

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Steven Brunk at 1:30 p.m. on February 16, 2011, in Room 346-S of the Capitol.

All members were present except:

- Representative Fund – excused
- Representative Henderson – excused
- Representative Kiegerl – excused
- Representative O'Hara – excused
- Representative Peterson – excused
- Representative Seiwert – excused

Committee staff present:

- Mike Heim, Office of the Revisor of Statutes
- Doug Taylor, Office of the Revisor of Statutes
- Julian Efird, Kansas Legislative Research Department
- Dennis Hodgins, Kansas Legislative Research Department
- Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

- Representative Lance Kinzer
- Julie Ann Griffin, M.D.
- Michael P. Cotter, M.D., FAAP
- Anita Showalter, D.O.
- Kathy Ostrowski, Kansans for Life

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2218 Abortion regulation based on capacity of unborn child to feel pain**

Mike Heim gave the committee a synopsis of the changes to law in the bill.

Representative Knox asked who the penalties were against. Mike said they would be against the physicians who violate the act. They are the same penalties as under the late term abortion law.

Representative Kinzer presented testimony as a proponent of **HB 2218 (Attachment 1)**. He said that there are strong legal arguments for these changes. We know a lot more about fetal pain now than we did when Roe was decided. What we know now gives us every reason to believe that unborn children do experience pain at a particular point of their fetal development and that does create a legitimate state interest.

There may be some conflicting medical testimony on exactly the point in which unborn babies are able to feel pain. One of the things the court has ruled on is that the lack of medical certainty is not a basis for the court to overturn a restriction on abortion. The interest asserted in this legislation is not just one of diminishing or eliminating an unborn child's pain, the interest of the state is the unborn child's capacity to feel pain. It is akin to a born child to which specific rights attach.

Representative Knox voiced a concern about saying that because a child has reached a certain level of development he has value. Lance said that he believes there is no moral difference in the value of an unborn child from the moment of conception thru birth and natural death. We are trying to work within the practical realities of the judicial context.

Representative Holmes asked it were determined that there were irreversible bodily function damage that would justify an abortion, does this bill require that the baby be anesthetized before the abortion is performed? Lance said that it was not in the current text but the committee could insert it with an

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 16, 2011, in Room 346-S of the Capitol.

amendment.

Representative Huebert asked if there was any information as to how this bill has impacted Nebraska? Lance was not aware the impact on Nebraska.

Representative Loganbill said that she had been doing research and it shows a lack of agreement as to when the fetus can feel pain. She said that we are early on this debate because the information is not one way or another. Some information says that it is 29 or 30 weeks before there is any kind of pain receptor that can feel pain and you are saying that it is 20 weeks. Lance said that the court cases are clear that the legislature is allowed to look at available medical evidence to make a policy judgment and implement it.

Representative Goico said that we have neonatal doctors who specialize in the care of very premature babies and you can see that they feel pain. Lance said that scientific knowledge and moral conviction are converging on the issue of the rights of the unborn.

Representative Rubin asked who the penalties would apply to. Lance said that the mother was protected from persecution. The penalties would apply to a person who performed an abortion on a baby past the point and time established in the act. The doctor would be the one subject to prosecution.

Representative Gatewood asked what are the further restrictions prescribed by this bill? Lance said the standard is moving from viability to a developmental stage of the child itself.

Julie Ann Griffin, M.D. gave testimony as a proponent of **HB 2228** ([Attachment 2](#)). She defined pain as an unpleasant sensory and emotional experience associated with actual or potential tissue damage. The fetus develops nociceptors at 7 weeks around the mouth and face and cover the entire body by 20 weeks. However they do not have the ability to down regulate or inhibit the pain until late in gestation (36040 wga) so that the pain is much more intense and uncontrolled pain. Evidence of the fetus' ability to experience pain is seen by the production of stress hormone production. Moreover, fetal anesthesiology and fetal surgery are rapidly growing fields of medicine appearing in childrens hospitals across the nation.

Representative Patton said that you indicated that the fetus could feel pain more intensely. She said that the fetus could not make their own opiate until 36 weeks of development.

Representative Goico asked what the earliest age and weight was able to survive outside the womb. The American Academy of Pediatrics states that it is routine to resuscitate 24 week fetuses of 500 grams weight or higher. 500 grams is roughly 1 ½ pounds.

Michael Cotter, M.D. presented testimony as a proponent of **HB 2228** ([Attachment 3](#)). His testimony is based on his experience working in the Newborn Intensive Care Units of several hospitals. He testified that children past 22 weeks gestational age experience clear physical signs of discomfort and are very sensitive to painful stimulus. Pain is typically identified by observing certain physical signs which includes: crying, thrashing, painful appearing facial expressions, changes in vital signs and physical withdrawal from pain. Premature infants on ventilators are often kept on a continuous drip of an opioid pain medication and at times a sedative. Many Newborn Intensive Care Units utilize some type of scoring system to quantify the pain experience of preterm newborns.

Anita Showalter, D.O., presented testimony as a proponent of **HB 2228** ([Attachment 4](#)). She spoke of the determination of fetal gestational age. The methods used to determine gestational age include learning the patient's last menstrual period and ultrasound. She also described the medical complications of pregnancy requiring termination at or after 20 weeks. Medical conditions that could result in recommendation for abortion after 20 weeks and before 24 weeks could be things like cardiac conditions, or diagnoses of cancer requiring treatment.

Representative Patton asked at how many weeks pain receptors were developed. Dr. Showalter said that by 22 weeks from the last menstrual period.

Kathy Ostrowski presented testimony as a proponent of **HB 2228** ([Attachment 5](#)). She suggested two slight technical corrections. One is to add "or induced" after "performed" in line 24, pg 5/ section 2 (g) (1) to match the rest of the bill. The other was to replace "preserve the life of the pregnant woman" with

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 16, 2011, in Room 346-S of the Capitol.

“avert the death of the pregnant woman” everywhere it occurs. The charts she mentioned in her testimony are available from Kansans for Life.

The hearing was left open until tomorrow to hear the opponents of the bill.

Michael Schuttloffel, Catholic Conference provided written only testimony as a proponent of **HB 2228** (Attachment 6).

Judy Smith, Concerned Women for America presented written only testimony as a proponent of **HB 2228** (Attachment 7).

The next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 3:08 p.m.