

SECOND EXTRAORDINARY SESSION
[CORRECTED]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
99TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Children, June 13, 2017, with recommendation that the Senate Committee Substitute do pass.

2436S.08C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 188.047, 188.075, and 197.230, RSMo, and to enact in lieu thereof five new sections relating to abortion, with penalty provisions and an emergency clause.

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

Section A. Sections 188.047, 188.075, and 197.230, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 188.047,
3 188.075, 188.125, 188.160, and 197.230, to read as follows:

188.047. [A representative sample of] **1. Sections 188.047, 188.075,**
2 **188.160, and 197.230, shall be known and may be cited as the "Women's**
3 **Health and Clinic Safety Act".**

4 **2. All tissue removed at the time of abortion shall be submitted within**
5 **twenty-four hours** to a board eligible or certified pathologist[, who] **for gross**
6 **and histopathological examination. The pathologist** shall file a copy of the
7 tissue report with the state department of health and senior services, and [who]
8 shall provide **within seventy-two hours** a copy of the report to the abortion
9 facility or hospital in which the abortion was performed or induced [and]. The
10 pathologist's report shall be made a part of the patient's permanent record. **If**
11 **the pathological examination fails to identify evidence of a completed**
12 **abortion, the pathologist shall notify the abortion facility or hospital**
13 **within twenty-four hours.**

14 **3. The department shall reconcile each notice of abortion with**
15 **its corresponding tissue report. If the department does not receive the**

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

16 notice of abortion or the tissue report, the department shall conduct an
17 investigation. If the department finds that the abortion facility or
18 hospital where the abortion was performed or induced was not in
19 compliance with the provisions of this section, the department shall
20 consider such noncompliance a deficiency requiring an unscheduled
21 inspection of the facility to ensure the deficiency is remedied. If such
22 deficiency is not remedied, the department shall suspend the abortion
23 facility's or hospital's license for no less than one year, subject to the
24 provisions of chapter 197 regarding license suspensions, reviews, and
25 appeals.

26 4. Beginning January 1, 2018, the department shall make an
27 annual report to the general assembly. The report shall include, but
28 not be limited to, all reports and information received by the
29 department under the provisions of this section, the number of any
30 deficiencies of each abortion facility in the calendar year and whether
31 such deficiencies were remedied, and the following for each abortion
32 procedure reported to the department the previous calendar year:

- 33 (1) The termination procedure used;
- 34 (2) Whether the department received the tissue report for that
35 abortion; and
- 36 (3) The existence and nature, if any, of any inconsistencies or
37 concerns between the abortion report submitted under section 188.052
38 and the tissue report submitted under this section.

39 The report shall not contain any personal patient information the
40 disclosure of which is prohibited by state or federal law.

41 5. All reports provided by the department to the general
42 assembly under this section shall maintain confidentiality of all
43 personal information of patients, facility personnel, and facility
44 physicians.

45 6. The department may adopt rules, regulations, and standards
46 governing the reports required under this section. In doing so, the
47 department shall ensure that these reports contain all information
48 necessary to ensure compliance with all applicable laws and
49 regulations. Any rule or portion of a rule, as that term is defined in
50 section 536.010 that is created under the authority delegated in this
51 section shall become effective only if it complies with and is subject to
52 all of the provisions of chapter 536, and, if applicable, section

53 **536.028. This section and chapter 536 are nonseverable and if any of**
54 **the powers vested with the general assembly pursuant to chapter 536,**
55 **to review, to delay the effective date, or to disapprove and annul a rule**
56 **are subsequently held unconstitutional, then the grant of rulemaking**
57 **authority and any rule proposed or adopted after the effective date of**
58 **this act, shall be invalid and void.**

188.075. 1. Any person who contrary to the provisions of sections 188.010
2 to [188.085] **188.160** knowingly performs, induces, or aids in the performance or
3 inducing of any abortion or knowingly fails to perform any action required by
4 sections 188.010 to [188.085] **188.160** shall be guilty of a class A misdemeanor,
5 unless a different penalty is provided for in state law, and, upon conviction, shall
6 be punished as provided by law.

7 2. It shall be an affirmative defense for any person alleged to have
8 violated any provision of this chapter that the person performed an action or did
9 not perform an action because of a medical emergency. This affirmative defense
10 shall be available in criminal, civil, and administrative actions or
11 proceedings. The defendant shall have the burden of persuasion that the defense
12 is more probably true than not.

