

FIRST REGULAR SESSION

# HOUSE BILL NO. 692

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HUBRECHT.

1430H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 188, RSMo, by adding thereto seven new sections relating to abortion, with penalty provisions.

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

Section A. Chapter 188, RSMo, is amended by adding thereto seven new sections, to be known as sections 188.450, 188.452, 188.454, 188.456, 188.458, 188.460, and 188.462, to read as follows:

**188.450. For purposes of sections 188.450 to 188.462, the following terms shall mean:**

**(1) "Abortion", the use or prescription of any instrument, medicine, drug, or any other substance or device:**

**(a) To intentionally kill the unborn child of a woman known to be pregnant; or**

**(b) To intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than:**

**a. After viability to produce a live birth and preserve the life and health of the child born alive; or**

**b. To remove a dead unborn child;**

**(2) "Attempt to perform or induce an abortion", an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of sections 188.450 to 188.462;**

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

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.

17 (4) "Fertilization", the fusion of a human spermatozoon with a human ovum;

18 (5) "Medical emergency", a condition that, in reasonable medical judgment, so  
19 complicates the medical condition of the pregnant woman that it necessitates the immediate  
20 abortion of her pregnancy without first determining postfertilization age to avert her death  
21 or for which the delay necessary to determine postfertilization age will create serious risk  
22 of substantial and irreversible physical impairment of a major bodily function, not  
23 including psychological or emotional conditions. No condition shall be deemed a medical  
24 emergency if based on a claim or diagnosis that the woman will engage in conduct which  
25 she intends to result in her death or in substantial and irreversible physical impairment of  
26 a major bodily function;

27 (6) "Physician", any person licensed to practice medicine and surgery or  
28 osteopathic medicine and surgery in this state;

29 (7) "Postfertilization age", the age of the unborn child as calculated from the fusion  
30 of a human spermatozoon with a human ovum;

31 (8) "Probable postfertilization age of the unborn child", what, in reasonable  
32 medical judgment, will with reasonable probability be the postfertilization age of the  
33 unborn child at the time the abortion is planned to be performed or induced;

34 (9) "Reasonable medical judgment", a medical judgment that would be made by  
35 a reasonably prudent physician, knowledgeable about the case and the treatment  
36 possibilities with respect to the medical conditions involved;

37 (10) "Serious health risk to the unborn child's mother", in reasonable medical  
38 judgment she has a condition that so complicates her medical condition that it necessitates  
39 the abortion of her pregnancy to avert her death or to avert serious risk of substantial and  
40 irreversible physical impairment of a major bodily function, not including psychological  
41 or emotional conditions. No greater risk shall be determined to exist if it is based on a  
42 claim or diagnosis that the woman will engage in conduct which she intends to result in her  
43 death or in substantial and irreversible physical impairment of a major bodily function;

44 (11) "Unborn child" or "fetus", an individual organism of the species homo sapiens  
45 from fertilization until live birth;

46 (12) "Woman", a female human being regardless of whether she has reached the  
47 age of majority.

188.452. 1. No person shall perform or induce, or attempt to perform or induce,  
2 an abortion of an unborn child capable of feeling pain unless necessary to prevent serious  
3 health risk to the unborn child's mother.

4 2. An unborn child shall be deemed capable of feeling pain when it has been  
5 determined, by the physician performing or inducing or attempting to perform or induce

6 the abortion or by another physician upon whose determination that physician relies, that  
7 the probable postfertilization age of the woman's unborn child is twenty or more weeks.

8       3. Except in the case of a medical emergency, no abortion shall be performed or  
9 induced or be attempted to be performed or induced unless the physician performing or  
10 inducing it has first made a determination of the probable postfertilization age of the  
11 unborn child or relied upon such a determination made by another physician. In making  
12 this determination, the physician shall make such inquiries of the woman and perform or  
13 cause to be performed such medical examinations and tests as a reasonably prudent  
14 physician, knowledgeable about the case and the medical conditions involved, would  
15 consider necessary to perform in making an accurate diagnosis with respect to  
16 postfertilization age.

17       4. If an abortion of an unborn child capable of feeling pain is necessary to prevent  
18 serious health risk to the unborn child's mother, the physician shall terminate the  
19 pregnancy in the manner which, in reasonable medical judgment, provides the best  
20 opportunity for the unborn child to survive, unless, in reasonable medical judgment,  
21 termination of the pregnancy in that manner would pose a greater risk either of the death  
22 of the pregnant woman or of the substantial and irreversible physical impairment of a  
23 major bodily function, not including psychological or emotional conditions, of the woman  
24 than would other available methods. No greater risk shall be determined to exist if it is  
25 based on a claim or diagnosis that the woman will engage in conduct which she intends to  
26 result in her death or in substantial and irreversible physical impairment of a major bodily  
27 function.

28       5. Any person who intentionally or recklessly performs or induces or attempts to  
29 perform or induce an abortion in violation of this section shall be guilty of a felony. No  
30 penalty shall be assessed against the woman upon whom the abortion is performed or  
31 induced or attempted to be performed or induced.

