

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 67

AN ACT

To repeal sections 188.036, 188.047, 188.052, 188.055, 188.075, 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:

1 Section A. Sections 188.036, 188.047, 188.052, 188.055,
2 188.075, and 197.230, RSMo, are repealed and seven new sections
3 enacted in lieu thereof, to be known as sections 188.036,
4 188.047, 188.052, 188.055, 188.075, 188.160, and 197.230, to read
5 as follows:

6 188.036. 1. Sections 188.036, 188.047, 188.052, 188.075,
7 188.160, and 197.230 shall be known and may be cited as the
8 "Women's Health and Clinic Safety Act".

9 2. No physician shall perform an abortion on a woman if the
10 physician knows that the woman conceived the unborn child for the
11 purpose of providing fetal organs or tissue for medical
12 transplantation to herself or another, and the physician knows
13 that the woman intends to procure the abortion to utilize those
14 organs or tissue for such use for herself or another.

15 [2.] 3. No person shall utilize the fetal organs or tissue
16 resulting from an abortion for medical transplantation, if the
17 person knows that the abortion was procured for the purpose of
18 utilizing those organs or tissue for such use.

1 [3.] 4. No person shall offer any inducement, monetary or
2 otherwise, to a woman or a prospective father of an unborn child
3 for the purpose of conceiving an unborn child for the medical,
4 scientific, experimental or therapeutic use of the fetal organs
5 or tissue.

6 [4.] 5. No person shall offer any inducement, monetary or
7 otherwise, to the mother or father of an unborn child for the
8 purpose of procuring an abortion for the medical, scientific,
9 experimental or therapeutic use of the fetal organs or tissue.

10 [5.] 6. No person shall knowingly donate or make an
11 anatomical gift of the fetal organs or tissue resulting from an
12 abortion to any person or entity for medical, scientific,
13 experimental, therapeutic, or any other use.

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

22 [6.] 8. Any person who violates the provisions of
23 subsections 4, 5, or 7 of this section shall be guilty of a class
24 C felony, and the court may impose a fine in an amount not less
25 than twice the amount of any valuable consideration received.

26 9. Nothing in this section shall prohibit the utilization
27 of fetal organs or tissue resulting from an abortion for medical
28 or scientific purposes to determine the cause or causes of any

1 anomaly, illness, death, or genetic condition, paternity, or for
2 law enforcement purposes.

3 10. If any provision in this section or the application
4 thereof to any person, circumstance or period of gestation is
5 held invalid, such invalidity shall not affect the provisions or
6 applications which can be given effect without the invalid
7 provision or application, and to this end the provisions of this
8 section are declared severable.

9 188.047. [A representative sample of] 1. Except as
10 provided for in subsection 9 of section 188.036, all fetal organs
11 and tissue removed at the time of abortion shall be submitted to
12 a board eligible or certified pathologist[, who] for gross and
13 histopathological examination. The pathologist shall file a copy
14 of the fetal organs and tissue report with the state department
15 of health and senior services, and [who] shall provide a copy of
16 the report to the abortion facility or hospital in which the
17 abortion was performed or induced [and]. The pathologist's
18 report shall be made a part of the patient's permanent record.

19 2. The fetal organs and tissue report shall include:

20 (1) The pathologist's estimation, to a reasonable degree of
21 scientific certainty, of the gestational age of the fetal organs
22 and tissue;

23 (2) Whether all fetal organs and tissue were received that
24 would be common for a specimen of such estimated gestational age
25 and the method of abortion;

26 (3) If the pathologist finds that all fetal organs and
27 tissue were not received, what portion of the fetal organs and
28 tissue were not received, considering the estimated gestational

age and method of abortion;

(4) A gross diagnosis and detailed gross findings of what was received including the percent blood clot and the percent tissue;

(5) The date the fetal organs and tissue were remitted to be disposed and the location of such disposal;

(6) A certification that all submitted fetal organs and tissue have been disposed in accordance with state and federal laws and regulations, including the federal Clinical Laboratory Improvement Amendments (CLIA); and

(7) The name of the entity and physical address of the entity conducting the examination of the specimen containing the fetal organs and tissue.

