

FIRST REGULAR SESSION

HOUSE BILL NO. 468

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DINKINS.

0636H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 188.015, RSMo, and to enact in lieu thereof three new sections relating to dismemberment abortions.

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

Section A. Section 188.015, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 188.015, 188.420, and 1, to read as follows:

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

(1) "Abortion":

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

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead 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) "**Dismemberment abortion**", **an abortion with the purpose of killing a living fetus in which the living fetus is extracted one piece at a time from the uterus through clamps, grasping forceps, tongs, scissors, or other similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps a portion of the fetus's body to**

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.

17 **cut or rip it off; "dismemberment abortion" does not include an abortion that uses suction**
 18 **to dismember a fetus by sucking fetal parts into a collection container;**

19 (6) "Down Syndrome", the same meaning as defined in section 191.923;

20 [~~(6)~~] (7) "Gestational age", length of pregnancy as measured from the first day of the
 21 woman's last menstrual period;

22 [~~(7)~~] (8) "Medical emergency", a condition which, based on reasonable medical
 23 judgment, so complicates the medical condition of a pregnant woman as to necessitate the
 24 immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a
 25 delay will create a serious risk of substantial and irreversible physical impairment of a major
 26 bodily function of the pregnant woman;

27 [~~(8)~~] (9) "Physician", any person licensed to practice medicine in this state by the state
 28 board of registration for the healing arts;

29 [~~(9)~~] (10) "Reasonable medical judgment", a medical judgment that would be made by
 30 a reasonably prudent physician, knowledgeable about the case and the treatment possibilities
 31 with respect to the medical conditions involved;

32 [~~(10)~~] (11) "Unborn child", the offspring of human beings from the moment of
 33 conception until birth and at every stage of its biological development, including the human
 34 conceptus, zygote, morula, blastocyst, embryo, and fetus;

35 [~~(11)~~] (12) "Viability" or "viable", that stage of fetal development when the life of the
 36 unborn child may be continued indefinitely outside the womb by natural or artificial
 37 life-supportive systems;

38 [~~(12)~~] (13) "Viable pregnancy" or "viable intrauterine pregnancy", in the first trimester
 39 of pregnancy, an intrauterine pregnancy that can potentially result in a liveborn baby.

188.420. 1. A person shall not knowingly or intentionally perform a
 2 **dismemberment abortion except in cases of medical emergency.**

3 **2. A woman upon whom a dismemberment abortion is performed shall not be**
 4 **prosecuted for violating or conspiring to violate the provisions of this section nor shall such**
 5 **woman be liable for any damages relating to the dismemberment abortion.**

6 **3. The following persons who worked at the direction of a physician who performed**
 7 **a dismemberment abortion are not liable for damages for the dismemberment abortion:**

8 **(1) A nurse;**

9 **(2) A technician;**

10 **(3) A secretary;**

11 **(4) A receptionist;**

12 **(5) An employee or agent who is not a physician but acts at the direction of a**
 13 **physician; or**

14 **(6) A pharmacist or other individual who is not a physician but who fills a**
15 **prescription or provides instruments or materials used in the dismemberment abortion.**

16 **4. The following persons may petition a court for an injunction against a person**
17 **who performed a dismemberment abortion in violation of this section:**

18 **(1) A woman upon whom the person performed a dismemberment abortion;**

19 **(2) The parent or guardian of a female upon whom a dismemberment abortion was**
20 **performed who was less than eighteen years of age at the time the dismemberment abortion**
21 **was performed; and**

22 **(3) A prosecuting attorney in the jurisdiction where the dismemberment abortion**
23 **was performed or in the jurisdiction of residence of the woman upon whom a**
24 **dismemberment abortion was performed.**

25 **5. An injunction shall prohibit the defendant from performing or attempting to**
26 **perform further dismemberment abortions in violation of this section. An injunction shall**
27 **not be obtained by a plaintiff under this section if the pregnancy resulted from the**
28 **plaintiff's criminal conduct.**

29 **6. (1) The following persons may bring an action for the recovery of damages**
30 **against a person who has performed a dismemberment abortion in violation of this section:**

31 **(a) A woman upon whom a dismemberment abortion has been performed;**

32 **(b) The father of the unborn child; and**

33 **(c) The maternal grandparents of the unborn child on whose mother a**
34 **dismemberment abortion was performed if a female was less than eighteen years of age at**
35 **the time of the dismemberment abortion or if she has died as a result of the abortion.**

36 **(2) No damages shall be awarded to a plaintiff if the pregnancy resulted from the**
37 **plaintiff's criminal conduct.**

38 **(3) Damages awarded under this section shall include:**

39 **(a) Damages for all injuries, including psychological and physical injuries, caused**
40 **by the dismemberment abortion; and**

41 **(b) Damages equal to three times the cost of the dismemberment abortion.**

42 **7. If a judgment is rendered in favor of a plaintiff under this section, the court shall**
43 **order reasonable attorney's fees in favor of the plaintiff. If a judgment is rendered in favor**
44 **of a defendant under this section and the court finds that the plaintiff's suit was frivolous**
45 **and brought in bad faith, the court shall order reasonable attorney's fees in favor of the**
46 **defendant.**

47 **8. In every civil, criminal, or administrative action brought under this section, the**
48 **identity of any woman upon whom a dismemberment abortion has been performed or was**
49 **attempted to have been performed shall be preserved from public disclosure. Anyone other**

50 **than a prosecuting attorney who brings an action under this section shall use a pseudonym**
51 **for the woman. This section shall not be construed to conceal the identity of the plaintiff**
52 **or of witnesses from the defendant or the attorneys for the defendant.**

Section 1. If any provision of section 188.015 or 188.420 or the application thereof
2 **to any person or circumstance is held invalid, such determination shall not affect the**
3 **provisions or applications of section 188.015 or 188.420, which may be given effect without**
4 **the invalid provision or application, and to that end the provisions of sections 188.015 and**
5 **188.420 are severable.**

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