

HOUSE BILL No. 2661

By Representative Parker

2-12

1 AN ACT concerning health and healthcare; relating to pharmacies;
2 requiring pharmacies to make contraceptives available to customers.

3
4 WHEREAS, Family planning is basic healthcare for women, and
5 access to contraceptives helps women prevent unintended pregnancy and
6 control the timing of and spacing between planned births; and

7 WHEREAS, Although the United States centers for disease control and
8 prevention included family planning in its published list of the 10 great
9 public health achievements in the 20th century, the United States still has
10 one of the highest rates of unintended pregnancies among industrialized
11 nations; and

12 WHEREAS, Each year, nearly half of all pregnancies in the United
13 States are unintentional; and

14 WHEREAS, Women rely on contraceptives for a range of medical
15 purposes in addition to birth control, such as endometriosis and regulation
16 of cycles; and

17 WHEREAS, After reviewing data and evidence, the United States food
18 and drug administration determined that emergency contraceptives are a
19 safe and effective method to prevent unintended pregnancy and approved
20 over-the-counter access to some forms of emergency contraceptives for all
21 individuals, regardless of age; and

22 WHEREAS, If taken soon after unprotected sex or primary
23 contraceptive failure, emergency contraceptives can significantly reduce a
24 woman's chance of unintended pregnancy; and

25 WHEREAS, Access to a full range of contraceptive methods is
26 fundamental to women's healthcare and should not be impeded because of
27 a refusal by a pharmacy.

28 Now, therefore:

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

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

31 (1) "Contraception" or "contraceptive" means any drug or device
32 approved by the United States food and drug administration to prevent
33 pregnancy.

34 (2) "Emergency contraception" means one or more drugs, used
35 separately or in combination, to prevent pregnancy within a medically
36 recommended amount of time after sexual intercourse.

1 (3) "Employee" means a person hired, by contract or any other form
2 of an agreement, by a pharmacy.

3 (4) "Pharmacy" means an entity that is licensed by the state board of
4 pharmacy under the pharmacy act of the state of Kansas to engage in the
5 business of selling prescription drugs at retail and that employs one or
6 more employees.

7 (5) "Product" means a United States food and drug administration-
8 approved drug or device.

9 (6) "Professional clinical judgment" means the use of professional
10 knowledge and skills to form a clinical judgment, in accordance with
11 prevailing medical standards.

12 (7) "Without delay," with respect to a pharmacy dispensing, providing
13 a referral for or ordering contraception or transferring a prescription for
14 contraception, means within the usual and customary time frame at the
15 pharmacy for dispensing, providing a referral for or ordering other
16 products or transferring a prescription for other products.

17 (b) (1) If a customer requests a contraceptive that is in stock, the
18 pharmacy shall ensure that the contraceptive is provided to the customer
19 without delay.

20 (2) If a customer requests a contraceptive that is not in stock, the
21 pharmacy shall immediately inform the customer that the contraceptive is
22 not in stock and offer the customer the following options without delay:

23 (A) If the customer prefers to obtain the contraceptive through a
24 referral or transfer, the pharmacy shall locate a pharmacy of the customer's
25 choice or the closest pharmacy confirmed to have the contraceptive in
26 stock and refer the customer or transfer the prescription to such pharmacy;
27 or

28 (B) if the customer prefers for the pharmacy to order the
29 contraceptive, the pharmacy shall obtain the contraceptive under the
30 pharmacy's standard procedure for expedited ordering of medication and
31 notify the customer when the contraceptive is available.

32 (3) The pharmacy shall ensure that the pharmacy's employees do not:

33 (A) Intimidate, threaten or harass customers in the delivery of
34 services relating to a request for contraception;

35 (B) interfere with or obstruct the delivery of services relating to a
36 request for contraception;

37 (C) intentionally misrepresent or deceive customers about the
38 availability of contraception or a contraceptive's mechanism of action;

39 (D) breach medical confidentiality with respect to a request for
40 contraception or threaten to breach such confidentiality; or

41 (E) refuse to return a valid, lawful prescription for contraception upon
42 customer request.

43 (4) This section shall not prohibit a pharmacy from refusing to

1 provide a contraceptive to a customer in accordance with any of the
2 following:

3 (A) If it is unlawful to dispense the contraceptive to the customer
4 without a valid, lawful prescription and no such prescription is presented;

5 (B) if the customer is unable to pay for the contraceptive; or

6 (C) if a licensed pharmacist refuses to provide the contraceptive on
7 the basis of a professional clinical judgment.

8 (5) Pharmacies shall stock over-the-counter emergency contraception
9 and make such contraception available for purchase without a prescription
10 in accordance with United States food and drug administration protocol, as
11 determined by the state board of pharmacy.

12 (c) The state board of pharmacy shall adopt rules and regulations as
13 necessary to implement and administer the provisions of this section.

14 (d) Any person aggrieved as a result of a violation of this section may
15 commence a civil action in a court of competent jurisdiction against the
16 pharmacy violating this section to obtain appropriate legal and equitable
17 relief, including, but not limited to, actual and punitive damages and
18 injunctive relief. A prevailing plaintiff in such an action shall be entitled to
19 recovery of costs and reasonable attorney fees.

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