3. Each specimen containing fetal organs and tissue shall be given a unique identification number to allow the specimen to be tracked from the abortion facility or hospital where the abortion was performed or induced to the pathology lab and to its final disposition location. The unique identification number shall be conspicuously adhered to the exterior of the specimen container.

4. A report shall be created and submitted to the department for each specimen containing fetal organs and tissue at each facility that handles the specimen, including the abortion facility or hospital where the abortion was performed or induced, the pathology lab under subsection 2 of this section, and the location of final disposition. Each report shall document, if applicable, the date the specimen containing fetal organs and tissue was collected, transported, received, and

1 disposed, and certify that the specimen was disposed of in
2 accordance with state and federal laws and regulations, including
3 CLIA. The report by the location of final disposition shall
4 verify that all fetal organs and tissue were received and have
5 been properly disposed according to state and federal laws and
6 regulations. The requirements of this subsection shall not apply
7 to funeral establishments, as defined in section 333.011.

8 5. The department shall reconcile each notice of abortion
9 with its corresponding fetal organs and tissue report. If the
10 department does not receive the notice of abortion and the fetal
11 organs and tissue report, the department shall conduct an
12 investigation. If the department finds that the abortion
13 facility or hospital where the abortion was performed or induced
14 was not in compliance with the provisions of this section, the
15 department shall consider such noncompliance a deficiency
16 requiring an unscheduled inspection of the facility to ensure the
17 deficiency is remedied. If such deficiency is not remedied, the
18 department shall suspend the abortion facility's or hospital's
19 license for no less than one year, subject to the provisions of
20 chapter 197 regarding license suspensions, reviews, and appeals.

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

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

3 (2) Whether the department received the fetal organs and
4 tissue report for that abortion, along with a certification of
5 the disposal of the fetal organs and tissue; and

6 (3) The existence and nature, if any, of any
7 inconsistencies or concerns between the abortion report submitted
8 under section 188.052 and the fetal organs and tissue report
9 submitted under this section.

10
11 The report shall not contain any personal patient information the
12 disclosure of which is prohibited by state or federal law.

13 7. All reports provided by the department to the general
14 assembly under this section shall maintain confidentiality of all
15 personal information of patients, facility personnel, and
16 facility physicians.

17 188.052. 1. An individual abortion report for each
18 abortion performed or induced upon a woman shall be completed by
19 her attending physician. The report shall include:

20 (1) The attending physician's estimation, to a reasonable
21 degree of scientific certainty, of the gestational age of the
22 fetal organs and tissue;

23 (2) Whether all fetal organs and tissue were removed that
24 would be common for a specimen of such estimated gestational age;
25 and

26 (3) If the attending physician finds that all fetal organs
27 and tissue were not removed, what portion of the fetal organs and
28 tissue were not removed.

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

4 (1) The date of the abortion;

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

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

9 3. All abortion reports shall be signed by the attending
10 physician, and submitted to the state department of health and
11 senior services within forty-five days from the date of the
12 abortion. All complication reports shall be signed by the
13 physician providing the post-abortion care and submitted to the
14 department of health and senior services within forty-five days
15 from the date of the post-abortion care.

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

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

25 188.055. 1. Every abortion facility, hospital, and
26 physician shall be supplied with forms by the department of
27 health and senior services for use in regards to the consents and
28 reports required by sections 188.010 to 188.085. A purpose and

1 function of such consents and reports shall be the preservation
2 of maternal health and life by adding to the sum of medical
3 knowledge through the compilation of relevant maternal health and
4 life data and to monitor all abortions performed to assure that
5 they are done only under and in accordance with the provisions of
6 the law.

7 2. All information obtained by physician, hospital, or
8 abortion facility from a patient for the purpose of preparing
9 reports to the department of health and senior services under
10 sections 188.010 to 188.085 or reports received by the division
11 of health shall be confidential and shall be used only for
12 statistical purposes. Such records, however, may be inspected
13 and health data acquired by local, state, or national public
14 health officers. The department shall, upon the request of the
15 president pro tempore of the senate, the speaker of the house of
16 representatives, or the minority leaders of either body, prepare
17 a summary of all such information within its possession. Such
18 report shall not contain any personal information of patients,
19 facility personnel, or facility physicians.

