

HB 757 -- ABORTION

SPONSOR: Christofanelli

This bill changes the laws regarding abortion.

The bill prohibits a person from performing or inducing, or attempting to perform or induce, an abortion of an unborn child capable of feeling pain unless necessary to prevent serious health risk to the unborn child's mother. An unborn child must be deemed capable of feeling pain when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is 20 or more weeks. The bill requires a physician to determine the probable postfertilization age of the unborn child before an abortion except in the case of a medical emergency. In determining the age of the unborn child the physician must inquire of the woman and perform any medical examinations or tests that a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to make an accurate diagnosis as to the age of the unborn child.

If an abortion of an unborn child capable of feeling pain is necessary to prevent serious health risk to the unborn child's mother, the physician must terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No greater risk must be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. Any person who intentionally or recklessly performs or attempts an abortion in violation of these provisions is guilty of a felony but no penalty must be assessed against the woman upon whom the abortion is performed attempted.

The bill requires any physician who performs or induces or attempts to perform or induce an abortion to report specified information to the department, on a schedule and in accordance with forms and regulations adopted and promulgated by the department. Reports must not contain the name or the address of the patient whose pregnancy was terminated or any other information identifying the

patient; except that, each report must contain a unique medical record identifying number to enable matching the report to the patient's medical records. These reports must be maintained in strict confidence by the department and must not be made available except to the attorney general or a district attorney pursuant to a criminal investigation or specified civil investigation, or pursuant to a court order in a specified civil cause of action.

By June 30th of each year, the bill requires the department to issue a public report containing specified information. The department must ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed, induced, or attempted.

Any physician who fails to submit a report by the end of 30 days following the due date established by regulation must be subject to a late fee of \$1,000 for each additional 30 period or portion of a 30 period the report is overdue. Any physician required to report under these provisions who has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless failure by any physician to conform to any requirement of these provisions, other than late filing of a report, constitutes unprofessional conduct under Chapter 334, RSMo. Intentional or reckless falsification of any report required under these provisions is a misdemeanor.

The department must adopt and promulgate forms and regulations under these provisions within 90 days of the effective date of the bill and must require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

Any woman upon whom an abortion has been performed or induced in violation of these provisions or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of these provisions for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of these provisions may maintain an action against the person who attempted the abortion in an intentional or reckless violation of these provisions for actual and punitive damages. A cause of action for injunctive relief against any person who has intentionally or recklessly violated these provisions may be maintained as specified in the bill. If judgment is rendered in favor of the plaintiff in such an action, the court must also

render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court must render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

In every action brought under the provisions of the bill, the court must rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted must be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, must make such a ruling and, upon determining that her anonymity should be preserved, must issue orders to the parties, witnesses, and counsel and must direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted, anyone, other than a public official, who brings an action under these provisions must do so under a pseudonym. This section must not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

The bill creates a special revenue fund known as the "Missouri Pain-Capable Unborn Child Protection Act Litigation Fund" for the purpose of providing funds to pay for any costs and expenses incurred by the Attorney General in relation to actions surrounding defense of these provisions. The fund must be maintained by the Commissioner of Administration and must consist of appropriations made to the fund by the General Assembly and any donations, gifts, or grants made to the fund. The fund must retain the interest income derived from the moneys credited to the fund.

The provisions of the bill must not be construed to repeal, by implication or otherwise, any otherwise applicable provision of Missouri law regulating or restricting abortion. An abortion that complies with these provisions but violates any other provision of Chapter 188 or any otherwise applicable provision of Missouri law shall be deemed unlawful as provided in such provision. An abortion that complies with any other provision of Chapter 188 or any otherwise applicable provision of Missouri law regulating or restricting abortion but violates these provisions must be deemed unlawful under the provisions of the bill.

This bill is the same as HB 692 (2017).