

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 65

96TH GENERAL ASSEMBLY

2011

0511S.05T

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:

Section A. Sections 188.015, 188.029, and 188.030, RSMo, are repealed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

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

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

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

9 (b) **The intentional termination of the pregnancy of a mother by
10 using or prescribing any instrument, device, medicine, drug, or other
11 means or substance with an intention other than to increase the
12 probability of a live birth or to remove a dead or dying unborn child;**

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- 17 (4) "Department", the department of health and senior services;
- 18 (5) "Gestational age", length of pregnancy as measured from the first day
19 of the woman's last menstrual period;
- 20 (6) "Medical emergency", a condition which, [on the basis of a physician's
21 good faith clinical] **based on reasonable medical** judgment, so complicates the
22 medical condition of a pregnant woman as to necessitate the immediate abortion
23 of her pregnancy to avert the death of the pregnant woman or for which a delay
24 will create a serious risk of substantial and irreversible **physical** impairment of
25 a major bodily function of the pregnant woman;
- 26 (7) "Physician", any person licensed to practice medicine in this state by
27 the state board of registration for the healing arts;
- 28 (8) "**Reasonable medical judgment**", a **medical judgment that**
29 **would be made by a reasonably prudent physician, knowledgeable**
30 **about the case and the treatment possibilities with respect to the**
31 **medical conditions involved;**
- 32 (9) "Unborn child", the offspring of human beings from the moment of
33 conception until birth and at every stage of its biological development, including
34 the human conceptus, zygote, morula, blastocyst, embryo, and fetus;
- 35 [(9)] (10) "Viability" or "**viable**", that stage of fetal development when
36 the life of the unborn child may be continued indefinitely outside the womb by
37 natural or artificial life-supportive systems.

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

8 2. Any physician who performs an abortion upon a woman carrying a
9 viable unborn child shall utilize the available method or technique of abortion
10 most likely to preserve the life and health of the unborn child. In cases where the
11 method or technique of abortion which would most likely preserve the life and
12 health of the unborn child would present a greater risk to the life and health of
13 the woman than another available method or technique, the physician may utilize
14 such other method or technique. In all cases where the physician performs an
15 abortion upon a viable unborn child, the physician shall certify in writing the

16 available method or techniques considered and the reasons for choosing the
17 method or technique employed.

18 3. An abortion of a viable unborn child shall be performed or induced only
19 when there is in attendance a physician other than the physician performing or
20 inducing the abortion who shall take control of and provide immediate medical
21 care for a child born as a result of the abortion. During the performance of the
22 abortion, the physician performing it, and subsequent to the abortion, the
23 physician required by this section to be in attendance, shall take all reasonable
24 steps in keeping with good medical practice, consistent with the procedure used,
25 to preserve the life and health of the viable unborn child; provided that it does
26 not pose an increased risk to the life or health of the woman.] **the abortion is**
27 **necessary to preserve the life of the pregnant woman whose life is**
28 **endangered by a physical disorder, physical illness, or physical injury,**
29 **including a life-endangering physical condition caused by or arising**
30 **from the pregnancy itself, or when continuation of the pregnancy will**
31 **create a serious risk of substantial and irreversible physical**
32 **impairment of a major bodily function of the pregnant woman. For**
33 **purposes of this section, "major bodily function" includes, but is not**
34 **limited to, functions of the immune system, normal cell growth,**
35 **digestive, bowel, bladder, neurological, brain, respiratory, circulatory,**
36 **endocrine, and reproductive functions.**

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

38 (1) Prior to performing or inducing an abortion upon a woman,
39 the physician shall determine the gestational age of the unborn child
40 in a manner consistent with accepted obstetrical and neonatal practices
41 and standards. In making such determination, the physician shall
42 make such inquiries of the pregnant woman and perform or cause to be
43 performed such medical examinations, imaging studies, and tests as a
44 reasonably prudent physician, knowledgeable about the medical facts
45 and conditions of both the woman and the unborn child involved, would
46 consider necessary to perform and consider in making an accurate
47 diagnosis with respect to gestational age.

48 (2) If the physician determines that the gestational age of the
49 unborn child is twenty weeks or more, prior to performing or inducing
50 an abortion upon the woman, the physician shall determine if the
51 unborn child is viable by using and exercising that degree of care, skill,
52 and proficiency commonly exercised by a skillful, careful, and prudent

53 physician. In making this determination of viability, the physician
54 shall perform or cause to be performed such medical examinations and
55 tests as are necessary to make a finding of the gestational age, weight,
56 and lung maturity of the unborn child and shall enter such findings and
57 determination of viability in the medical record of the woman.

58 (3) If the physician determines that the gestational age of the
59 unborn child is twenty weeks or more, and further determines that the
60 unborn child is not viable and performs or induces an abortion upon
61 the woman, the physician shall report such findings and determinations
62 and the reasons for such determinations to the health care facility in
63 which the abortion is performed and to the state board of registration
64 for the healing arts, and shall enter such findings and determinations
65 in the medical records of the woman and in the individual abortion
66 report submitted to the department under section 188.052.

