

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 213

96TH GENERAL ASSEMBLY

0647S.05T

2011

AN ACT

To repeal sections 188.015, 188.029, and 188.030, RSMo, and to enact in lieu thereof two new sections relating to abortion, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 188.015, 188.029, and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows:

188.015. As used in this chapter, the following terms mean:

(1) "Abortion"[, the intentional destruction of the life of an embryo or fetus in his or her mother's womb or the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child]

:
(a) **The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's womb; or**

(b) **The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;**

(2) "Abortion facility", a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital;

(3) "Conception", the fertilization of the ovum of a female by a sperm of a male;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 16 (4) "Department", the department of health and senior services;
- 17 (5) "Gestational age", length of pregnancy as measured from the first day of the woman's
18 last menstrual period;
- 19 (6) "Medical emergency", a condition which, [on the basis of a physician's good faith
20 clinical] **based on reasonable medical** judgment, so complicates the medical condition of a
21 pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of
22 the pregnant woman or for which a delay will create a serious risk of substantial and irreversible
23 **physical** impairment of a major bodily function of the pregnant woman;
- 24 (7) "Physician", any person licensed to practice medicine in this state by the state board
25 of registration for the healing arts;
- 26 (8) **"Reasonable medical judgment", a medical judgment that would be made by
27 a reasonably prudent physician, knowledgeable about the case and the treatment
28 possibilities with respect to the medical conditions involved;**
- 29 (9) "Unborn child", the offspring of human beings from the moment of conception until
30 birth and at every stage of its biological development, including the human conceptus, zygote,
31 morula, blastocyst, embryo, and fetus;
- 32 [(9)] (10) "Viability" or "**viable**", that stage of fetal development when the life of the
33 unborn child may be continued indefinitely outside the womb by natural or artificial
34 life-supportive systems.

188.030. 1. **Except in the case of a medical emergency**, no abortion of a viable unborn
2 child shall be performed **or induced** unless [necessary to preserve the life or health of the
3 woman. Before a physician may perform an abortion upon a pregnant woman after such time
4 as her unborn child has become viable, such physician shall first certify in writing that the
5 abortion is necessary to preserve the life or health of the woman and shall further certify in
6 writing the medical indications for such abortion and the probable health consequences.

7 2. Any physician who performs an abortion upon a woman carrying a viable unborn child
8 shall utilize the available method or technique of abortion most likely to preserve the life and
9 health of the unborn child. In cases where the method or technique of abortion which would
10 most likely preserve the life and health of the unborn child would present a greater risk to the life
11 and health of the woman than another available method or technique, the physician may utilize
12 such other method or technique. In all cases where the physician performs an abortion upon a
13 viable unborn child, the physician shall certify in writing the available method or techniques
14 considered and the reasons for choosing the method or technique employed.

15 3. An abortion of a viable unborn child shall be performed or induced only when there
16 is in attendance a physician other than the physician performing or inducing the abortion who
17 shall take control of and provide immediate medical care for a child born as a result of the

18 abortion. During the performance of the abortion, the physician performing it, and subsequent
19 to the abortion, the physician required by this section to be in attendance, shall take all
20 reasonable steps in keeping with good medical practice, consistent with the procedure used, to
21 preserve the life and health of the viable unborn child; provided that it does not pose an increased
22 risk to the life or health of the woman.] **the abortion is necessary to preserve the life of the**
23 **pregnant woman whose life is endangered by a physical disorder, physical illness, or**
24 **physical injury, including a life-endangering physical condition caused by or arising from**
25 **the pregnancy itself, or when continuation of the pregnancy will create a serious risk of**
26 **substantial and irreversible physical impairment of a major bodily function of the**
27 **pregnant woman. For purposes of this section, "major bodily function" includes, but is**
28 **not limited to, functions of the immune system, normal cell growth, digestive, bowel,**
29 **bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive**
30 **functions.**

31 **2. Except in the case of a medical emergency:**

32 **(1) Prior to performing or inducing an abortion upon a woman, the physician shall**
33 **determine the gestational age of the unborn child in a manner consistent with accepted**
34 **obstetrical and neonatal practices and standards. In making such determination, the**
35 **physician shall make such inquiries of the pregnant woman and perform or cause to be**
36 **performed such medical examinations, imaging studies, and tests as a reasonably prudent**
37 **physician, knowledgeable about the medical facts and conditions of both the woman and**
38 **the unborn child involved, would consider necessary to perform and consider in making**
39 **an accurate diagnosis with respect to gestational age.**

40 **(2) If the physician determines that the gestational age of the unborn child is twenty**
41 **weeks or more, prior to performing or inducing an abortion upon the woman, the**
42 **physician shall determine if the unborn child is viable by using and exercising that degree**
43 **of care, skill, and proficiency commonly exercised by a skillful, careful, and prudent**
44 **physician. In making this determination of viability, the physician shall perform or cause**
45 **to be performed such medical examinations and tests as are necessary to make a finding**
46 **of the gestational age, weight, and lung maturity of the unborn child and shall enter such**
47 **findings and determination of viability in the medical record of the woman.**

48 **(3) If the physician determines that the gestational age of the unborn child is twenty**
49 **weeks or more, and further determines that the unborn child is not viable and performs**
50 **or induces an abortion upon the woman, the physician shall report such findings and**
51 **determinations and the reasons for such determinations to the health care facility in which**
52 **the abortion is performed and to the state board of registration for the healing arts, and**

53 shall enter such findings and determinations in the medical records of the woman and in
54 the individual abortion report submitted to the department under section 188.052.

