

FIRST REGULAR SESSION

HOUSE BILL NO. 456

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SWAN.

1167H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 188.036, 188.047, 188.052, and 197.230, RSMo, and to enact in lieu thereof five new sections relating to abortion, with penalty provisions.

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

Section A. Sections 188.036, 188.047, 188.052, and 197.230, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 188.036, 188.047, 188.052, 188.160, and 197.230, to read as follows:

188.036. 1. **Sections 188.036, 188.047, 188.052, 188.160, and 197.230 shall be known and may be cited as the "Women's Health and Clinic Safety Act".**

2. No physician shall perform an abortion on a woman if the physician knows that the woman conceived the unborn child for the purpose of providing fetal organs or tissue for medical transplantation to herself or another, and the physician knows that the woman intends to procure the abortion to utilize those organs or tissue for such use for herself or another.

~~2.~~ 3. No person shall utilize the fetal organs or tissue resulting from an abortion for medical transplantation, if the person knows that the abortion was procured for the purpose of utilizing those organs or tissue for such use.

~~3.~~ 4. No person shall offer any inducement, monetary or otherwise, to a woman or a prospective father of an unborn child for the purpose of conceiving an unborn child for the medical, scientific, experimental or therapeutic use of the fetal organs or tissue.

~~4.~~ 5. No person shall offer any inducement, monetary or otherwise, to the mother or father of an unborn child for the purpose of procuring an abortion for the medical, scientific, experimental or therapeutic use of the fetal organs or tissue.

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.

16 ~~[5.]~~ **6. No person shall knowingly donate or make an anatomical gift of the fetal**
17 **organs or tissue resulting from an abortion to any person or entity for medical, scientific,**
18 **experimental, therapeutic, or any other use.**

19 **7. No person shall knowingly offer or receive any valuable consideration for the fetal**
20 **organs or tissue resulting from an abortion, provided that nothing in this subsection shall prohibit**
21 **payment for burial or other final disposition of the fetal remains so long as the final disposition**
22 **does not include any donation or anatomical gift of fetal organs or tissue,** or payment for a
23 pathological examination, autopsy or postmortem examination of the fetal remains.

24 ~~[6.]~~ **8. Any person who violates the provisions of subsection 4, 5, or 7 of this section**
25 **shall be guilty of a class C felony, and the court may impose a fine in an amount not less**
26 **than twice the amount of any valuable consideration received.**

27 **9. Nothing in this section shall prohibit the utilization of fetal organs or tissue**
28 **resulting from an abortion for medical or scientific purposes to determine the cause or**
29 **causes of any anomaly, illness, death, or genetic condition of the fetus, the paternity of the**
30 **fetus, or for law enforcement purposes.**

31 **10. If any provision in this section or the application thereof to any person, circumstance**
32 **or period of gestation is held invalid, such invalidity shall not affect the provisions or**
33 **applications which can be given effect without the invalid provision or application, and to this**
34 **end the provisions of this section are declared severable.**

188.047. ~~[A representative sample of]~~ **1. Except as provided for in subsection 9 of**
2 **section 188.036, all fetal organs and tissue removed at the time of abortion shall be submitted**
3 **to a board eligible or certified pathologist~~[, who]~~ for gross and histopathological examination.**
4 **The pathologist shall file a copy of the fetal organs and tissue report with the state department**
5 **of health and senior services, and ~~[who]~~ shall provide a copy of the report to the abortion facility**
6 **or hospital in which the abortion was performed or induced ~~[and]~~ . The pathologist's report shall**
7 **be made a part of the patient's permanent record.**

8 **2. The fetal organs and tissue report shall include:**

9 **(1) The pathologist's estimation, to a reasonable degree of scientific certainty, of the**
10 **gestational age of the fetal organs and tissue;**

11 **(2) Whether all fetal organs and tissue were received that would be common for a**
12 **specimen of such estimated gestational age;**

13 **(3) If the pathologist finds that all fetal organs and tissue were not received, what**
14 **portion of the fetal organs and tissue were not received;**

15 **(4) A gross diagnosis and detailed gross findings of what was received including the**
16 **percent blood clot and the percent tissue;**

17 **(5) The date the fetal organs and tissue were remitted to be disposed and the**
18 **location of such disposal;**

19 **(6) A certification that all submitted fetal organs and tissue have been disposed in**
20 **accordance with state laws and regulations; and**

21 **(7) The name of the entity and physical address of the entity conducting the**
22 **examination of the specimen containing the fetal organs and tissue.**

23 **3. Each specimen containing fetal organs and tissue shall be given a unique**
24 **identification number to allow the specimen to be tracked from the abortion facility or**
25 **hospital where the abortion was performed or induced to the pathology lab and to its final**
26 **disposition location. The unique identification number shall be conspicuously adhered to**
27 **the exterior of the specimen container.**

