

SECOND REGULAR SESSION

SENATE BILL NO. 770

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 23, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4998S.04I

AN ACT

To repeal sections 188.015 and 188.030, RSMo, and to enact in lieu thereof two new sections relating to the protection of women's health care, with existing penalty provisions.

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

Section A. Sections 188.015 and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows: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 or dying 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) "Gestational age", length of pregnancy as measured from the first day of the woman's last menstrual period;

(6) "Medical emergency", a condition which, based on reasonable medical

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

18 judgment, so complicates the medical condition of a pregnant woman as to
19 necessitate the immediate abortion of her pregnancy to avert the death of the
20 pregnant woman or for which a delay will create a serious risk of substantial and
21 irreversible physical impairment of a major bodily function of the pregnant
22 woman, **not including psychological or emotional conditions. No**
23 **condition shall be deemed a medical emergency if based on a claim or**
24 **diagnosis that the woman will engage in conduct which she intends to**
25 **result in her death or in substantial and irreversible physical**
26 **impairment of a major bodily function. The attending physician of such**
27 **woman shall immediately refer the woman to a qualified suicide**
28 **prevention counselor. Record of such referral shall be maintained in**
29 **the woman's medical file;**

30 (7) "Physician", any person licensed to practice medicine in this state by
31 the state board of registration for the healing arts;

32 (8) "Reasonable medical judgment", a medical judgment that would be
33 made by a reasonably prudent physician, knowledgeable about the case and the
34 treatment possibilities with respect to the medical conditions involved;

35 (9) "Unborn child", the offspring of human beings from the moment of
36 conception until birth and at every stage of its biological development, including
37 the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

38 (10) "Viability" or "viable", that stage of fetal development when the life
39 of the unborn child may be continued indefinitely outside the womb by natural
40 or artificial life-supportive systems.

188.030. 1. Except in the case of a medical emergency, no abortion of a
2 viable unborn child shall be performed or induced unless the abortion is
3 necessary to [preserve the life of the pregnant woman whose life is endangered
4 by a physical disorder, physical illness, or physical injury, including a
5 life-endangering physical condition caused by or arising from the pregnancy itself,
6 or when continuation of the pregnancy will create a serious risk of substantial
7 and irreversible physical impairment of a major bodily function of the pregnant
8 woman] **avert the pregnant woman's death or to avert serious risk of**
9 **substantial and irreversible physical impairment of a major bodily**
10 **function, not including psychological or emotional conditions. No such**
11 **greater risk shall be deemed to exist if it is based on a claim or**
12 **diagnosis that the woman will engage in conduct which she intends to**
13 **result in her death or in substantial and irreversible physical**

14 **impairment of a major bodily function. The attending physician of such**
15 **woman shall immediately refer the woman to a qualified suicide**
16 **prevention counselor. Record of such referral shall be maintained in**
17 **the woman's medical file.** For purposes of this section, "major bodily function"
18 includes, but is not limited to, functions of the immune system, normal cell
19 growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory,
20 endocrine, and reproductive functions.

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

22 (1) Prior to performing or inducing an abortion upon a woman, the
23 physician shall determine the gestational age of the unborn child in a manner
24 consistent with accepted obstetrical and neonatal practices and standards. In
25 making such determination, the physician shall make such inquiries of the
26 pregnant woman and perform or cause to be performed such medical
27 examinations, imaging studies, and tests as a reasonably prudent physician,
28 knowledgeable about the medical facts and conditions of both the woman and the
29 unborn child involved, would consider necessary to perform and consider in
30 making an accurate diagnosis with respect to gestational age;

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

40 (3) If the physician determines that the gestational age of the unborn
41 child is twenty weeks or more, and further determines that the unborn child is
42 not viable and performs or induces an abortion upon the woman, the physician
43 shall report such findings and determinations and the reasons for such
44 determinations to the health care facility in which the abortion is performed and
45 to the state board of registration for the healing arts, and shall enter such
46 findings and determinations in the medical records of the woman and in the
47 individual abortion report submitted to the department under section 188.052;

48 (4) (a) If the physician determines that the unborn child is viable, the
49 physician shall not perform or induce an abortion upon the woman unless the

50 abortion is necessary to preserve the life of the pregnant woman or that a
51 continuation of the pregnancy will create a serious risk of substantial and
52 irreversible physical impairment of a major bodily function of the woman.

53 (b) Before a physician may proceed with performing or inducing an
54 abortion upon a woman when it has been determined that the unborn child is
55 viable, the physician shall first certify in writing the medical threat posed to the
56 life of the pregnant woman, or the medical reasons that continuation of the
57 pregnancy would cause a serious risk of substantial and irreversible physical
58 impairment of a major bodily function of the pregnant woman. Upon completion
59 of the abortion, the physician shall report the reasons and determinations for the
60 abortion of a viable unborn child to the health care facility in which the abortion
61 is performed and to the state board of registration for the healing arts, and shall
62 enter such findings and determinations in the medical record of the woman and
63 in the individual abortion report submitted to the department under section
64 188.052.