55 (4) (a) If the physician determines that the unborn child is viable, the physician
56 shall not perform or induce an abortion upon the woman unless the abortion is necessary
57 to preserve the life of the pregnant woman or that a continuation of the pregnancy will
58 create a serious risk of substantial and irreversible physical impairment of a major bodily
59 function of the woman.

60 (b) Before a physician may proceed with performing or inducing an abortion upon
61 a woman when it has been determined that the unborn child is viable, the physician shall
62 first certify in writing the medical threat posed to the life of the pregnant woman, or the
63 medical reasons that continuation of the pregnancy would cause a serious risk of
64 substantial and irreversible physical impairment of a major bodily function of the
65 pregnant woman. Upon completion of the abortion, the physician shall report the reasons
66 and determinations for the abortion of a viable unborn child to the health care facility in
67 which the abortion is performed and to the state board of registration for the healing arts,
68 and shall enter such findings and determinations in the medical record of the woman and
69 in the individual abortion report submitted to the department under section 188.052.

70 (c) Before a physician may proceed with performing or inducing an abortion upon
71 a woman when it has been determined that the unborn child is viable, the physician who
72 is to perform the abortion shall obtain the agreement of a second physician with knowledge
73 of accepted obstetrical and neonatal practices and standards who shall concur that the
74 abortion is necessary to preserve the life of the pregnant woman, or that continuation of
75 the pregnancy would cause a serious risk of substantial and irreversible physical
76 impairment of a major bodily function of the pregnant woman. This second physician
77 shall also report such reasons and determinations to the health care facility in which the
78 abortion is to be performed and to the state board of registration for the healing arts, and
79 shall enter such findings and determinations in the medical record of the woman and the
80 individual abortion report submitted to the department under section 188.052. The second
81 physician shall not have any legal or financial affiliation or relationship with the physician
82 performing or inducing the abortion, except that such prohibition shall not apply to
83 physicians whose legal or financial affiliation or relationship is a result of being employed
84 by or having staff privileges at the same hospital as the term "hospital" is defined in
85 section 197.020.

86 (d) Any physician who performs or induces an abortion upon a woman when it has
87 been determined that the unborn child is viable shall utilize the available method or
88 technique of abortion most likely to preserve the life or health of the unborn child. In cases

89 where the method or technique of abortion most likely to preserve the life or health of the
90 unborn child would present a greater risk to the life or health of the woman than another
91 legally permitted and available method or technique, the physician may utilize such other
92 method or technique. In all cases where the physician performs an abortion upon a viable
93 unborn child, the physician shall certify in writing the available method or techniques
94 considered and the reasons for choosing the method or technique employed.

95 (e) No physician shall perform or induce an abortion upon a woman when it has
96 been determined that the unborn child is viable unless there is in attendance a physician
97 other than the physician performing or inducing the abortion who shall take control of and
98 provide immediate medical care for a child born as a result of the abortion. During the
99 performance of the abortion, the physician performing it, and subsequent to the abortion,
100 the physician required to be in attendance, shall take all reasonable steps in keeping with
101 good medical practice, consistent with the procedure used, to preserve the life or health of
102 the viable unborn child; provided that it does not pose an increased risk to the life of the
103 woman or does not pose an increased risk of substantial and irreversible physical
104 impairment of a major bodily function of the woman.

105 3. Any person who knowingly performs or induces an abortion of an unborn child
106 in violation of the provisions of this section is guilty of a class C felony, and upon a finding
107 of guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and,
108 notwithstanding the provisions of section 560.011, shall be fined not less than ten thousand
109 nor more than fifty thousand dollars.

110 4. Any physician who pleads guilty to or is found guilty of performing or inducing
111 an abortion of an unborn child in violation of this section shall be subject to suspension or
112 revocation of his or her license to practice medicine in the state of Missouri by the state
113 board of registration for the healing arts under the provisions of sections 334.100 and
114 334.103.

115 5. Any hospital licensed in the state of Missouri that knowingly allows an abortion
116 of an unborn child to be performed or induced in violation of this section may be subject
117 to suspension or revocation of its license under the provisions of section 197.070.

118 6. Any ambulatory surgical center licensed in the state of Missouri that knowingly
119 allows an abortion of an unborn child to be performed or induced in violation of this
120 section may be subject to suspension or revocation of its license under the provisions of
121 section 197.220.

122 7. A woman upon whom an abortion is performed or induced in violation of this
123 section shall not be prosecuted for a conspiracy to violate the provisions of this section.

124 **8. Nothing in this section shall be construed as creating or recognizing a right to**
125 **abortion, nor is it the intention of this section to make lawful any abortion that is currently**
126 **unlawful.**

127 **9. It is the intent of the legislature that this section be severable as noted in section**
128 **1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause**
129 **of this section be declared invalid under the Constitution of the United States or the**
130 **Constitution of the State of Missouri, it is the intent of the legislature that the remaining**
131 **provisions of this section remain in force and effect as far as capable of being carried into**
132 **execution as intended by the legislature.**

133 **10. The general assembly may, by concurrent resolution, appoint one or more of**
134 **its members who sponsored or co-sponsored this act in his or her official capacity, to**
135 **intervene as a matter of right in any case in which the constitutionality of this law is**
136 **challenged.**

2 [188.029. Before a physician performs an abortion on a woman he has
3 reason to believe is carrying an unborn child of twenty or more weeks gestational
4 age, the physician shall first determine if the unborn child is viable by using and
5 exercising that degree of care, skill, and proficiency commonly exercised by the
6 ordinarily skillful, careful, and prudent physician engaged in similar practice
7 under the same or similar conditions. In making this determination of viability,
8 the physician shall perform or cause to be performed such medical examinations
9 and tests as are necessary to make a finding of the gestational age, weight, and
10 lung maturity of the unborn child and shall enter such findings and determination
of viability in the medical record of the mother.]

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