20 188.075. 1. Any person who contrary to the provisions of
21 sections 188.010 to 188.085 knowingly performs, induces, or aids
22 in the performance or inducing of any abortion or knowingly fails
23 to perform any action required by sections 188.010 to 188.085
24 shall be guilty of a class A misdemeanor, unless a different
25 penalty is provided for in state law, and, upon conviction, shall
26 be punished as provided by law.

27 2. It shall be an affirmative defense for any person
28 alleged to have violated any provision of this chapter that the

1 person performed an action or did not perform an action because
2 of a medical emergency. This affirmative defense shall be
3 available in criminal, civil, and administrative actions or
4 proceedings. The defendant shall have the burden of persuasion
5 that the defense is more probably true than not.

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

20 188.160. 1. Each hospital, ambulatory surgical center,
21 pathology lab, medical research entity, and disposal facility
22 involved in handling fetal organs or tissue from an elective
23 abortion shall establish and implement a written policy adopted
24 by each hospital, ambulatory surgical center, pathology lab,
25 medical research entity, and disposal facility relating to the
26 protections for employees who disclose information under
27 subsection 2 of this section. This policy shall include a time
28 frame for completion of investigations related to complaints, not

1 to exceed thirty days, and a method for notifying the complainant
2 of the disposition of the investigation. This policy shall be
3 submitted to the department of health and senior services to
4 verify implementation. At a minimum, such policy shall include
5 the following provisions:

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

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

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

25 2. The provisions of this section shall apply to
26 information disclosed or reported in good faith by an employee
27 concerning alleged violations of applicable federal or state laws
28 or administrative rules concerning the handling of fetal organs

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

10 3. Prior to any disclosure to individuals or agencies other
11 than the department, employees wishing to make a disclosure under
12 the provisions of this section shall first report to the
13 individual or individuals designated by the hospital, ambulatory
14 surgical center, pathology lab, medical research entity, or
15 disposal facility under subsection 1 of this section.

16 4. If the compliance officer, compliance committee, or
17 management official discovers credible evidence of misconduct
18 from any source and, after a reasonable inquiry, has reason to
19 believe that the misconduct may violate criminal, civil, or
20 administrative law, the hospital, ambulatory surgical center,
21 pathology lab, medical research entity, or disposal facility
22 shall report the existence of misconduct to the appropriate
23 governmental authority within a reasonable period, but not more
24 than seven days after determining that there is credible evidence
25 of a violation.

26 5. Reports made to the department shall be subject to the
27 provisions of section 197.477; provided that, the restrictions of
28 section 197.477 shall not be construed to limit the employee's

1 ability to subpoena from the original source the information
2 reported to the department under this section.

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

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

13 8. Beginning December 1, 2017, each hospital, ambulatory
14 surgical center, pathology lab, medical research entity, and
15 disposal facility involved in handling fetal organs or tissue
16 from an elective abortion shall post a notice at their place of
17 employment, in a sufficient number of places on the premises to
18 assure that such notice will reasonably be seen by all employees.
19 A hospital, ambulatory surgical center, pathology lab, medical
20 research entity, or disposal facility involved in handling fetal
21 organs or tissue from an elective abortion for whom services are
22 performed by individuals who may not reasonably be expected to
23 see a posted notice shall notify each such employee in writing of
24 the contents of such notice. The notice shall include all
25 information provided in this section.

26 197.230. 1. The department of health and senior services
27 shall make, or cause to be made, such inspections and
28 investigations as it deems necessary. The department may

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

11 2. In the case of any ambulatory surgical center operated
12 for the purpose of performing or inducing an abortion, the
13 department shall make or cause to be made an unannounced on-site
14 inspection and investigation at least annually. Such on-site
15 inspection and investigation shall include, but not be limited
16 to, the following areas:

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

21 (2) Compliance with the requirement in section 188.047 that
22 all fetal organs or tissue removed at the time of abortion be
23 submitted to a board certified or eligible pathologist and that
24 the resultant tissue report be made a part of the patient's
25 permanent record;

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

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

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

8 3. Inspection, investigation, and quality assurance reports
9 shall be made available to the public. Any portion of a report
10 may be redacted when made publicly available if such portion
11 would disclose information that is not subject to disclosure
12 under the law.