67 (4) (a) If the physician determines that the unborn child is
68 viable, the physician shall not perform or induce an abortion upon the
69 woman unless the abortion is necessary to preserve the life of the
70 pregnant woman or that a continuation of the pregnancy will create a
71 serious risk of substantial and irreversible physical impairment of a
72 major bodily function of the woman.

73 (b) Before a physician may proceed with performing or inducing
74 an abortion upon a woman when it has been determined that the
75 unborn child is viable, the physician shall first certify in writing the
76 medical threat posed to the life of the pregnant woman, or the medical
77 reasons that continuation of the pregnancy would cause a serious risk
78 of substantial and irreversible physical impairment of a major bodily
79 function of the pregnant woman. Upon completion of the abortion, the
80 physician shall report the reasons and determinations for the abortion
81 of a viable unborn child to the health care facility in which the
82 abortion is performed and to the state board of registration for the
83 healing arts, and shall enter such findings and determinations in the
84 medical record of the woman and in the individual abortion report
85 submitted to the department under section 188.052.

86 (c) Before a physician may proceed with performing or inducing
87 an abortion upon a woman when it has been determined that the
88 unborn child is viable, the physician who is to perform the abortion
89 shall obtain the agreement of a second physician with knowledge of

90 accepted obstetrical and neonatal practices and standards who shall
91 concur that the abortion is necessary to preserve the life of the
92 pregnant woman, or that continuation of the pregnancy would cause a
93 serious risk of substantial and irreversible physical impairment of a
94 major bodily function of the pregnant woman. This second physician
95 shall also report such reasons and determinations to the health care
96 facility in which the abortion is to be performed and to the state board
97 of registration for the healing arts, and shall enter such findings and
98 determinations in the medical record of the woman and the individual
99 abortion report submitted to the department under section
100 188.052. The second physician shall not have any legal or financial
101 affiliation or relationship with the physician performing or inducing
102 the abortion, except that such prohibition shall not apply to physicians
103 whose legal or financial affiliation or relationship is a result of being
104 employed by or having staff privileges at the same hospital as the term
105 "hospital" is defined in section 197.020.

106 (d) Any physician who performs or induces an abortion upon a
107 woman when it has been determined that the unborn child is viable
108 shall utilize the available method or technique of abortion most likely
109 to preserve the life or health of the unborn child. In cases where the
110 method or technique of abortion most likely to preserve the life or
111 health of the unborn child would present a greater risk to the life or
112 health of the woman than another legally permitted and available
113 method or technique, the physician may utilize such other method or
114 technique. In all cases where the physician performs an abortion upon
115 a viable unborn child, the physician shall certify in writing the
116 available method or techniques considered and the reasons for
117 choosing the method or technique employed.

118 (e) No physician shall perform or induce an abortion upon a
119 woman when it has been determined that the unborn child is viable
120 unless there is in attendance a physician other than the physician
121 performing or inducing the abortion who shall take control of and
122 provide immediate medical care for a child born as a result of the
123 abortion. During the performance of the abortion, the physician
124 performing it, and subsequent to the abortion, the physician required
125 to be in attendance, shall take all reasonable steps in keeping with
126 good medical practice, consistent with the procedure used, to preserve

127 the life or health of the viable unborn child; provided that it does not
128 pose an increased risk to the life of the woman or does not pose an
129 increased risk of substantial and irreversible physical impairment of
130 a major bodily function of the woman.

131 3. Any person who knowingly performs or induces an abortion
132 of an unborn child in violation of the provisions of this section is guilty
133 of a class C felony, and upon a finding of guilt or plea of guilty, shall be
134 imprisoned for a term of not less than one year, and, notwithstanding
135 the provisions of section 560.011, shall be fined not less than ten
136 thousand nor more than fifty thousand dollars.

137 4. Any physician who pleads guilty to or is found guilty of
138 performing or inducing an abortion of an unborn child in violation of
139 this section shall be subject to suspension or revocation of his or her
140 license to practice medicine in the state of Missouri by the state board
141 of registration for the healing arts under the provisions of sections
142 334.100 and 334.103.

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

147 6. Any ambulatory surgical center licensed in the state of
148 Missouri that knowingly allows an abortion of an unborn child to be
149 performed or induced in violation of this section may be subject to
150 suspension or revocation of its license under the provisions of section
151 197.220.

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

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

158 9. It is the intent of the legislature that this section be severable
159 as noted in section 1.140. In the event that any section, subsection,
160 subdivision, paragraph, sentence, or clause of this section be declared
161 invalid under the Constitution of the United States or the Constitution
162 of the State of Missouri, it is the intent of the legislature that the
163 remaining provisions of this section remain in force and effect as far

164 as capable of being carried into execution as intended by the
165 legislature.

166 **10. The general assembly may, by concurrent resolution, appoint**
167 **one or more of its members who sponsored or co-sponsored this act in**
168 **his or her official capacity, to intervene as a matter of right in any case**
169 **in which the constitutionality of this law is challenged.**

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

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