

HCS HBs 2069 & 2371 -- ABORTION

SPONSOR: Franklin

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Children and Families by a vote of 9 to 3. Voted "Do Pass with HCS" by the Select Committee on Social Services by a vote of 7 to 3.

This bill changes the laws regarding abortion.

PROHIBITED ACTIVITIES REGARDING FETAL REMAINS (Section 188.036, RSMo)

The bill changes the laws regarding fetal remains. The bill prohibits a person from knowingly donating or making an anatomical gift of the fetal organs or tissue resulting from an abortion to any person or entity for medical, scientific, experimental, therapeutic, or any other use. Any person who violates these provisions is guilty of a class C felony and the court may impose a fine in an amount not less than twice the amount of any valuable consideration received. These provisions must not prohibit the utilization of fetal organs or tissue resulting from an abortion for medical or scientific purposes to determine the cause of any anomaly, illness, death, or genetic condition of the fetus, the paternity of the fetus, or for law enforcement purposes.

REPORTS REQUIRED AFTER AN ABORTION (Sections 188.047 and 188.052)

Currently, only a representative sample of tissue removed at the time of abortion must be sent to a pathologist. The bill requires all tissue removed at the abortion to be sent to a pathologist. The tissue report from the pathologist must include the pathologist's estimation of the gestational age of the fetal remains; whether all tissue and products of conception were received that would be common for a specimen of such estimated gestational age; if the pathologist finds that all tissue and products of conception were not received, what portion of the tissue and products of conception were not received; the name and address of the entity where the evaluation was conducted, and the date the tissue and products of conception were remitted to be disposed and the location of such disposal. The abortion report completed by the attending physician must include the physician's estimation of the gestational age of the fetal remains; whether all tissue and products of conception were removed that would be common for a specimen of such estimated gestational age; and if the physician finds that all tissue and products of conception were not removed, what portion of the tissue and products of conception were not removed.

Each fetal tissue specimen must be given a unique identification number to allow the specimen to be tracked from the abortion facility or hospital where the abortion was performed to the pathology lab and its final disposition location. A report must be created and submitted as specified in the bill and must document the date the specimen was collected, transported, received, and disposed, if applicable. The Department of Health and Senior Services must pair each notice of abortion with its corresponding pathology report. If the department does not receive both reports, the department must investigate and if the department finds the facility where the abortion was performed is not in compliance with these provisions, the department must consider such noncompliance a deficiency requiring an unscheduled inspection of the facility to ensure remediation. All reports and information received by the department under these provisions must be included in an annual report to the General Assembly.

PHYSICIAN PRIVILEGES (Section 188.080)

Currently, any physician performing or inducing an abortion must have clinical privileges at a hospital which offers obstetrical or gynecological care located within 30 miles of the location at which the abortion is performed or induced. The bill changes that requirement to instead require the physician to have surgical and admitting privileges at such hospital.

EMPLOYEE PROTECTIONS FOR CERTAIN DISCLOSURES (Section 188.160)

The bill changes the laws regarding disclosures by employees of facilities involved in the handling of fetal remains from an elective abortion. The bill requires each hospital, ambulatory surgical center, pathology lab, medical research entity, and disposal facility involved in such activities to establish and implement a written policy relating to the protections for employees who in good faith disclose facility mismanagement, fraudulent activity, or violations of applicable federal or state laws or administrative rules concerning abortions or the handling of fetal remains. Such policy must include a time frame for completion of investigations related to complaints, not to exceed 30 days, and a method for notifying the complainant of the disposition of the investigation. The policy must be submitted to the department to verify implementation and must, at a minimum, include certain provisions as specified in the bill.

All information disclosed, collected, and maintained under these provisions must be accessible to the department at all times and must be reviewed by the department at least annually. Complainants must be notified of the department's access to such information and

of the complainants right to notify the department of any information concerning alleged violations of applicable federal or state laws or rules. Prior to any disclosure to individuals or agencies other than the department, employees wishing to make a disclosure under these provisions must first report to the individual designated by the facility. If the compliance officer, compliance committee, or management official discovers credible evidence of misconduct from any source and after reasonable inquiry has reason to believe the misconduct may violate law, the facility must report the existence of misconduct to the appropriate governmental authority no more than seven days after determining there is credible evidence of a violation. Each facility must, within 48 hours of receiving a report, notify the employee that his or her report has been received and is being reviewed. The bill requires specified entities to post notice of these provisions in locations conspicuous to employees.

