal body parts have an opportunity to review in detail the non-disclosure agreement they are required to sign which should include a clear recitation of federal law that providing information as evidence of violation of federal law should be considered non-violation of a non-disclosure agreement.

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Representative Kline responded to questions that \$5.00 was an arbitrary amount and could be changed to another figure if that did not in fact represent reasonable charges.

Representative Tom Klein suggested "implantation" be stricken from the listing of transportation and processing since it is a medical procedure and doesn't relate to the issue being addressed. Representative Kline said definitions were taken directly from federal law.

Testimony of Dr. Herbert Hodes in opposition to **HB 2078** was taken out of order to accommodate time constraints of Dr. Hodes (Attachment #4). After presenting his testimony relating to **HB 2078** (for discussion see page 3), Dr. Hodes was questioned by the committee concerning his opinions about certain provisions in **HB 3034**. Dr. Hodes is a physician practicing in Overland Park.

In response to questions, Dr. Hodes said he did not believe \$5.00 would cover the costs of transporting fetal tissue which would include dry ice and Federal Express picking it up. He does not believe the physician should be penalized because he is involved in research. They are not doing it because it is \$5, \$50 or \$1,000. He thinks the reasonable and customary shipping charge of \$25 would be fair.

Hearing continued on

HB 3034, Use of fetal tissue, restrictions

Dr. Norman Thoms, general and thoracic surgeon, Topeka, testified in support of **HB 3034** and read from an article by Dr. Curt Harris, Oklahoma City, entitled "Do We Need Fetal Tissue Research?" from Focus on the Family's September/ October 1990 edition of Physician magazine (Attachment #5).

Beatrice Swoopes testified in support of **HB 3034** on behalf of the Kansas Catholic Conference (Attachment #6). She stated that while the Kansas Catholic Conference would endorse a "ban" on aborted fetal tissue research, they see **HB 3034** as a step in the right direction.

Cleta Renyer appeared on behalf of Right to Life of Kansas, Inc. and presented written testimony in support of **HB 3034** (Attachment #7) and written testimony relating to **HB 3034**, **HB 2078** and **HCR 5075** (Attachment #8).

Judy Smith testified in support of the bill on behalf of Concerned Women of America in Kansas (Attachment #9). She referred to the loophole in the federal law allowing for "reasonable payments".

Joyce Moore testified in support of the bill on behalf of the Kansas Christian Coalition (Attachment #10). Her testimony included quotations from Linda Bevington, research director of the Center for Bioethics and Human Dignity.

Barbara Salvidar testified in support of **HB 3034** on behalf of Kansans for Life (Attachment #11). She listed questions she hoped further investigations such as the ABC 20/20 news show would help to answer.

Eleanor Adams Harris, Leawood, testified in opposition to the bill (Attachment #12). She was speaking on behalf of herself and Marion Davis, Overland Park, both of whom have been diagnosed with glaucoma. She included a list of Institutions on record in support of research with fetal tissue.

Hearing on **HB 3034** was closed.

Chairman Powell opened the hearing on

HB 2078, Ambulatory surgical center to include facilities where procedures for the termination of human pregnancies are performed.

Testimony in support of **HB 2078** was given by Dr. W. J. Pearce, Chief of Gynecological Services at Truman Medical Center-West and Associate Professor, Department of Obstetrics and Gynecology of the University of Missouri- Kansas City School of Medicine (Attachment #13). Dr. Pearce provided copies of two articles: "Elective Abortion Complications" by Dr. Morris Wortman and Rachel Plotinsky, from The Female Patient, vol. 23, December, 1998; and "Pregnancy-Related Mortality in the United States, 1987-1990," by Dr. Cynthia J. Berg; Dr. Hani K. Atrash, Lisa M. Koonin, and Myra Tucker, from the

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August 1996 issue of Obstetrics & Gynecology. Dr. Pearce testified that in consideration of his experience with the complications of induced abortions done elsewhere and treated at Truman Medical Center and information contained in the two magazines, he would recommend that abortion facilities in the State of Kansas be required to be certified and meet the standards of ambulatory surgical centers.

