

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 2069 & 2371
98TH GENERAL ASSEMBLY

5587H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 188.036, 188.047, 188.052, 188.080, 194.375, and 197.230, RSMo, and to enact in lieu thereof seven 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Section A. Sections 188.036, 188.047, 188.052, 188.080, 194.375, and 197.230, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 188.036, 188.047, 188.052, 188.080, 188.160, 194.375, and 197.230, to read as follows:

188.036. 1. 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. 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. 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. 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.

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

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

22 [6.] **7.** If any provision in this section or the application thereof to any person,
23 circumstance or period of gestation is held invalid, such invalidity shall not affect the provisions
24 or applications which can be given effect without the invalid provision or application, and to this
25 end the provisions of this section are declared severable.

26 **8.** Any person who violates the provisions of subsection 3, 4, 5, or 6 of this section
27 shall be guilty of a class C felony, and the court may impose a fine in an amount not less
28 than twice the amount of any valuable consideration received.

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

 188.047. [A representative sample of] **1.** All tissue and remains of a human fetus, as
2 defined in section 194.375, removed at the time of abortion shall be ensured as nonhazardous
3 in compliance with department of natural resources regulations and submitted to a board
4 eligible or certified pathologist, who shall file a copy of the tissue report with the state
5 department of health and senior services, and who shall provide a copy of the report to the
6 abortion facility or hospital in which the abortion was performed or induced and the pathologist's
7 report shall be made a part of the patient's permanent record.

8 **2.** The 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 remains;

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

13 **(3)** If the pathologist finds that all tissue and remains of a human fetus were not
14 received, what portion of the tissue and remains of a human fetus 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 tissue and remains of a human fetus were remitted to be disposed
18 and the location of such disposal;

19 **(6)** A certification that all submitted tissue and remains of a human fetus have been
20 disposed in 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 remains of a human fetus.**

23 **3. Each specimen containing remains of a human fetus 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 remains of a human fetus at each facility that handles the specimen, including**
30 **the abortion facility or hospital where the abortion was performed or induced, the**
31 **pathology lab, and the location of final disposition. Each report shall document, if**
32 **applicable, the date the specimen containing remains of a human fetus was collected,**
33 **transported, received, and disposed. The report by the location of final disposition shall**
34 **verify that all fetal tissue was received and has been properly disposed according to state**
35 **laws and regulations.**

36 **5. The department shall pair each notice of abortion with its corresponding**
37 **pathology report. If the department does not receive the notice of abortion and the**
38 **pathology report, the department shall conduct an investigation. If the department finds**
39 **that the abortion facility or hospital where the abortion was performed or induced was not**
40 **in compliance with the provisions of this section, the department shall consider such**
41 **noncompliance a deficiency requiring an unscheduled inspection of the facility to ensure**
42 **the deficiency is remedied.**

43 **6. Beginning January 1, 2017, the department shall make an annual report to the**
44 **general assembly. The report shall include, but not be limited to, all reports and**
45 **information received by the department under the provisions of this section, the number**
46 **of any deficiencies of each abortion facility in the calendar year and whether such**
47 **deficiencies were remedied, and the following for each abortion procedure reported to the**
48 **department the previous calendar year:**

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

50 **(2) Whether the department received the tissue report for that abortion, along with**
51 **a certification of the disposal of the remains; and**

52 **(3) The existence and nature, if any, of any inconsistencies or concerns between the**
53 **abortion report submitted under section 188.052 and the tissue report submitted under**
54 **subsection 1 of this section.**

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56 **The report shall not contain any personal patient information the disclosure of which is**
57 **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 remains;**

5 **(2) Whether all tissue and remains of a human fetus, as defined in section 194.375,**
6 **were removed that would be common for a specimen of such estimated gestational age; and**

7 **(3) If the attending physician finds that all tissue and remains of a human fetus**
8 **were not removed, what portion of the tissue and remains of a human fetus were not**
9 **removed.**

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

12 (1) The date of the abortion;

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

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

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

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

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

188.080. Any person who is not a physician who performs or induces or attempts to
2 perform or induce an abortion on another is guilty of a class B felony, and, upon conviction, shall
3 be punished as provided by law. Any physician performing or inducing an abortion who does
4 not have [clinical] **surgical and admitting** privileges at a hospital which offers obstetrical or
5 gynecological care located within thirty miles of the location at which the abortion is performed
6 or induced shall be guilty of a class A misdemeanor, and, upon conviction shall be punished as
7 provided by law.

