

HCS HB 2012 -- HEALTH CARE (Kelly (141))

COMMITTEE OF ORIGIN: Special Committee on Government Oversight

This bill modifies provisions relating to health care.

BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT (Section 188.035)

This bill establishes the "Born-Alive Abortion Survivors Protection Act". This bill mandates that a child born alive during or after an abortion or attempted abortion shall have the same rights, privileges, and immunities as any other person, citizen, and resident of Missouri, including any other liveborn child.

Any licensed, registered, or certified health care provider present at the time a child is born alive during or after an abortion or attempted abortion shall exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious provider would render to any other child born alive at the same gestational age, as well as ensure that the child is transported and admitted to a hospital following such care.

A person shall be civilly liable as specified in this bill when he or she:

- (1) Knowingly, recklessly, or negligently causes the death of a child born alive during or after an abortion or attempted abortion;
- (2) Knowingly fails to comply with the health care provider standards of care described in this bill;
- (3) Knowingly performs or induces, or attempts to perform or induce, an unlawful abortion;
- (4) Knowingly aids or abets another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion;
- (5) Knowingly, recklessly, or negligently supplies or makes available any instrument, device, medicine, drug, or any other means or substance for another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion; or
- (6) Knowingly incites, solicits, or otherwise uses speech or writing as an integral part of conduct in violation of a valid criminal statute to influence another person to undergo a self-induced abortion or attempted self-induced abortion or to procure

an unlawful abortion or attempted unlawful abortion.

A cause of action for personal injury, bodily injury, or wrongful death may be brought if injury or death arises out of or results from any of these circumstances to:

(1) A person upon whom an unlawful abortion or attempted unlawful abortion was performed or induced;

(2) A person who underwent a self-induced abortion or attempted self-induced abortion or who procured an unlawful abortion or attempted unlawful abortion;

(3) A child who was born alive during or after an abortion or attempted abortion; or

(4) An unborn child.

In a cause of action for wrongful death, the spouse, partner, parents, siblings, and children of the deceased person, child, or unborn child shall be entitled to bring the action and receive damages, attorney fees, and other costs as described in the bill. A defendant may not plead or prove a defense that the plaintiff assumed or otherwise consented to certain risks involving self-induced or unlawful abortions or attempted self-induced or unlawful abortions.

The bill also prohibits any person from maintaining a cause of action or receiving an award of damages under the provisions in this section if the person engaged in or aided or abetted a person who engaged in criminal conduct, domestic violence, or sexual assault which resulted in the pregnancy in which another person was injured or died as a result of an abortion or attempted abortion.

FETAL REMAINS (Sections 188.036, 188.047, and 188.165)

The bill prohibits the use of or the donating of fetal tissue from an abortion for any purpose, except to diagnose anomalies, paternity, or for any other law enforcement purposes. Violation of these provisions shall be a class E felony and be subject to license suspension or revocation.

The bill also creates the offense of hoarding of aborted human remains for any person who possess all or part of two or more bodies of aborted children. Violators shall be guilty of a class D felony and undergo mental evaluation and treatment.

ABORTION-INDUCING DRUGS (Sections 188.090, 338.270, and 338.337)

The bill also establishes the offense of trafficking abortion-inducing drugs if a person or entity knowingly imports, exports, distributes, delivers, manufactures, produces, prescribes, administers, or dispenses, or attempts to do so, any medicine, drug, or other means or substance to be used to induce an abortion, as defined under Section 188.015, on another person in violation of state or federal law. The offense is a Class B felony.

Furthermore, the bill prohibits the Board of Pharmacy from issuing or renewing a non-resident pharmacy license if the applicant or licensee delivers directly to a patient in this state any medicine, drug, or other means or substance to be used to induce an abortion.

It is also unlawful for a licensed or registered out-of-state wholesale distributor, out-of-state pharmacy acting as a distributor, drug outsourcer, or third-party logistics provider to deliver directly to a patient in this state any medicine, drug, or other means or substance to be used to induce an abortion. The penalty for a violation of this provision is the same as other unlawful acts of such entities and is a Class D felony.

PUBLIC FUNDS AND CONTRACTS (Sections 188.202, 188.207, 188.220, 208.152, 208.153, 208.164, 208.659)

This bill provides no federal act, law, executive order, administrative order, rule, or regulation may infringe on the right of state citizens to restrict public funds, facilities, and employees from:

- (1) Being used to perform, induce, or assist in abortions;
- (2) Encouraging childbirth over abortions in the use of public funds, facilities, and employees;
- (3) Defending the religious beliefs and moral convictions of those who do not wish to be forced to participate directly or indirectly in abortions;
- (4) Preventing the state, its political subdivisions, and public officials from being coerced or compelled by the federal government from administering or enforcing a federal regulatory program that funds abortions.

It shall be unlawful for public funds to be expended to any abortion facility and any affiliate or associate of such facility.

If a taxpayer takes action to enforce the above provisions of the bill, a court may order injunctive or other equitable relief, recovery of damages or other legal remedies, or both, as well as

payment of reasonable attorney's fees, costs, and expenses of the taxpayer.

Any person entitled to MO HealthNet benefits is able to obtain benefits from any provider of services, which is not excluded or disqualified as a provider under any provision of law, with which an agreement is in effect and which undertakes to provide the services, as authorized by the MO HealthNet Division.

This bill mandates that the Department of Health and Senior Services suspend, revoke, cancel, or refuse to enter into any contract or provider agreement when it is determined that a provider is not qualified to perform under the contract as required. The bill provides such conditions for determining that a provider is not qualified to perform the service or services required, including the conviction of crimes related to fraud and patient care, patterns of discrimination, and that the provider is an abortion facility.