

# HOUSE BILL NO. 1352

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GATSCHENBERGER.

5328H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 188.015 and 188.030, RSMo, and to enact in lieu thereof two new sections relating to the protection of women's health care, with existing penalty provisions.

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

Section A. Sections 188.015 and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows: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

(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;

(4) "Department", the department of health and senior services;

(5) "Gestational age", length of pregnancy as measured from the first day of the woman's last menstrual period;

(6) "Medical emergency", a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a

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.

18 serious risk of substantial and irreversible physical impairment of a major bodily function of the  
19 pregnant woman, **not including psychological or emotional conditions. No condition shall**  
20 **be deemed a medical emergency if based on a claim or diagnosis that the woman will**  
21 **engage in conduct which she intends to result in her death or in substantial and irreversible**  
22 **physical impairment of a major bodily function;**

23 (7) "Physician", any person licensed to practice medicine in this state by the state board  
24 of registration for the healing arts;

25 (8) "Reasonable medical judgment", a medical judgment that would be made by a  
26 reasonably prudent physician, knowledgeable about the case and the treatment possibilities with  
27 respect to the medical conditions involved;

28 (9) "Unborn child", the offspring of human beings from the moment of conception until  
29 birth and at every stage of its biological development, including the human conceptus, zygote,  
30 morula, blastocyst, embryo, and fetus;

31 (10) "Viability" or "viable", that stage of fetal development when the life of the unborn  
32 child may be continued indefinitely outside the womb by natural or artificial life-supportive  
33 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 the abortion is necessary to [preserve the life of the  
3 pregnant woman whose life is endangered by a physical disorder, physical illness, or physical  
4 injury, including a life-endangering physical condition caused by or arising from the pregnancy  
5 itself, or when continuation of the pregnancy will create a serious risk of substantial and  
6 irreversible physical impairment of a major bodily function of the pregnant woman] **avert the**  
7 **pregnant woman's death or to avert serious risk of substantial and irreversible physical**  
8 **impairment of a major bodily function, not including psychological or emotional**  
9 **conditions. No such greater risk shall be deemed to exist if it is based on a claim or**  
10 **diagnosis that the woman will engage in conduct which she intends to result in her death**  
11 **or in substantial and irreversible physical impairment of a major bodily function.** For  
12 purposes of this section, "major bodily function" includes, but is not limited to, functions of the  
13 immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory,  
14 circulatory, endocrine, and reproductive functions.

15 2. Except in the case of a medical emergency:

16 (1) Prior to performing or inducing an abortion upon a woman, the physician shall  
17 determine the gestational age of the unborn child in a manner consistent with accepted obstetrical  
18 and neonatal practices and standards. In making such determination, the physician shall make  
19 such inquiries of the pregnant woman and perform or cause to be performed such medical  
20 examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about

21 the medical facts and conditions of both the woman and the unborn child involved, would  
22 consider necessary to perform and consider in making an accurate diagnosis with respect to  
23 gestational age;

24 (2) If the physician determines that the gestational age of the unborn child is twenty  
25 weeks or more, prior to performing or inducing an abortion upon the woman, the physician shall  
26 determine if the unborn child is viable by using and exercising that degree of care, skill, and  
27 proficiency commonly exercised by a skillful, careful, and prudent physician. In making this  
28 determination of viability, the physician shall perform or cause to be performed such medical  
29 examinations and tests as are necessary to make a finding of the gestational age, weight, and lung  
30 maturity of the unborn child and shall enter such findings and determination of viability in the  
31 medical record of the woman;

32 (3) If the physician determines that the gestational age of the unborn child is twenty  
33 weeks or more, and further determines that the unborn child is not viable and performs or  
34 induces an abortion upon the woman, the physician shall report such findings and determinations  
35 and the reasons for such determinations to the health care facility in which the abortion is  
36 performed and to the state board of registration for the healing arts, and shall enter such findings  
37 and determinations in the medical records of the woman and in the individual abortion report  
38 submitted to the department under section 188.052;

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

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

53 (c) Before a physician may proceed with performing or inducing an abortion upon a  
54 woman when it has been determined that the unborn child is viable, the physician who is to  
55 perform the abortion shall obtain the agreement of a second physician with knowledge of  
56 accepted obstetrical and neonatal practices and standards who shall concur that the abortion is

57 necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy  
58 would cause a serious risk of substantial and irreversible physical impairment of a major bodily  
59 function of the pregnant woman. This second physician shall also report such reasons and  
60 determinations to the health care facility in which the abortion is to be performed and to the state  
61 board of registration for the healing arts, and shall enter such findings and determinations in the  
62 medical record of the woman and the individual abortion report submitted to the department  
63 under section 188.052. The second physician shall not have any legal or financial affiliation or  
64 relationship with the physician performing or inducing the abortion, except that such prohibition  
65 shall not apply to physicians whose legal or financial affiliation or relationship is a result of  
66 being employed by or having staff privileges at the same hospital as the term "hospital" is  
67 defined in section 197.020.