In response to questions Dr. Pearce explained the statistics he had presented. Data is available on how many live births occur but there is none for how many persons are pregnant. The total number of deaths for 100,000 live births is about seven or eight between 1981 and 1996. There are 3.5 million live births in the U.S. each year.

In response to question from Representative Powell as to medical reason to treat an abortion clinic like an ambulatory surgical center, Dr. Pearce said there was always a trade-off between price and prudence. Raising the price of abortion and trying to be more prudent about clinics and the likelihood of disease and death.

Dr. Pearce said in response to question from Representative Benlon that he saw no reason to have a nurse on duty 24 hours a day because they close up after patients go home and always give them information about whom to call and under what circumstances.

Dr. Patrick Herrick, Olathe, presented testimony in support of **HB 2078** (Attachment #14). He presented information and statistics concerning abortions in Kansas and reasons he believes the Kansas Administrative Regulations regarding ambulatory surgical centers are germane to abortion clinics.

Dr. Herbert Hodes, a physician practicing in Overland Park, testified in opposition to **HB 2078** (Attachment #4). He said the endpoint of regulating ambulatory clinics would be to prohibit death. He provided statistics indicating that last year in the United States there were 327 deaths of women of childbearing age relating to pregnancy and three deaths in the United States following abortion and in Kansas there were none. The final three pages of his testimony are policy statements by the American College of Obstetricians and Gynecologists (ACOG). He believes that since this is a medical problem not a legislative problem, not a legal problem, these statements by ACOG are important. ACOG believes abortion is a medical matter between a woman and her physician and is against harassment of abortion providers and against unnecessary regulation of abortion providers. "The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous."

Referring to Representative Kline's comments about lack of supervision, he said licensure is under supervision by the state. Dr. Hodes said he is certified by the federal government, is also under his own ethical considerations as a physician, and is supervised by his malpractice insurance carrier and by organizations and societies of which he is a member. He does not believe the law should single out abortion providers because it will increase the cost of providing services, cause delay and is discriminatory against patients and providers.

In response to questions Dr. Hodes stated that basically the restrictions **HB 2078** imposes are not based on sound medical care. Thousands of procedures are done in physicians offices every day in Kansas that do not fall under this restriction. There have been deaths from liposuction and from oral surgery, but there have been no deaths in several years in Kansas in abortion clinics.

In response to question from Representative Powell as to the specific parts of the regulation he objects to, Dr. Hodes said those involving registered nurses and on site restrictions regarding laboratory facilities. He objects to restrictions other than those imposed by the city, state, and federal governments and his own policing organizations.

In discussing the requirement that a registered nurse be on duty, Dr. Hodes noted none is required when having a wisdom tooth pulled in a dental office.

It was noted that Section 1 (f) (page 1, line 43) requires registered professional nurse services "whenever a

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patient is in the facility” and would not be required when no patient is present.

Erika Fox testified in opposition to **HB 2078** on behalf of Planned Parenthood of Kansas and Mid-Missouri (Attachment #15). She testified when PPKMM acquired their affiliated Comprehensive Health facility in Overland Park in 1997 it had for many years been licensed as an ambulatory surgical center. Despite the fact that they chose to maintain that licensed status for several reasons, they adamantly oppose efforts to impose that requirement on other providers of abortion services which would unnecessarily burden providers and their patients such that the constitutional right to choose to have an abortion will be denied as the cost and difficulty of obtaining an abortion increases. Her testimony included reference to the fact that a similar law in South Carolina had been found by the federal district court to violate both the right to privacy in the Due Process cause of the U.S. Constitution and the Equal Protection clause (Greenville Women’s Clinic v. Bryant, 66 F.Supp.2d 691 (D.S.C. 1999)).