28 **4. A report shall be created and submitted to the department for each specimen**
29 **containing fetal organs and tissue at each facility that handles the specimen, including the**
30 **abortion facility or hospital where the abortion was performed or induced, the pathology**
31 **lab, and the location of final disposition. Each report shall document, if applicable, the**
32 **date the specimen containing fetal organs and tissue was collected, transported, received,**
33 **and disposed. The report by the location of final disposition shall verify that all fetal**
34 **organs and tissue were received and have been properly disposed according to state laws**
35 **and regulations.**

36 **5. The department shall reconcile each notice of abortion with its corresponding**
37 **fetal organs and tissue report. If the department does not receive the notice of abortion**
38 **and the fetal organs and tissue report, the department shall conduct an investigation. If**
39 **the department finds that the abortion facility or hospital where the abortion was**
40 **performed or induced was not in compliance with the provisions of this section, the**
41 **department shall consider such noncompliance a deficiency requiring an unscheduled**
42 **inspection of the facility to ensure the deficiency is remedied. If such deficiency is not**
43 **remedied, the department shall suspend the abortion facility's or hospital's license for no**
44 **less than one year, subject to the provisions of chapter 197 regarding license suspensions,**
45 **reviews, and appeals.**

46 **6. Beginning January 1, 2018, the department shall make an annual report to the**
47 **general assembly. The report shall include, but not be limited to, all reports and**
48 **information received by the department under the provisions of this section, the number**
49 **of any deficiencies of each abortion facility in the calendar year and whether such**
50 **deficiencies were remedied, and the following for each abortion procedure reported to the**
51 **department the previous calendar year:**

52 **(1) The termination procedure used with a clinical estimation of gestation;**

53 **(2) Whether the department received the fetal organs and tissue report for that**
54 **abortion, along with a certification of the disposal of the fetal organs and tissue; and**

55 **(3) The existence and nature, if any, of any inconsistencies or concerns between the**
56 **abortion report submitted under section 188.052 and the fetal organs and tissue report**
57 **submitted under this section.**

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59 **The report shall not contain any personal patient information the disclosure of which is**
60 **prohibited by state or federal law.**

188.052. 1. An individual abortion report for each abortion performed or induced upon
2 a woman shall be completed by her attending physician. **The report shall include:**

3 **(1) The attending physician's estimation, to a reasonable degree of scientific**
4 **certainty, of the gestational age of the fetal organs and tissue;**

5 **(2) Whether all fetal organs and tissue were removed that would be common for**
6 **a specimen of such estimated gestational age; and**

7 **(3) If the attending physician finds that all fetal organs and tissue were not**
8 **removed, what portion of the fetal organs and tissue were not removed.**

9 2. An individual complication report for any post-abortion care performed upon a woman
10 shall be completed by the physician providing such post-abortion care. This report shall include:

11 (1) The date of the abortion;

12 (2) The name and address of the abortion facility or hospital where the abortion was
13 performed;

14 (3) The nature of the abortion complication diagnosed or treated.

15 3. All abortion reports shall be signed by the attending physician, and submitted to the
16 state department of health and senior services within forty-five days from the date of the
17 abortion. All complication reports shall be signed by the physician providing the post-abortion
18 care and submitted to the department of health and senior services within forty-five days from
19 the date of the post-abortion care.

20 4. A copy of the abortion report shall be made a part of the medical record of the patient
21 of the facility or hospital in which the abortion was performed.

22 5. The state department of health and senior services shall be responsible for collecting
23 all abortion reports and complication reports and collating and evaluating all data gathered
24 therefrom and shall annually publish a statistical report based on such data from abortions
25 performed in the previous calendar year.

188.160. 1. Each hospital, ambulatory surgical center, pathology lab, medical
2 **research entity, and disposal facility involved in handling fetal organs or tissue from an**
3 **elective abortion shall establish and implement a written policy adopted by each hospital,**

4 ambulatory surgical center, pathology lab, medical research entity, and disposal facility
5 relating to the protections for employees who disclose information under subsection 2 of
6 this section. This policy shall include a time frame for completion of investigations related
7 to complaints, not to exceed thirty days, and a method for notifying the complainant of the
8 disposition of the investigation. This policy shall be submitted to the department of health
9 and senior services to verify implementation. At a minimum, such policy shall include the
10 following provisions:

11 (1) No supervisor or individual with authority to hire or fire in a hospital,
12 ambulatory surgical center, pathology lab, medical research entity, or disposal facility shall
13 prohibit employees from disclosing information under subsection 2 of this section;

14 (2) No supervisor or individual with authority to hire or fire in a hospital,
15 ambulatory surgical center, pathology lab, medical research entity, or disposal facility shall
16 use or threaten to use his or her supervisory authority to knowingly discriminate against,
17 dismiss, penalize, or in any way retaliate against or harass an employee because the
18 employee in good faith reported or disclosed any information under subsection 2 of this
19 section, or in any way attempt to dissuade, prevent, or interfere with an employee who
20 wishes to report or disclose such information; and

21 (3) Establish a program to identify a compliance officer who is a designated person
22 responsible for administering the reporting and investigation process and an alternate
23 person should the primary designee be implicated in the report.