13 **3. The attorney general shall have concurrent original**
14 **jurisdiction throughout the state, along with each prosecuting attorney**
15 **and circuit attorney within their respective jurisdictions, to commence**
16 **actions for a violation of any provision of this chapter, for a violation**
17 **of any state law on the use of public funds for an abortion, or for a**
18 **violation of any state law which regulates an abortion facility or a**
19 **person who performs or induces an abortion. The attorney general, or**
20 **prosecuting attorney or circuit attorney within their respective**
21 **jurisdictions, may seek injunctive or other relief against any person**
22 **who, or entity which, is in violation of any provision of this chapter,**
23 **misuses public funds for an abortion, or violates any state law which**
24 **regulates an abortion facility or a person who performs or induces an**
25 **abortion.**

188.125. 1. It is the intent of the general assembly to
2 acknowledge the right of an alternatives to abortion agency to operate
3 freely and engage in speech without governmental interference as
4 protected by the constitution of the United States and the constitution
5 and laws of Missouri, the right of a person not to be compelled by the
6 government to participate in abortion contrary to his, her, or its

7 religious beliefs or moral convictions, and that the constitution of the
8 United States and the constitution and laws of Missouri shall be
9 interpreted, construed, applied, and enforced to fully protect such
10 rights.

11 2. A political subdivision of this state is preempted from
12 enacting, adopting, maintaining, or enforcing any order, ordinance,
13 rule, regulation, policy, or other similar measure that prohibits,
14 restricts, limits, controls, directs, interferes with, or otherwise
15 adversely affects an alternatives to abortion agency or its officers',
16 agents', employees', or volunteers' operations or speech including, but
17 not limited to, counseling, referrals, or education of, advertising or
18 information to, or other communications with, clients, patients, other
19 persons, or the public.

20 3. Nothing in subsection 2 of this section shall preclude or
21 preempt a political subdivision of this state from exercising its lawful
22 authority to regulate zoning or land use or to enforce a building or fire
23 code regulation; provided that, such political subdivision treats an
24 alternatives to abortion agency in the same manner as a similarly
25 situated agency and that such authority is not used to circumvent the
26 intent of subsection 2 of this section.

27 4. A political subdivision of this state is preempted from
28 enacting, adopting, maintaining, or enforcing any order, ordinance,
29 rule, regulation, policy, or other similar measure that has the purpose
30 or effect of requiring a person to directly or indirectly participate in
31 abortion if such participation is contrary to the religious beliefs or
32 moral convictions of such person.

33 5. A political subdivision of this state is preempted from
34 enacting, adopting, maintaining, or enforcing any order, ordinance,
35 rule, regulation, policy, or other similar measure requiring a real estate
36 broker, real estate salesperson, real estate broker-salesperson,
37 appraisal firm, appraiser, as such terms are defined in chapter 339, a
38 property owner, or any other person to buy, sell, exchange, purchase,
39 rent, lease, advertise for, or otherwise conduct real estate transactions
40 for, to, or with an abortion facility or for, to, or with a person for the
41 purpose of performing or inducing an abortion not necessary to save
42 the life of the mother, if such requirement is contrary to the religious
43 beliefs or moral convictions of such real estate broker, real estate

44 salesperson, real estate broker-salesperson, appraisal firm, appraiser,
45 property owner, or other person.

46 6. A political subdivision of this state is preempted from
47 enacting, adopting, maintaining, or enforcing any order, ordinance,
48 rule, regulation, policy, or other similar measure requiring an
49 employer, employee, health plan provider, health plan sponsor, health
50 care provider, or any other person to provide coverage for or to
51 participate in a health plan that includes benefits that are not
52 otherwise required by state law.

53 7. In any action to enforce the provisions of this section, a court
54 of competent jurisdiction may order injunctive or other equitable
55 relief, recovery of damages or other legal remedies, or both, as well as
56 payment of reasonable attorney's fees, costs, and expenses. The relief
57 and remedies set forth shall not be deemed exclusive and shall be in
58 addition to any other relief or remedies permitted by law.

59 8. In addition to a private cause of action by a person whose
60 rights are violated contrary to the provisions of this section, the
61 attorney general is also authorized to bring a cause of action to defend
62 the rights guaranteed under this section.

