

SECOND REGULAR SESSION

# HOUSE BILL NO. 1636

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SEITZ.

3696H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 188.030, RSMo, and to enact in lieu thereof one new section relating to abortion, with penalty provisions.

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

Section A. Section 188.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.030, to read as follows:

188.030. 1. Except in the case of a medical emergency, no abortion of a viable unborn child shall be performed or induced unless the abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. For purposes of this section, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

2. Except in the case of a medical emergency:

(1) Prior to performing or inducing an abortion upon a woman, the physician shall determine the gestational age of the unborn child in a manner consistent with accepted obstetrical and neonatal practices and standards. In making such determination, the physician shall make such inquiries of the pregnant woman and perform or cause to be performed such medical examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about the medical facts and conditions of both the woman and the unborn

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 child involved, would consider necessary to perform and consider in making an accurate  
18 diagnosis with respect to gestational age;

19 (2) If the physician determines that the gestational age of the unborn child is twenty  
20 weeks or more, prior to performing or inducing an abortion upon the woman, the physician  
21 shall determine if the unborn child is viable by using and exercising that degree of care, skill,  
22 and proficiency commonly exercised by a skillful, careful, and prudent physician. In making  
23 this determination of viability, the physician shall perform or cause to be performed such  
24 medical examinations and tests as are necessary to make a finding of the gestational age,  
25 weight, and lung maturity of the unborn child and shall enter such findings and determination  
26 of viability in the medical record of the woman;

27 (3) If the physician determines that the gestational age of the unborn child is twenty  
28 weeks or more, and further determines that the unborn child is not viable and performs or  
29 induces an abortion upon the woman, the physician shall report such findings and  
30 determinations and the reasons for such determinations to the health care facility in which the  
31 abortion is performed and to the state board of registration for the healing arts, and shall enter  
32 such findings and determinations in the medical records of the woman and in the individual  
33 abortion report submitted to the department under section 188.052;

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

39 (b) Before a physician may proceed with performing or inducing an abortion upon a  
40 woman when it has been determined that the unborn child is viable, the physician shall first  
41 certify in writing the medical threat posed to the life of the pregnant woman, or the medical  
42 reasons that continuation of the pregnancy would cause a serious risk of substantial and  
43 irreversible physical impairment of a major bodily function of the pregnant woman. Upon  
44 completion of the abortion, the physician shall report the reasons and determinations for the  
45 abortion of a viable unborn child to the health care facility in which the abortion is performed  
46 and to the state board of registration for the healing arts, and shall enter such findings and  
47 determinations in the medical record of the woman and in the individual abortion report  
48 submitted to the department under section 188.052.

49 (c) Before a physician may proceed with performing or inducing an abortion upon a  
50 woman when it has been determined that the unborn child is viable, the physician who is to  
51 perform the abortion shall obtain the agreement of a second physician with knowledge of  
52 accepted obstetrical and neonatal practices and standards who shall concur that the abortion is  
53 necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy

54 would cause a serious risk of substantial and irreversible physical impairment of a major  
55 bodily function of the pregnant woman. This second physician shall also report such reasons  
56 and determinations to the health care facility in which the abortion is to be performed and to  
57 the state board of registration for the healing arts, and shall enter such findings and  
58 determinations in the medical record of the woman and the individual abortion report  
59 submitted to the department under section 188.052. The second physician shall not have any  
60 legal or financial affiliation or relationship with the physician performing or inducing the  
61 abortion, except that such prohibition shall not apply to physicians whose legal or financial  
62 affiliation or relationship is a result of being employed by or having staff privileges at the  
63 same hospital as the term "hospital" is defined in section 197.020.

64 (d) Any physician who performs or induces an abortion upon a woman when it has  
65 been determined that the unborn child is viable shall utilize the available method or technique  
66 of abortion most likely to preserve the life or health of the unborn child. In cases where the  
67 method or technique of abortion most likely to preserve the life or health of the unborn child  
68 would present a greater risk to the life or health of the woman than another legally permitted  
69 and available method or technique, the physician may utilize such other method or technique.  
70 In all cases where the physician performs an abortion upon a viable unborn child, the  
71 physician shall certify in writing the available method or techniques considered and the  
72 reasons for choosing the method or technique employed.

73 (e) No physician shall perform or induce an abortion upon a woman when it has been  
74 determined that the unborn child is viable unless there is in attendance a physician other than  
75 the physician performing or inducing the abortion who shall take control of and provide  
76 immediate medical care for a child born as a result of the abortion. During the performance  
77 of the abortion, the physician performing it, and subsequent to the abortion, the physician  
78 required to be in attendance, shall take all reasonable steps in keeping with good medical  
79 practice, consistent with the procedure used, to preserve the life or health of the viable unborn  
80 child; provided that it does not pose an increased risk to the life of the woman or does not  
81 pose an increased risk of substantial and irreversible physical impairment of a major bodily  
82 function of the woman.

83 3. Any person who knowingly performs or induces an abortion of an unborn child in  
84 violation of the provisions of this section is guilty of a class ~~[D]~~ C felony, and, upon a finding  
85 of guilt or plea of guilty, shall be imprisoned for a term of not less than ~~[one year]~~ **three**  
86 **years**, and, notwithstanding the provisions of section 558.002, shall be fined not less than ten  
87 thousand nor more than fifty thousand dollars.

88 4. Any physician who pleads guilty to or is found guilty of performing or inducing an  
89 abortion of an unborn child in violation of this section shall be subject to suspension or

90 revocation of his or her license to practice medicine in the state of Missouri by the state board  
91 of registration for the healing arts under the provisions of sections 334.100 and 334.103.

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

95         6. Any abortion facility licensed in the state of Missouri that knowingly allows an  
96 abortion of an unborn child to be performed or induced in violation of this section may be  
97 subject to suspension or revocation of its license under the provisions of section 197.220.

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

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

103         9. It is the intent of the legislature that this section be severable as noted in section  
104 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of  
105 this section be declared invalid under the Constitution of the United States or the Constitution  
106 of the State of Missouri, it is the intent of the legislature that the remaining provisions of this  
107 section remain in force and effect as far as capable of being carried into execution as intended  
108 by the legislature.

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

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