188.160. 1. Each hospital, ambulatory surgical center, pathology lab, medical research entity, and disposal facility involved in handling fetal remains from an elective abortion shall establish and implement a written policy adopted by each hospital, ambulatory surgical center, pathology lab, medical research entity, and disposal facility relating to the protections for employees who disclose information under subsection 2 of this section. This policy shall include a time frame for completion of investigations related to complaints, not to exceed thirty days, and a method for notifying the complainant of the disposition of the investigation. This policy shall be submitted to the department to verify implementation. At a minimum, such policy shall include the following provisions:

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

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

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

2. The provisions of this section shall apply to information disclosed or reported in good faith by an employee concerning:

(1) Alleged facility mismanagement or fraudulent activity; or

(2) Alleged violations of applicable federal or state laws or administrative rules concerning abortions or the handling of fetal remains.

All information disclosed, collected, and maintained under this subsection and under the written policy requirements of this section shall be accessible to the department at all times and shall be reviewed by the department at least annually. Complainants shall be notified of the department's access to such information and of the complainant's right to notify the department of any information concerning alleged violations of applicable federal or state laws or administrative rules concerning abortions or the handling of fetal remains.

3. Prior to any disclosure to individuals or agencies other than the department, employees wishing to make a disclosure under the provisions of this section shall first

37 report to the individual or individuals designated by the hospital, ambulatory surgical
38 center, pathology lab, medical research entity, or disposal facility under subsection 1 of this
39 section.

40 4. If the compliance officer, compliance committee, or management official
41 discovers credible evidence of misconduct from any source and, after a reasonable inquiry,
42 has reason to believe that the misconduct may violate criminal, civil, or administrative law,
43 the hospital, ambulatory surgical center, pathology lab, medical research entity, or disposal
44 facility shall report the existence of misconduct to the appropriate governmental authority
45 within a reasonable period, but not more than seven days after determining that there is
46 credible evidence of a violation.

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

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

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

59 8. Beginning December 1, 2016, each hospital, ambulatory surgical center,
60 pathology lab, medical research entity, and disposal facility involved in handling fetal
61 remains from an elective abortion shall post a notice at their place of employment, in a
62 sufficient number of places on the premises to assure that such notice will reasonably be
63 seen by all employees. A hospital, ambulatory surgical center, pathology lab, medical
64 research entity, or disposal facility involved in handling fetal remains from an elective
65 abortion for whom services are performed by individuals who may not reasonably be
66 expected to see a posted notice shall notify each such employee in writing of the contents
67 of such notice. The notice shall include all information provided in this section.

194.375. 1. Sections 194.375 to 194.390 shall be known and may be cited as the
2 "Disposition of Fetal Remains Act".

3 2. As used in sections 194.375 to 194.390, the following terms mean:

4 (1) "Final disposition", the burial, cremation, or other disposition of the remains of a
5 human fetus following a spontaneous fetal demise occurring after a gestation period of less than
6 twenty completed weeks;

7 (2) "Remains of a human fetus", the [fetal] remains [or fetal products of conception of
8 a mother after a miscarriage, regardless of the gestational age or whether the remains have been
9 obtained by spontaneous or accidental means] **of the dead offspring of a human being that has
10 reached a stage of development so that there are cartilaginous structures or fetal or skeletal
11 parts after an abortion or miscarriage, whether the remains have been obtained by
12 induced, spontaneous, or accidental means.**

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 tissue removed at
18 the time of abortion be submitted to a board certified or eligible pathologist and that the
19 resultant tissue report be made a part of the patient's permanent record;**

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

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

26 **(5) Compliance with sections 188.080 and 197.215 requiring any physician**
27 **performing or inducing abortions to have the hospital surgical and admitting privileges**
28 **prescribed therein; and**

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

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

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