

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 2
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 8, 2005, with recommendation that the Senate Committee Substitute do pass.

0424S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 188.015, 188.075, 188.080, and 197.200, RSMo, and to enact in lieu thereof six 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Section A. Sections 188.015, 188.075, 188.080, and 197.200, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 188.015, 188.031, 188.075, 188.080, 188.250, and 197.200, to read as follows:

188.015. [Unless the language or context clearly indicates a different meaning is intended, the following words or phrases for the purposes of sections 188.010 to 188.130 shall be given the meaning ascribed to them] **As used in this chapter, the following terms mean:**

(1) "Abortion", the intentional destruction of the life of an embryo or fetus in his or her mother's womb or the intentional termination of the pregnancy of a mother 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;**

[(4)] (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, on the basis of a**

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

physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman;

[(5)] (7) "Physician", any person licensed to practice medicine in this state by the state board of registration of the healing arts;

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

[(7)] (9) "Viability", that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

188.031. For purposes of section 188.028, the term "next friend" shall not include another minor child, or any entity or person in an individual or representative capacity that has a financial interest or potential gain from the proposed abortion, or any employee of or volunteer for such entity or person.

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

2. It shall be a defense for any person alleged to have violated any provision of this chapter that the person performed an action or did not perform an action because of a medical emergency. This defense shall be available in criminal, civil, and administrative actions or proceedings. The defendant shall have the burden of injecting the issue of medical emergency as a defense.

188.080. Notwithstanding any other penalty provision in this chapter, any person who is not a licensed physician as defined in section 188.015 who performs **or induces** or attempts to perform **or induce** an abortion on another as defined in subdivision (1) of section 188.015, is guilty of a class B felony, and, upon conviction, shall be punished as provided by law. Any physician performing **or inducing** an abortion who does not have [surgical] **clinical** privileges at a

hospital which offers obstetrical or gynecological care **located within thirty miles of the location at which the abortion is performed or induced** shall be guilty of a class B felony, and, upon conviction shall be punished as provided by law.

188.250. 1. No person shall intentionally cause, aid, or assist a minor to obtain an abortion without the consent or consents or judicial decree required by section 188.028.

2. A person who violates subsection 1 of this section shall be civilly liable to the minor and to the person or persons required to give the consent or consents pursuant to section 188.028. A court may award damages to the person or persons adversely affected by a violation of subsection 1 of this section, including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorneys' fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sex act with a minor in violation of the provisions of chapter 566, 567, 568, or 573, RSMo, which results in the minor's pregnancy shall not be awarded damages pursuant to this section.

3. It shall not be a defense to a claim brought pursuant to this section that the abortion was performed or induced pursuant to consent to the abortion given in a manner that is otherwise lawful in the state or place where the abortion was performed or induced.

4. An unemancipated minor does not have capacity to consent to any action in violation of this section or section 188.028.

5. A court may enjoin conduct that would be in violation of this section upon petition by the attorney general, a prosecuting or circuit attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

- (1) Is reasonably anticipated to occur in the future; or**
- (2) Has occurred in the past, whether with the same minor or others, and that it is not unreasonable to expect that such conduct will be repeated.**

197.200. As used in sections 197.200 to 197.240, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Ambulatory surgical center", any public or private establishment operated primarily for the purpose of performing surgical procedures or primarily**

for the purpose of performing childbirths **or any establishment operated for the purpose of performing or inducing any second or third-trimester abortions or five or more first-trimester abortions per month**, and which does not provide services or other accommodations for patients to stay more than twenty-three hours within the establishment, provided, however, that nothing in this definition shall be construed to include the offices of dentists currently licensed pursuant to chapter 332, RSMo;

(2) "Dentist", any person currently licensed to practice dentistry pursuant to chapter 332, RSMo;

(3) "Department", the department of health and senior services;

(4) "Governmental unit", any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state;

(5) "Person", any individual, firm, partnership, corporation, company, or association and the legal successors thereof;

(6) "Physician", any person currently licensed to practice medicine pursuant to chapter 334, RSMo;

(7) "Podiatrist", any person currently licensed to practice podiatry pursuant to chapter 330, RSMo.

Bill

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