24 2. The provisions of this section shall apply to information disclosed or reported in
25 good faith by an employee concerning alleged violations of applicable federal or state laws
26 or administrative rules concerning the handling of fetal organs or tissue. All information
27 disclosed, collected, and maintained under this subsection and under the written policy
28 requirements of this section shall be accessible to the department at all times and shall be
29 reviewed by the department at least annually. Complainants shall be notified of the
30 department's access to such information and of the complainant's right to notify the
31 department of any information concerning alleged violations of applicable federal or state
32 laws or administrative rules concerning abortions or the handling of fetal organs or tissue.

33 3. Prior to any disclosure to individuals or agencies other than the department,
34 employees wishing to make a disclosure under the provisions of this section shall first
35 report to the individual or individuals designated by the hospital, ambulatory surgical
36 center, pathology lab, medical research entity, or disposal facility under subsection 1 of this
37 section.

38 4. If the compliance officer, compliance committee, or management official
39 discovers credible evidence of misconduct from any source and, after a reasonable inquiry,

40 has reason to believe that the misconduct may violate criminal, civil, or administrative law,
41 the hospital, ambulatory surgical center, pathology lab, medical research entity, or disposal
42 facility shall report the existence of misconduct to the appropriate governmental authority
43 within a reasonable period, but not more than seven days after determining that there is
44 credible evidence of a violation.

45 5. Reports made to the department shall be subject to the provisions of section
46 197.477; provided that, the restrictions of section 197.477 shall not be construed to limit
47 the employee's ability to subpoena from the original source the information reported to the
48 department under this section.

49 6. Each written policy shall allow employees making a report who wish to remain
50 anonymous to do so, and shall include safeguards to protect the confidentiality of the
51 employee making the report, the confidentiality of patients, and the integrity of data,
52 information, and medical records.

53 7. Each hospital, ambulatory surgical center, pathology lab, medical research
54 entity, and disposal facility shall, within forty-eight hours of the receipt of a report, notify
55 the employee that his or her report has been received and is being reviewed, unless the
56 employee wishes to remain anonymous.

57 8. Beginning December 1, 2017, each hospital, ambulatory surgical center,
58 pathology lab, medical research entity, and disposal facility involved in handling fetal
59 organs or tissue from an elective abortion shall post a notice at their place of employment,
60 in a sufficient number of places on the premises to assure that such notice will reasonably
61 be seen by all employees. A hospital, ambulatory surgical center, pathology lab, medical
62 research entity, or disposal facility involved in handling fetal organs or tissue from an
63 elective abortion for whom services are performed by individuals who may not reasonably
64 be expected to see a posted notice shall notify each such employee in writing of the contents
65 of such notice. The notice shall include all information provided in this section.

197.230. 1. The department of health and senior services shall make, or cause to be
2 made, such inspections and investigations as it deems necessary. The department may delegate
3 its powers and duties to investigate and inspect ambulatory surgical centers to an official of a
4 political subdivision having a population of at least four hundred fifty thousand if such political
5 subdivision is deemed qualified by the department to inspect and investigate ambulatory surgical
6 centers. The official so designated shall submit a written report of his or her findings to the
7 department and the department may accept the recommendations of such official if it determines
8 that the facility inspected meets minimum standards established pursuant to sections 197.200 to
9 197.240.

10 **2. In the case of any ambulatory surgical center operated for the purpose of**
11 **performing or inducing an abortion, the department shall make or cause to be made an**
12 **unannounced on-site inspection and investigation at least annually. Such on-site inspection**
13 **and investigation shall include, but not be limited to, the following areas:**

14 **(1) Compliance with all statutory and regulatory requirements for an ambulatory**
15 **surgical center, including requirements that the facility maintain adequate staffing and**
16 **equipment to respond to medical emergencies;**

17 **(2) Compliance with the requirement in section 188.047 that all fetal organs or**
18 **tissue removed at the time of abortion be submitted to a board certified or eligible**
19 **pathologist and that the resultant tissue report be made a part of the patient's permanent**
20 **record;**

21 **(3) Review of patient records to ensure that no consent forms or other**
22 **documentation authorizes any utilization of fetal organs or tissue in violation of sections**
23 **188.036 and 194.275;**

24 **(4) Compliance with sections 188.205, 188.210, and 188.215 prohibiting the use of**
25 **public funds, facilities, and employees to perform or to assist a prohibited abortion or to**
26 **encourage or to counsel a woman to have a prohibited abortion; and**

27 **(5) Compliance with the requirement in section 197.215 that continuous physician**
28 **services or registered professional nursing services be provided whenever a patient is in**
29 **the facility.**

30 **3. Inspection, investigation, and quality assurance reports shall be made available**
31 **to the public. Any portion of a report may be redacted when made publicly available if**
32 **such portion would disclose information that is not subject to disclosure under the law.**

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