188.454. 1. Any physician who performs or induces or attempts to perform or  
2 induce an abortion shall report to the department, on a schedule and in accordance with  
3 forms and regulations adopted and promulgated by the department, that include:

4       (1) The postfertilization age. If a determination of probable postfertilization age  
5 was made, whether ultrasound was employed in making the determination, and the week  
6 of probable postfertilization age determined. If a determination of probable  
7 postfertilization age was not made, the basis of the determination that a medical emergency  
8 existed;

9       (2) Which of the following methods of abortion was employed:

- 10           **(a) Medication abortion including, but not limited to, mifepristone/misoprostol or**  
11 **methotrexate/misoprostol;**
- 12           **(b) Manual vacuum aspiration;**
- 13           **(c) Electrical vacuum aspiration;**
- 14           **(d) Dilation and evacuation;**
- 15           **(e) Combined induction abortion and dilation and evacuation;**
- 16           **(f) Induction abortion with prostaglandins;**
- 17           **(g) Induction abortion with intra-amniotic instillation including, but not limited to,**  
18 **saline or urea;**
- 19           **(h) Other induction abortion;**
- 20           **(i) Intact dilation and extraction or partial-birth; or**
- 21           **(j) A method not listed, which shall be specified;**
- 22           **(3) Whether an intra-fetal injection was used in an attempt to induce fetal demise**  
23 **including, but not limited to, intrafetal potassium chloride or digoxin;**
- 24           **(4) The age and race of the patient;**
- 25           **(5) If the unborn child was deemed capable of experiencing pain under section**  
26 **188.452, the basis of the determination that the pregnant woman had a condition which so**  
27 **complicated her medical condition as to necessitate the abortion of her pregnancy to avert**  
28 **her death or to avert serious risk of substantial and irreversible physical impairment of a**  
29 **major bodily function, not including psychological or emotional conditions; and**
- 30           **(6) If the unborn child was deemed capable of experiencing pain under section**  
31 **188.452, whether the method of abortion used was one that, in reasonable medical**  
32 **judgment, provided the best opportunity for the unborn child to survive and, if such a**  
33 **method was not used, the basis of the determination that termination of the pregnancy in**  
34 **that manner would pose a greater risk either of the death of the pregnant woman or of the**  
35 **substantial and irreversible physical impairment of a major bodily function, not including**  
36 **psychological or emotional conditions, of the woman than would other available methods.**
- 37           **2. Reports required by subsection 1 of this section shall not contain the name or the**  
38 **address of the patient whose pregnancy was terminated, nor shall the report contain any**  
39 **other information identifying the patient; except that, each report shall contain a unique**  
40 **medical record identifying number to enable matching the report to the patient's medical**  
41 **records. These reports shall be maintained in strict confidence by the department, shall**  
42 **not be available for public inspection, and shall not be made available except:**
- 43           **(1) To the attorney general or a district attorney with appropriate jurisdiction**  
44 **pursuant to a criminal investigation;**

45           **(2) To the attorney general or a district attorney pursuant to a civil investigation**  
46 **of the grounds for an action under subsection 2 of section 188.456; or**

47           **(3) Pursuant to court order in an action under section 188.456.**

48           **3. By June thirtieth of each year, the department shall issue a public report**  
49 **providing statistics for the previous calendar year compiled from all of the reports covering**  
50 **that year submitted in accordance with this section for each of the items listed in subsection**  
51 **1 of this section. Each report shall also provide the statistics for all previous calendar years**  
52 **during which this section was in effect, adjusted to reflect any additional information from**  
53 **late or corrected reports. The department shall ensure that none of the information**  
54 **included in the public reports could reasonably lead to the identification of any pregnant**  
55 **woman upon whom an abortion was performed, induced, or attempted.**

56           **4. Any physician who fails to submit a report by the end of thirty days following**  
57 **the due date established by regulation shall be subject to a late fee of one thousand dollars**  
58 **for each additional thirty-day period or portion of a thirty-day period the report is**  
59 **overdue. Any physician required to report in accordance with this section who has not**  
60 **submitted a report, or has submitted only an incomplete report, more than six months**  
61 **following the due date, may, in an action brought by the department, be directed by a court**  
62 **of competent jurisdiction to submit a complete report within a period stated by court order**  
63 **or be subject to civil contempt. Intentional or reckless failure by any physician to conform**  
64 **to any requirement of this section, other than late filing of a report, constitutes**  
65 **unprofessional conduct under chapter 334. Intentional or reckless failure by any physician**  
66 **to submit a complete report in accordance with a court order constitutes unprofessional**  
67 **conduct under chapter 334. Intentional or reckless falsification of any report required**  
68 **under this section is a misdemeanor.**

69           **5. Within ninety days of the effective date of this section, the department shall**  
70 **adopt and promulgate forms and regulations to assist in compliance with this section.**  
71 **Subsection 1 of this section shall take effect so as to require reports regarding all abortions**  
72 **performed or induced on and after the first day of the first calendar month following the**  
73 **effective date of such rules.**

**188.456. 1. Any woman upon whom an abortion has been performed or induced**  
2 **in violation of sections 188.450 to 188.462, or the father of the unborn child who was the**  
3 **subject of such an abortion, may maintain an action against the person who performed or**  
4 **induced the abortion in intentional or reckless violation of sections 188.450 to 188.462 for**  
5 **actual and punitive damages. Any woman upon whom an abortion has been attempted in**  
6 **violation of sections 188.450 to 188.462 may maintain an action against the person who**

7 attempted to perform or induce the abortion in an intentional or reckless violation of  
8 sections 188.450 to 188.462 for actual and punitive damages.