DISPOSITION OF FETAL REMAINS (Section 194.375)

The bill changes the definition of "remains of a human fetus" to be the remains of the dead offspring of a human being that has reached a stage of development so that there are cartilaginous structures or fetal or skeletal parts after an abortion or miscarriage, whether the remains have been obtained by induced, spontaneous, or accidental means.

ABORTION FACILITY INSPECTIONS (Section 197.230)

The bill requires the department to conduct annual, unannounced, on-site inspections and investigations of abortion facilities. These inspections must, at a minimum, include the following areas:

- (1) Compliance with all statutory and regulatory requirements for an ambulatory surgical center, including requirements that the facility maintain adequate staffing and equipment to respond to medical emergencies;
- (2) Compliance with the requirement that all tissue removed at the time of an abortion be submitted to a pathologist and that the resultant tissue report be made a part of the patient's permanent record;
- (3) Review patient records to ensure that no consent forms or other documentation authorizes any utilization of fetal organs or tissue in violation of state law;
- (4) Compliance with state law prohibiting the use of public funds, facilities, and employees to perform or assist a prohibited abortion or to encourage or counsel a women to have a prohibited

abortion;

(5) Compliance with state law requiring any physician performing or inducing abortions to have the appropriate hospital surgical and admitting privileges; and

(6) Compliance with the requirement in state law that continuous physician or registered professional nursing services be provided whenever a patient is in the facility. Additionally, the inspection and investigation reports must be available to the public, provided that information not subject to disclosure under the law be redacted.

This bill is similar to HBs 2068, 2070, 2071, and 2329 (2016) and SCS SB 644 (2016).

PROPOSERS: Supporters say that the legislation helps to ensure compliance with the law and ensures documentation of such compliance. No one is harmed and no research is prevented by not conducting research using fetal tissue. If you don't make fetal tissue available to scientists, they'll find alternatives. Fetal tissue is not the only option for research to discover new treatments and cures. There has been a significant absence of accountability and lack of concern by those involved in the bad acts depicted in the videos from this past summer. The legislation attempts to bring accountability and dignity to Missouri. Women shouldn't have to worry about their doctors changing a procedure to get more intact tissue. Supporters say they cannot stop abortions but they can give dignity to these little babies.

Testifying for the bill were Representative Franklin; James L. Sherley, M.D., Ph.D.; Campaign Life Missouri; Americans United For Life; Missouri Family Network; Mary Maschmeier, Defenders Of The Unborn; Jim Marcum; Rebecca Zaer Rafie; Wendy Curtis; BettyAnn Wood; Robert McNutt; Kathleen A. Forck; Concerned Women For America Of Missouri; Bonnie Lee; Joanna Schrader; Missouri Catholic Conference; and Missouri Right To Life.

OPPOSERS: Those who oppose the bill say that fetal tissue research has played an important role in public health history. Bans on cutting edge research tell the medical community that lifesaving treatments are not valued in Missouri. The requirement that all tissue be sent to a pathologist would prevent physicians from doing genetic testing for fetal anomalies or DNA testing for victims of rape. Fetal tissue has been used to help convict rapists. The regulation of medicine should be guided by scientific best practices and not political ideologies. Thirty-eight states and the District of Columbia permit the donation of fetal tissue for research purposes. The legislation treats abortion as an

incredibly dangerous procedure when in reality it is safer than a colonoscopy.

Testifying against the bill were Christina Stallworth; Tenaya Drapkin; Planned Parenthood Advocates In Missouri; Stacy Sherrod; James Moore; Jaclyn Grentzer, MD, MSCL; Julia Lange; ACLU Of Missouri; NARAL Pro-Choice Missouri; Christine Fouts; Kelsey Conner; Elizabeth Vonderahe; R. Lear; Alaina Smith; Rowan Walker; Tim Williams; Rebecca Wise; Ann Wade; Cara Cheevers; Margaret O'Hara; Payton Stringer; Susan Gibson; Connie Ordway; Gertrude Friswold; Dina van der Zalm; and Vera Schulte.