

SENATE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 213

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:

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2 are repealed and two new sections enacted in lieu thereof, to be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

4 188.015. As used in this chapter, the following terms mean:

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

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

14 (b) The intentional termination of the pregnancy of a
15 mother by using or prescribing any instrument, device, medicine,
16 drug, or other means or substance with an intention other than to

1 increase the probability of a live birth or to remove a dead or
2 dying unborn child;

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

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

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

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

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

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

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

27 (9) "Unborn child", the offspring of human beings from the
28 moment of conception until birth and at every stage of its

1 biological development, including the human conceptus, zygote,
2 morula, blastocyst, embryo, and fetus;

3 [(9)] (10) "Viability" or "viable", that stage of fetal
4 development when the life of the unborn child may be continued
5 indefinitely outside the womb by natural or artificial
6 life-supportive systems.

7 188.030. 1. Except in the case of a medical emergency, no
8 abortion of a viable unborn child shall be performed or induced
9 unless [necessary to preserve the life or health of the woman.
10 Before a physician may perform an abortion upon a pregnant woman
11 after such time as her unborn child has become viable, such
12 physician shall first certify in writing that the abortion is
13 necessary to preserve the life or health of the woman and shall
14 further certify in writing the medical indications for such
15 abortion and the probable health consequences.

16 2. Any physician who performs an abortion upon a woman
17 carrying a viable unborn child shall utilize the available method
18 or technique of abortion most likely to preserve the life and
19 health of the unborn child. In cases where the method or
20 technique of abortion which would most likely preserve the life
21 and health of the unborn child would present a greater risk to
22 the life and health of the woman than another available method or
23 technique, the physician may utilize such other method or
24 technique. In all cases where the physician performs an abortion
25 upon a viable unborn child, the physician shall certify in
26 writing the available method or techniques considered and the
27 reasons for choosing the method or technique employed.

28 3. An abortion of a viable unborn child shall be performed

1 or induced only when there is in attendance a physician other
2 than the physician performing or inducing the abortion who shall
3 take control of and provide immediate medical care for a child
4 born as a result of the abortion. During the performance of the
5 abortion, the physician performing it, and subsequent to the
6 abortion, the physician required by this section to be in
7 attendance, shall take all reasonable steps in keeping with good
8 medical practice, consistent with the procedure used, to preserve
9 the life and health of the viable unborn child; provided that it
10 does not pose an increased risk to the life or health of the
11 woman.] the abortion is necessary to preserve the life of the
12 pregnant woman whose life is endangered by a physical disorder,
13 physical illness, or physical injury, including a life-
14 endangering physical condition caused by or arising from the
15 pregnancy itself, or when continuation of the pregnancy will
16 create a serious risk of substantial and irreversible physical
17 impairment of a major bodily function of the pregnant woman. For
18 purposes of this section, "major bodily function" includes, but
19 is not limited to, functions of the immune system, normal cell
20 growth, digestive, bowel, bladder, neurological, brain,
21 respiratory, circulatory, endocrine, and reproductive functions.

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

23 (1) Prior to performing or inducing an abortion upon a
24 woman, the physician shall determine the gestational age of the
25 unborn child in a manner consistent with accepted obstetrical and
26 neonatal practices and standards. In making such determination,
27 the physician shall make such inquiries of the pregnant woman and
28 perform or cause to be performed such medical examinations,

1 imaging studies, and tests as a reasonably prudent physician,
2 knowledgeable about the medical facts and conditions of both the
3 woman and the unborn child involved, would consider necessary to
4 perform and consider in making an accurate diagnosis with respect
5 to gestational age.

6 (2) If the physician determines that the gestational age of
7 the unborn child is twenty weeks or more, prior to performing or
8 inducing an abortion upon the woman, the physician shall
9 determine if the unborn child is viable by using and exercising
10 that degree of care, skill, and proficiency commonly exercised by
11 a skillful, careful, and prudent physician. In making this
12 determination of viability, the physician shall perform or cause
13 to be performed such medical examinations and tests as are
14 necessary to make a finding of the gestational age, weight, and
15 lung maturity of the unborn child and shall enter such findings
16 and determination of viability in the medical record of the
17 woman.

18 (3) If the physician determines that the gestational age of
19 the unborn child is twenty weeks or more, and further determines
20 that the unborn child is not viable and performs or induces an
21 abortion upon the woman, the physician shall report such findings
22 and determinations and the reasons for such determinations to the
23 health care facility in which the abortion is performed and to
24 the state board of registration for the healing arts, and shall
25 enter such findings and determinations in the medical records of
26 the woman and in the individual abortion report submitted to the
27 department under section 188.052.

