

FIRST REGULAR SESSION

# SENATE BILL NO. 65

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Pre-filed December 30, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0511S.02I

## 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Section A. Sections 188.015, 188.029, and 188.030, RSMo, are repealed  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 (2) "Abortion facility", a clinic, physician's office, or any other place or  
7 facility in which abortions are performed or induced other than a hospital;
- 8 (3) "Conception", the fertilization of the ovum of a female by a sperm of  
9 a male;
- 10 (4) "Department", the department of health and senior services;
- 11 (5) "Gestational age", length of pregnancy as measured from the first day  
12 of the woman's last menstrual period;
- 13 (6) "Medical emergency", a condition which, on the basis of a physician's  
14 good faith clinical judgment, so complicates the medical condition of a pregnant  
15 woman as to necessitate the immediate abortion of her pregnancy to avert the  
16 death of the pregnant woman or for which a delay will create a serious risk of  
17 substantial and irreversible impairment of a major bodily function of the  
18 pregnant woman;

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

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

21 (8) "Unborn child", the offspring of human beings from the moment of  
22 conception until birth and at every stage of its biological development, including  
23 the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

24 (9) ["Viability", that stage of fetal development when the life of the unborn  
25 child may be continued indefinitely outside the womb by natural or artificial life-  
26 supportive systems.] **"Viable", that stage of fetal development when it is  
27 the physician's judgment according to accepted obstetrical or neonatal  
28 standards of care and practice that there is a reasonable likelihood that  
29 the life of the unborn child can be sustained outside the mother's womb  
30 with or without artificial support.**

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 impairment of a**  
32 **major bodily function of the pregnant woman. For purposes of this**  
33 **section, "major bodily function" includes, but is not limited to, functions**  
34 **of the immune system, normal cell growth, digestive, bowel, bladder,**  
35 **neurological, brain, respiratory, circulatory, endocrine, and**  
36 **reproductive functions.**

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

48 **(1) 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 **(2) 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 (3) If the physician determines that the gestational age of the  
68 unborn child is twenty weeks or more, and further determines that the  
69 unborn child is viable, the physician shall not perform or induce an  
70 abortion upon the woman unless the abortion is necessary to preserve  
71 the life of the pregnant woman or that a continuation of the pregnancy  
72 will create a serious risk of substantial and irreversible impairment of  
73 a major bodily function of the woman.

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

87 (b) Before a physician may proceed with performing or inducing  
88 an abortion upon a woman when it has been determined that the  
89 unborn child is viable, the physician who is to perform the abortion  
90 shall obtain the agreement of a second physician with knowledge of  
91 accepted obstetrical and neonatal practices and standards who shall  
92 concur that the abortion is necessary to preserve the life of the  
93 pregnant woman, or that continuation of the pregnancy would cause a  
94 serious risk of substantial and irreversible impairment of a major  
95 bodily function of the pregnant woman. This second physician shall  
96 also report such reasons and determinations to the health care facility  
97 in which the abortion is to be performed and to the state board of  
98 registration for the healing arts, and shall enter such findings and

99 determinations in the medical record of the woman and the individual  
100 abortion report submitted to the department under section  
101 188.052. The second physician shall not have any legal or financial  
102 affiliation or relationship with the physician performing or inducing  
103 the abortion.

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

116 (d) No physician shall perform or induce an abortion upon a  
117 woman when it has been determined that the unborn child is viable  
118 unless there is in attendance a physician other than the physician  
119 performing or inducing the abortion who shall take control of and  
120 provide immediate medical care for a child born as a result of the  
121 abortion. During the performance of the abortion, the physician  
122 performing it, and subsequent to the abortion, the physician required  
123 to be in attendance, shall take all reasonable steps in keeping with  
124 good medical practice, consistent with the procedure used, to preserve  
125 the life or health of the viable unborn child; provided that it does not  
126 pose an increased risk to the life of the woman or does not pose an  
127 increased risk of substantial and irreversible impairment of a major  
128 bodily function of the woman.

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

135 4. Any physician who pleads guilty to or is found guilty of

136 performing or inducing an abortion of an unborn child in violation of  
137 this section shall have his or her license to practice medicine in the  
138 state of Missouri suspended for a period of three years.

139 5. Any hospital licensed in the state of Missouri in which an  
140 abortion of an unborn child is performed or induced in violation of this  
141 section shall be subject to suspension or revocation of its license under  
142 the provisions of section 197.070.

143 6. Any ambulatory surgical center licensed in the state of  
144 Missouri in which an abortion of an unborn child is performed or  
145 induced in violation of this section shall be subject to suspension or  
146 revocation of its license under the provisions of section 197.220.

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

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

153 9. It is the intent of the legislature that this section be severable  
154 as noted in section 1.140. In the event that any section, subsection,  
155 subdivision, paragraph, sentence, or clause of this section be declared  
156 invalid under the Constitution of the United States or the Constitution  
157 of the State of Missouri, it is the intent of the legislature that the  
158 remaining provisions of this section remain in force and effect as far  
159 as capable of being carried into execution as intended by the  
160 legislature.

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

2 [188.029. Before a physician performs an abortion on a  
3 woman he has reason to believe is carrying an unborn child of  
4 twenty or more weeks gestational age, the physician shall first  
5 determine if the unborn child is viable by using and exercising that  
6 degree of care, skill, and proficiency commonly exercised by the  
7 ordinarily skillful, careful, and prudent physician engaged in  
8 similar practice under the same or similar conditions. In making  
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.]

✓

Unofficial

Bill

Copy