68 (d) Any physician who performs or induces an abortion upon a woman when it has been  
69 determined that the unborn child is viable shall utilize the available method or technique of  
70 abortion most likely to preserve the life or health of the unborn child. In cases where the method  
71 or technique of abortion most likely to preserve the life or health of the unborn child would  
72 present a greater risk to the life or health of the woman than another legally permitted and  
73 available method or technique, the physician may utilize such other method or technique. In all  
74 cases where the physician performs an abortion upon a viable unborn child, the physician shall  
75 certify in writing the available method or techniques considered and the reasons for choosing the  
76 method or technique employed.

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

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

91 4. Any physician who pleads guilty to or is found guilty of performing or inducing an  
92 abortion of an unborn child in violation of this section shall be subject to suspension or

93 revocation of his or her license to practice medicine in the state of Missouri by the state board  
94 of registration for the healing arts under the provisions of sections 334.100 and 334.103.

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

98         6. **(1) The department of health and senior services shall make or cause to be made**  
99 **such inspections and investigations as it deems necessary, but in no case fewer than four**  
100 **inspections of any abortion facility in a fiscal year. Information received by the**  
101 **department through file reports, inspection, or as otherwise authorized under this section**  
102 **shall not be disclosed publicly in such manner as to identify individual patients, except to**  
103 **another state agency for purposes of investigation of professional or business practices in**  
104 **an abortion facility, which state agency shall not disclose such individual patient**  
105 **information publicly.**

106         **(2) Every abortion facility and any premises proposed to be conducted as an**  
107 **abortion facility shall be open at all reasonable times to an inspection authorized in writing**  
108 **by the director of the department. No notice need be given to any person prior to any**  
109 **inspection.**

110         **(3) Whenever an inspection of any abortion facility discloses that the continued**  
111 **operation of such facility constitutes an immediate and serious risk of harm to the health**  
112 **or safety of the patients thereof, the inspector is authorized to immediately close such**  
113 **facility. Once the facility has been closed, the personnel employed there shall cease any**  
114 **activity related to the patients, unless continued treatment of any given patient is necessary**  
115 **to protect her physical health or life. A written order setting forth the grounds on which**  
116 **any action under this section is based shall be served on the licensee within twenty-four**  
117 **hours after such action is taken. Any director of an abortion facility that has been closed**  
118 **may, within ten days thereafter, by written notice, request that the director of the**  
119 **department conduct a hearing and a reinspection under the provisions of this section. If**  
120 **a subsequent inspection discloses that the violations of this section or rules, regulations, or**  
121 **standards have been abated, the director of the department shall cancel the order of closing**  
122 **and permit patients to be treated therein. The remedies provided in this section are in**  
123 **addition to and not exclusive of any other remedy provided by law.**

124         7. Any ambulatory surgical center licensed in the state of Missouri that knowingly allows  
125 an abortion of an unborn child to be performed or induced in violation of this section may be  
126 subject to suspension or revocation of its license under the provisions of section 197.220.

127         [7.] **8. A woman upon whom an abortion is performed or induced in violation of this**  
128 **section shall not be prosecuted for a conspiracy to violate the provisions of this section.**

129 [8.] **9.** Nothing in this section shall be construed as creating or recognizing a right to  
130 abortion, nor is it the intention of this section to make lawful any abortion that is currently  
131 unlawful.

132 [9.] **10.** It is the intent of the legislature that this section be severable as noted in section  
133 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of  
134 this section be declared invalid under the Constitution of the United States or the Constitution  
135 of the State of Missouri, it is the intent of the legislature that the remaining provisions of this  
136 section remain in force and effect as far as capable of being carried into execution as intended  
137 by the legislature.

138 [10.] **11.** The general assembly may, by concurrent resolution, appoint one or more of  
139 its members who sponsored or co-sponsored this act in his or her official capacity to intervene  
140 as a matter of right in any case in which the constitutionality of this law is challenged.

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