Barbara Duke presented testimony in opposition to the bill on behalf of The Kansas Choice Alliance (Attachment #16).

Representative Vining said it was her understanding that Dr. George Tiller’s Clinic operates under ambulatory surgical regulations and asked Erika Fox how that would limit performing abortions. Ms. Fox said from their experience as an ambulatory surgical center they know how burdensome the regulations are and it is their estimate that if they were imposed on all clinics, many of them would go out of business. It would be not just a matter of not getting abortions but of trying to get the money together for more expensive abortion.

Hearing on **HB 2078** closed.

Hearing opened on
HCR 5075, Task force on fetal tissue research and transplantation.

Representative Lightner presented testimony as co-sponsor of **HCR 5075** (Attachment #17). She said now is the time to question and review the legal practice of the harvesting and selling of fetal tissue in this state and that having legislators actively look into fetal tissue research and organ transplants together with members of the medical community is an important first step. She distributed copies of articles from the Kansas City Star concerning Congressional hearings and an FBI inquiry into the possible involvement of an Overland Park abortion clinic with the selling of fetal tissue and organs.

Representative Landwehr testified as co-sponsor of the resolution (Attachment #18). She said the proposed task force would study the laws, rules and regulations that regulate fetal tissue research and organ donation in Kansas and the laws in other states. It would review specifically the medical, legal and ethical opinions involved and seek input from individuals with expertise in these areas.

In response to questions, Representative Landwehr said the proposal was modeled on a similar task force in Missouri which appeared to be workable.

Hearing was closed on **HCR 5075**.

Chairman Powell announced consideration of **HB 3034, Use of fetal tissue, restrictions**.

Chairman Powell moved that the provisions of **HB 3034** with two amendments be substituted for **SB 430**. The two changes would be the addition in Sec. 1 (page 1, line 13) of “4” to sections referenced (“As used in sections 2, 3 and 4”); and in Section 1(b)(1) striking \$5.00 and inserting \$25.00 in line 22 and striking “implantation” in line 23. Representative Hutchins seconded the motion.

Representative Cox said the Board of Regents requested **SB 430** and he thought it was inappropriate to use it for substitution. Chairman responded that **SB 430** would not be worked and this would have no different effect on it.

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Representative Benlon referred to the statement by Representative Lightner and the references to the FBI investigation.

Representative Powell said he appreciated the comments. The problem has been identified as the question of what is "reasonable cost" in the federal statute. The bill provides a tighter definition and reporting requirements. He believes while an FBI investigation is warranted we also have an obligation as part of our police powers as a state.

Representative Vickrey questioned whether the penalty was sufficient. Representative Powell said a Class A Misdemeanor is grounds for losing license to practice medicine.

Representative Powell moved the amendments to **HB 3034** to be **substituted for SB 430**. Motion carried.

Representative Hutchins noted Representative Kline had testified that it would be desirable to amend the bill to make clear that employees providing evidence about violation of federal laws without being in violation of non-disclosure agreement.

Representative Powell said that could be offered as a floor amendment and he believes an employee is already protected under our current laws. He would like to study that issue and it could be offered as a floor amendment.

Representative Freeborn moved that **Substitute for SB 430** be reported favorably for passage. Representative Hutchins seconded. Motion carried. Representatives Benlon, Burroughs, Cox, Gilbert, Henderson and Peterson are recorded as voting NO.

The Committee considered **HB 2078 Ambulatory surgical center to include facilities where procedures for the termination of human pregnancies are performed**

Representative Powell moved to insert **HB 2078** into **SB 115** as substitute to be designated **House Substitute for SB 115**. Representative Vining seconded. Motion carried.

Representative Vining moved that **Substitute SB 115** be recommended favorably for passage. Representative Hutchins seconded. Motion carried.

The meeting adjourned. Next scheduled meeting is March 28.