63 9. Nothing in this section shall be construed to prohibit a
64 political subdivision from enacting, adopting, maintaining, or enforcing
65 any order, ordinance, rule, regulation, policy, or other similar measure
66 to assist pregnant women to carry their unborn children to term or to
67 assist women in caring for their dependent children or placing their
68 children for adoption including, but not limited to, by funding or
69 otherwise assisting an alternatives to abortion agency to provide
70 services to such women and children.

71 10. As used in this section, the following terms mean:

72 (1) "Alternatives to abortion agency":

73 (a) A maternity home as defined in section 135.600;

74 (b) A pregnancy resource center as defined in section 135.630; or

75 (c) An agency or entity that has the primary purpose of
76 providing services or counseling to pregnant women to assist such
77 women in carrying their unborn children to term instead of having
78 abortions and to assist such women in caring for their dependent
79 children or placing their children for adoption, as described in section
80 188.325, regardless of whether such agency or entity is receiving

81 **funding or reimbursement from the state for such purposes;**

82 **(2) "Participate in abortion":**

83 **(a) To undergo an abortion; or**

84 **(b) To perform or induce, assist in, refer or counsel for, advocate**
85 **for, promote, procure, reimburse for, or provide health plan coverage**
86 **for an abortion not necessary to save the life of the mother.**

188.160. 1. Every hospital, ambulatory surgical center, pathology
2 lab, medical research entity, and any other facility involved in elective
3 abortions shall establish and implement a written policy relating to the
4 protections for employees who disclose information concerning actual,
5 potential, or alleged violations of applicable federal or state laws or
6 administrative rules, regulations, or standards.

7 2. The department of health and senior services is authorized to
8 adopt rules, regulations, and standards regarding the establishment
9 and implementation of policies created under this section. Any rule or
10 portion of a rule, as that term is defined in section 536.010 that is
11 created under the authority delegated in this section shall become
12 effective only if it complies with and is subject to all of the provisions
13 of chapter 536, and, if applicable, section 536.028. This section and
14 chapter 536 are nonseverable and if any of the powers vested with the
15 general assembly pursuant to chapter 536, to review, to delay the
16 effective date, or to disapprove and annul a rule are subsequently held
17 unconstitutional, then the grant of rulemaking authority and any rule
18 proposed or adopted after the effective date of this act, shall be invalid
19 and void.

197.230. 1. The department of health and senior services shall make, or
2 cause to be made, such inspections and investigations as it deems necessary. The
3 department may delegate its powers and duties to investigate and inspect
4 ambulatory surgical centers to an official of a political subdivision having a
5 population of at least four hundred fifty thousand if such political subdivision is
6 deemed qualified by the department to inspect and investigate ambulatory
7 surgical centers. The official so designated shall submit a written report of his
8 or her findings to the department and the department may accept the
9 recommendations of such official if it determines that the facility inspected meets
10 minimum standards established pursuant to sections 197.200 to 197.240.

11 2. In the case of any ambulatory surgical center operated for the
12 purpose of performing or inducing an abortion, the department shall

13 **make or cause to be made an unannounced on-site inspection and**
14 **investigation at least annually. Such on-site inspection and**
15 **investigation shall include, but not be limited to, the following areas:**

16 **(1) Compliance with all statutory and regulatory requirements**
17 **for an ambulatory surgical center, including requirements that the**
18 **facility maintain adequate staffing and equipment to respond to**
19 **medical emergencies;**

20 **(2) Compliance with the requirements of section 188.047;**

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

25 **(4) Compliance with the requirement in section 197.215 that**
26 **continuous physician services or registered professional nursing**
27 **services be provided whenever a patient is in the facility.**

28 **3. Inspection, investigation, and quality assurance reports shall**
29 **be made available to the public. Any portion of a report may be**
30 **redacted when made publicly available if such portion would disclose**
31 **information that is not subject to disclosure under the law.**

Section B. In accordance with the provisions of section 1.140, the
2 provisions of section A are severable. If any provision of section A is found by a
3 court of competent jurisdiction to be invalid, the remaining provisions shall
4 remain valid and enforceable.

Section C. Because of the immediate need to protect the right to life of
2 persons in this state, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace, and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

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