28 (4) (a) If the physician determines that the unborn child

1 is viable, the physician shall not perform or induce an abortion
2 upon the woman unless the abortion is necessary to preserve the
3 life of the pregnant woman or that a continuation of the
4 pregnancy will create a serious risk of substantial and
5 irreversible physical impairment of a major bodily function of
6 the woman.

7 (b) Before a physician may proceed with performing or
8 inducing an abortion upon a woman when it has been determined
9 that the unborn child is viable, the physician shall first
10 certify in writing the medical threat posed to the life of the
11 pregnant woman, or the medical reasons that continuation of the
12 pregnancy would cause a serious risk of substantial and
13 irreversible physical impairment of a major bodily function of
14 the pregnant woman. Upon completion of the abortion, the
15 physician shall report the reasons and determinations for the
16 abortion of a viable unborn child to the health care facility in
17 which the abortion is performed and to the state board of
18 registration for the healing arts, and shall enter such findings
19 and determinations in the medical record of the woman and in the
20 individual abortion report submitted to the department under
21 section 188.052.

22 (c) Before a physician may proceed with performing or
23 inducing an abortion upon a woman when it has been determined
24 that the unborn child is viable, the physician who is to perform
25 the abortion shall obtain the agreement of a second physician
26 with knowledge of accepted obstetrical and neonatal practices and
27 standards who shall concur that the abortion is necessary to
28 preserve the life of the pregnant woman, or that continuation of

1 the pregnancy would cause a serious risk of substantial and
2 irreversible physical impairment of a major bodily function of
3 the pregnant woman. This second physician shall also report such
4 reasons and determinations to the health care facility in which
5 the abortion is to be performed and to the state board of
6 registration for the healing arts, and shall enter such findings
7 and determinations in the medical record of the woman and the
8 individual abortion report submitted to the department under
9 section 188.052. The second physician shall not have any legal
10 or financial affiliation or relationship with the physician
11 performing or inducing the abortion, except that such prohibition
12 shall not apply to physicians whose legal or financial
13 affiliation or relationship is a result of being employed by or
14 having staff privileges at the same hospital as the term
15 "hospital" is defined in section 197.020.

16 (d) Any physician who performs or induces an abortion upon
17 a woman when it has been determined that the unborn child is
18 viable shall utilize the available method or technique of
19 abortion most likely to preserve the life or health of the unborn
20 child. In cases where the method or technique of abortion most
21 likely to preserve the life or health of the unborn child would
22 present a greater risk to the life or health of the woman than
23 another legally permitted and available method or technique, the
24 physician may utilize such other method or technique. In all
25 cases where the physician performs an abortion upon a viable
26 unborn child, the physician shall certify in writing the
27 available method or techniques considered and the reasons for
28 choosing the method or technique employed.

1 (e) No physician shall perform or induce an abortion upon a
2 woman when it has been determined that the unborn child is viable
3 unless there is in attendance a physician other than the
4 physician performing or inducing the abortion who shall take
5 control of and provide immediate medical care for a child born as
6 a result of the abortion. During the performance of the
7 abortion, the physician performing it, and subsequent to the
8 abortion, the physician required to be in attendance, shall take
9 all reasonable steps in keeping with good medical practice,
10 consistent with the procedure used, to preserve the life or
11 health of the viable unborn child; provided that it does not pose
12 an increased risk to the life of the woman or does not pose an
13 increased risk of substantial and irreversible physical
14 impairment of a major bodily function of the woman.

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

22 4. Any physician who pleads guilty to or is found guilty of
23 performing or inducing an abortion of an unborn child in
24 violation of this section shall be subject to suspension or
25 revocation of his or her license to practice medicine in the
26 state of Missouri by the state board of registration for the
27 healing arts under the provisions of sections 334.100 and
28 334.103.

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

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

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

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

18 9. It is the intent of the legislature that this section be
19 severable as noted in section 1.140. In the event that any
20 section, subsection, subdivision, paragraph, sentence, or clause
21 of this section be declared invalid under the Constitution of the
22 United States or the Constitution of the State of Missouri, it is
23 the intent of the legislature that the remaining provisions of
24 this section remain in force and effect as far as capable of
25 being carried into execution as intended by the legislature.

26 10. The general assembly may, by concurrent resolution,
27 appoint one or more of its members who sponsored or co-sponsored
28 this act in his or her official capacity, to intervene as a

1 matter of right in any case in which the constitutionality of
2 this law is challenged.

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

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