9       **2. A cause of action for injunctive relief against any person who has intentionally**  
10 **or recklessly violated sections 188.450 to 188.462 may be maintained:**

11       **(1) By the woman upon whom an abortion was performed or induced or attempted**  
12 **to be performed or induced in violation of sections 188.450 to 188.462;**

13       **(2) By any person who is the spouse, parent, sibling, or guardian of, or a current**  
14 **or former licensed health care provider of, the woman upon whom an abortion has been**  
15 **performed or induced or attempted to be performed or induced in violation of sections**  
16 **188.450 to 188.462;**

17       **(3) By a prosecuting attorney with appropriate jurisdiction; or**

18       **(4) By the attorney general.**

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20 **The injunction shall prevent the abortion provider from performing or inducing or**  
21 **attempting to perform or induce further abortions in violation of sections 188.450 to**  
22 **188.462 in this state.**

23       **3. If judgment is rendered in favor of the plaintiff in an action described in this**  
24 **section, the court shall also render judgment for reasonable attorney's fees in favor of the**  
25 **plaintiff against the defendant.**

26       **4. If judgment is rendered in favor of the defendant and the court finds that the**  
27 **plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment**  
28 **for reasonable attorney's fees in favor of the defendant against the plaintiff.**

29       **5. No damages or attorney's fees shall be assessed against the woman upon whom**  
30 **an abortion was performed or induced or attempted to be performed or induced except in**  
31 **accordance with subsection 4 of this section.**

**188.458. In every civil or criminal proceeding or action brought under sections**  
2 **188.450 to 188.462, the court shall rule whether the anonymity of any woman upon whom**  
3 **an abortion has been performed or induced or attempted to be performed or induced shall**  
4 **be preserved from public disclosure if she does not give her consent to such disclosure. The**  
5 **court, upon motion or sua sponte, shall make such a ruling and, upon determining that her**  
6 **anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and**  
7 **shall direct the sealing of the record and exclusion of individuals from courtrooms or**  
8 **hearing rooms to the extent necessary to safeguard her identity from public disclosure.**  
9 **Each such order shall be accompanied by specific written findings explaining why the**  
10 **anonymity of the woman should be preserved from public disclosure, why the order is**  
11 **essential to that end, how the order is narrowly tailored to serve that interest, and why no**

12 reasonable less restrictive alternative exists. In the absence of written consent of the  
13 woman upon whom an abortion has been performed or induced or attempted to be  
14 performed or induced, anyone, other than a public official, who brings an action under  
15 subsection 1 or 2 of section 188.456 shall do so under a pseudonym. This section shall not  
16 be construed to conceal the identity of the plaintiff or of witnesses from the defendant or  
17 from attorneys for the defendant.

188.460. 1. There is created a special revenue fund known as the “Missouri  
2 Pain-Capable Unborn Child Protection Act Litigation Fund” for the purpose of providing  
3 funds to pay for any costs and expenses incurred by the attorney general in relation to  
4 actions surrounding defense of sections 188.450 to 188.462.

5 2. The fund shall be maintained by the commissioner of administration.

6 3. The fund shall consist of appropriations made to the fund by the general  
7 assembly and any donations, gifts, or grants made to the fund.

8 4. The fund shall retain the interest income derived from the moneys credited to  
9 the fund.

188.462. Sections 188.450 to 188.462 shall not be construed to repeal, by implication  
2 or otherwise, any otherwise applicable provision of Missouri law regulating or restricting  
3 abortion. An abortion that complies with sections 188.450 to 188.462 but violates any other  
4 provision of chapter 188 or any otherwise applicable provision of Missouri law shall be  
5 deemed unlawful as provided in such provision. An abortion that complies with any other  
6 provision of chapter 188 or any otherwise applicable provision of Missouri law regulating  
7 or restricting abortion but violates sections 188.450 to 188.462 shall be deemed unlawful  
8 as provided in sections 188.450 to 188.462. If some or all of the provisions of sections  
9 188.450 to 188.462 are ever temporarily or permanently restrained or enjoined by judicial  
10 order, all other provisions of Missouri law regulating or restricting abortion shall be  
11 enforced as though such restrained or enjoined provisions had not been adopted; provided  
12 that, whenever such temporary or permanent restraining order of injunction is stayed or  
13 dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

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