

FIRST REGULAR SESSION

# HOUSE BILL NO. 213

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), DAY, DIECKHAUS, LONG, BARNES, LICHTENEGGER, FAITH, SMITH (150), LOEHNER, BAHR, HAMPTON, SCHAD, FREDERICK, MEADOWS, ALLEN, LAUER, WYATT, McCAHERTY, CURTMAN, CROSS, HINSON, RIDDLE, KORMAN, NANCE, POLLOCK, FRANZ, ASBURY, FRANKLIN, STREAM, THOMSON, KOENIG, JONES (117), CRAWFORD, WHITE, DUGGER, SHUMAKE, DAVIS, BURLISON, LEARA, BROWN (85), HAEFNER, KELLEY (126), DIEHL, BERNSKOETTER, MOLENDORP, SCHARNHORST, NOLTE, SCHNEIDER, RUZICKA, LANT, JOHNSON, FISHER, LASATER, WIELAND, KEENEY, SCHOELLER, CONWAY (14), GATSCHENBERGER, SILVEY, WRIGHT, PARKINSON, COX, BRANDOM, CIERPIOT, GOSEN, WELLS, LARGENT, FUNDERBURK, McGHEE, BRATTIN, REIBOLDT, NETH, ELMER, RICHARDSON, WALLINGFORD, FITZWATER, LEACH, ZERR, PHILLIPS, FRAKER AND KLIPPENSTEIN (Co-sponsors).

0647L.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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.

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- Section A. Sections 188.015, 188.029, and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows: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

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.

11 (6) "Medical emergency", a condition which, on the basis of a physician's good faith  
12 clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate  
13 the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which  
14 a delay will create a serious risk of substantial and irreversible impairment of a major bodily  
15 function of the pregnant woman;

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

18 (8) "Unborn child", the offspring of human beings from the moment of conception until  
19 birth and at every stage of its biological development, including the human conceptus, zygote,  
20 morula, blastocyst, embryo, and fetus;

21 (9) ["Viability", that stage of fetal development when the life of the unborn child may  
22 be continued indefinitely outside the womb by natural or artificial life- supportive systems]  
23 **"Viable", that stage of fetal development when it is the physician's judgment according to**  
24 **accepted obstetrical or neonatal standards of care and practice that there is a reasonable**  
25 **likelihood that the life of the unborn child can be sustained outside the mother's womb**  
26 **with or without artificial support.**

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 impairment of a major bodily function of the pregnant woman.**  
27 **For purposes of this section, "major bodily function" includes, but is not limited to,**  
28 **functions of the immune system, normal cell growth, digestive, bowel, bladder,**  
29 **neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.**

30       **2. (1) Except in the case of a medical emergency, prior to performing or inducing**  
31 **an abortion upon a woman, the physician shall determine the gestational age of the unborn**  
32 **child in a manner consistent with accepted obstetrical and neonatal practices and**  
33 **standards. In making such determination, the physician shall make such inquiries of the**  
34 **pregnant woman and perform or cause to be performed such medical examinations,**  
35 **imaging studies, and tests as a reasonably prudent physician, knowledgeable about the**  
36 **medical facts and conditions of both the woman and the unborn child involved, would**  
37 **consider necessary to perform and consider in making an accurate diagnosis with respect**  
38 **to gestational age.**

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

47       **(3) If the physician determines that the gestational age of the unborn child is twenty**  
48 **weeks or more and further determines that the unborn child is not viable and performs or**  
49 **induces an abortion upon the woman, the physician shall report such findings and**  
50 **determinations and the reasons for such determinations to the health care facility in which**  
51 **the abortion is performed and to the state board of registration for the healing arts and**  
52 **shall enter such findings and determinations in the medical records of the woman and in**  
53 **the individual abortion report submitted to the department under section 188.052.**

54       **(4) (a) If the physician determines that the gestational age of the unborn child is**  
55 **twenty weeks or more and further 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 impairment of a major bodily function  
59 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 impairment of a major bodily function of the pregnant woman.  
65 Upon completion of the abortion, the physician shall report the reasons and determinations  
66 for the abortion of a viable unborn child to the health care facility in which the abortion  
67 is performed and to the state board of registration for the healing arts and shall enter such  
68 findings and determinations in the medical record of the woman and in the individual  
69 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 impairment of a  
76 major bodily function of the pregnant woman. This second physician shall also report such  
77 reasons and determinations to the health care facility in which the abortion is to be  
78 performed and to the state board of registration for the healing arts and shall enter such  
79 findings and determinations in the medical record of the woman and the individual  
80 abortion report submitted to the department under section 188.052. The second physician  
81 shall not have any legal or financial affiliation or relationship with the physician  
82 performing or inducing the abortion.

83 (d) Any physician who performs or induces an abortion upon a woman when it has  
84 been determined that the unborn child is viable shall utilize the available method or  
85 technique of abortion most likely to preserve the life or health of the unborn child. In cases  
86 where the method or technique of abortion most likely to preserve the life or health of the  
87 unborn child would present a greater risk to the life or health of the woman than another  
88 legally permitted and available method or technique, the physician may utilize such other  
89 method or technique. In all cases where the physician performs an abortion upon a viable  
90 unborn child, the physician shall certify in writing the available method or techniques  
91 considered and the reasons for choosing the method or technique employed.

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

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

107           4. Any physician who pleads guilty to or is found guilty of performing or inducing  
108 an abortion of an unborn child in violation of this section shall have his or her license to  
109 practice medicine in the state of Missouri suspended for a period of three years.

110           5. Any hospital licensed in the state of Missouri in which an abortion of an unborn  
111 child is performed or induced in violation of this section shall be subject to suspension or  
112 revocation of its license under the provisions of section 197.070.

113           6. Any ambulatory surgical center licensed in the state of Missouri in which an  
114 abortion of an unborn child is performed or induced in violation of this section shall be  
115 subject to suspension or revocation of its license under the provisions of section 197.220.

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

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

121           9. It is the intent of the legislature that this section be severable as noted in section  
122 1.140. In the event that any section, subsection, subdivision, paragraph, sentence or clause  
123 of this section be declared invalid under the Constitution of the United States or the  
124 Constitution of the State of Missouri, it is the intent of the legislature that the remaining  
125 provisions of this section remain in force and effect as far as capable of being carried into  
126 execution as intended by the legislature.

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

131           [188.029. Before a physician performs an abortion on a woman he has  
132 reason to believe is carrying an unborn child of twenty or more weeks gestational  
133 age, the physician shall first determine if the unborn child is viable by using and  
134 exercising that degree of care, skill, and proficiency commonly exercised by the  
135 ordinarily skillful, careful, and prudent physician engaged in similar practice  
136 under the same or similar conditions. In making this determination of viability,  
137 the physician shall perform or cause to be performed such medical examinations  
138 and tests as are necessary to make a finding of the gestational age, weight, and  
139 lung maturity of the unborn child and shall enter such findings and determination  
140 of viability in the medical record of the mother.]

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