65 (c) Before a physician may proceed with performing or inducing an
66 abortion upon a woman when it has been determined that the unborn child is
67 viable, the physician who is to perform the abortion shall obtain the agreement
68 of a second physician with knowledge of accepted obstetrical and neonatal
69 practices and standards who shall concur that the abortion is necessary to
70 preserve the life of the pregnant woman, or that continuation of the pregnancy
71 would cause a serious risk of substantial and irreversible physical impairment of
72 a major bodily function of the pregnant woman. This second physician shall also
73 report such reasons and determinations to the health care facility in which the
74 abortion is to be performed and to the state board of registration for the healing
75 arts, and shall enter such findings and determinations in the medical record of
76 the woman and the individual abortion report submitted to the department under
77 section 188.052. The second physician shall not have any legal or financial
78 affiliation or relationship with the physician performing or inducing the abortion,
79 except that such prohibition shall not apply to physicians whose legal or financial
80 affiliation or relationship is a result of being employed by or having staff
81 privileges at the same hospital as the term "hospital" is defined in section
82 197.020.

83 (d) Any physician who performs or induces an abortion upon a woman
84 when it has been determined that the unborn child is viable shall utilize the
85 available method or technique of abortion most likely to preserve the life or

86 health of the unborn child. In cases where the method or technique of abortion
87 most likely to preserve the life or health of the unborn child would present a
88 greater risk to the life or health of the woman than another legally permitted and
89 available method or technique, the physician may utilize such other method or
90 technique. In all cases where the physician performs an abortion upon a viable
91 unborn child, the physician shall certify in writing the available method or
92 techniques considered and the reasons for choosing the method or technique
93 employed.

94 (e) No physician shall perform or induce an abortion upon a woman when
95 it has been determined that the unborn child is viable unless there is in
96 attendance a physician other than the physician performing or inducing the
97 abortion who shall take control of and provide immediate medical care for a child
98 born as a result of the abortion. During the performance of the abortion, the
99 physician performing it, and subsequent to the abortion, the physician required
100 to be in attendance, shall take all reasonable steps in keeping with good medical
101 practice, consistent with the procedure used, to preserve the life or health of the
102 viable unborn child; provided that it does not pose an increased risk to the life of
103 the woman or does not pose an increased risk of substantial and irreversible
104 physical impairment of a major bodily function of the woman.

105 3. Any person who knowingly performs or induces an abortion of an
106 unborn child in violation of the provisions of this section is guilty of a class C
107 felony, and, upon a finding of guilt or plea of guilty, shall be imprisoned for a
108 term of not less than one year, and, notwithstanding the provisions of section
109 560.011, shall be fined not less than ten thousand nor more than fifty thousand
110 dollars.

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

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

120 6. **(1) The department of health and senior services shall make**
121 **or cause to be made such inspections and investigations as it deems**

122 necessary, but in no case fewer than four inspections of any abortion
123 facility in a fiscal year. Information received by the department
124 through file reports, inspection, or as otherwise authorized under this
125 section shall not be disclosed publicly in such manner as to identify
126 individual patients, except to another state agency for purposes of
127 investigation of professional or business practices in an abortion
128 facility, which state agency shall not disclose such individual patient
129 information publicly.

130 (2) Every abortion facility and any premises proposed to be
131 conducted as an abortion facility shall be open at all reasonable times
132 to an inspection authorized in writing by the director of the
133 department. No notice need be given to any person prior to any
134 inspection.

135 (3) Whenever an inspection of any abortion facility discloses that
136 the continued operation of such facility constitutes an immediate and
137 serious risk of harm to the health or safety of the patients thereof, the
138 inspector is authorized to immediately close such facility. Once the
139 facility has been closed, the personnel employed there shall cease any
140 activity related to the patients, unless continued treatment of any given
141 patient is necessary to protect her physical health or life. A written
142 order setting forth the grounds on which any action under this section
143 is based shall be served on the licensee within twenty-four hours after
144 such action is taken. Any director of an abortion facility that has been
145 closed may, within ten days thereafter, by written notice, request that
146 the director of the department conduct a hearing and a reinspection
147 under the provisions of this section. If a subsequent inspection
148 discloses that the violations of this section or rules, regulations, or
149 standards have been abated, the director of the department shall cancel
150 the order of closing and permit patients to be treated therein. The
151 remedies provided in this section are in addition to and not exclusive
152 of any other remedy provided by law.

153 7. Any ambulatory surgical center licensed in the state of Missouri that
154 knowingly allows an abortion of an unborn child to be performed or induced in
155 violation of this section may be subject to suspension or revocation of its license
156 under the provisions of section 197.220.

157 [7.] 8. A woman upon whom an abortion is performed or induced in
158 violation of this section shall not be prosecuted for a conspiracy to violate the

159 provisions of this section.

160 [8.] 9. Nothing in this section shall be construed as creating or
161 recognizing a right to abortion, nor is it the intention of this section to make
162 lawful any abortion that is currently unlawful.

163 [9.] 10. It is the intent of the legislature that this section be severable
164 as noted in section 1.140. In the event that any section, subsection, subdivision,
165 paragraph, sentence, or clause of this section be declared invalid under the
166 Constitution of the United States or the Constitution of the State of Missouri, it
167 is the intent of the legislature that the remaining provisions of this section
168 remain in force and effect as far as capable of being carried into execution as
169 intended by the legislature.

170 [10.] 11. The general assembly may, by concurrent resolution, appoint
171 one or more of its members who sponsored or co-sponsored this act in his or her
172 official capacity to intervene as a matter of right in any case in which the
173 constitutionality of this law is challenged.

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Bill

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