

SECOND REGULAR SESSION

SENATE BILL NO. 929

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CASKEY, HOWARD, LYBYER, QUICK, STAPLES AND MAXWELL.

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TERRY L. SPIELER, Secretary.

S3246.04I

AN ACT

To repeal sections 188.015, 188.030, 188.035, 188.075 and 565.021, RSMo 1994, and to enact in lieu thereof six new sections relating to banning partial birth abortions, with penalty provisions.

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

Section A. Sections 188.015, 188.030, 188.035, 188.075 and 565.021, RSMo 1994, are repealed and six new sections enacted in lieu thereof, to be known as sections 188.015, 188.030, 188.035, 188.041, 188.075 and 565.021, to read as follows: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 shall 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 other than a hospital;
- (3) "Conception", the fertilization of the ovum of a female by a sperm of a male;
- (4) "Gestational age", length of pregnancy as measured from the first day of the woman's last menstrual period;
- (5) **"Partial birth abortion", only the termination of pregnancy by using the dilation and extraction procedure of partially vaginally delivering a viable living intact fetus, purposefully inserting an instrument into the skull of the intact fetus, and**

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

utilizing a suction device to remove the skull contents;

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

(7) **"Risk to a woman's health", any condition, which if left untreated, could progress to such a point that death or permanent injury could result, but does not mean a condition which creates a negligible threat to life or health or a significant threat of only transient health problems;**

[(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. **Viability shall be determined by the physician, based upon his own best clinical judgment. The physician shall determine whether, based on the particular facts of a woman's pregnancy that are known to him, and in light of medical technology and information reasonably available to him, there is a realistic possibility that the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life supportive systems.**

188.030. 1. No abortion of a viable unborn child shall be performed unless necessary to preserve the life or health of the woman. Before a physician may perform an abortion upon a pregnant woman after such time as her unborn child has become viable, such physician shall first certify in writing that the abortion is necessary to preserve the life or health of the woman and shall further certify in writing the medical indications for such abortion and the probable health consequences.

2. Any physician who performs an abortion upon a woman carrying a viable unborn child shall utilize the available method or technique of abortion most likely to preserve the life and health of the unborn child. In cases where the method or technique of abortion which would most likely preserve the life and health of the unborn child would present a greater risk to the life and health of the woman than another available method or technique, the physician may utilize such other method or technique. In all cases where the physician performs an abortion upon a viable unborn child, the physician shall certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

3. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the **second** physician required by this section to be in attendance, shall take all

reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman.

188.035. Whoever, with intent to do so, shall take the life of a child aborted alive[, shall be] **is** guilty of murder [of] **in** the second degree.

188.041. 1. After viability has been determined pursuant to subsection 9 of section 188.015, no person shall knowingly perform a partial birth abortion upon a pregnant woman if there is any other available abortion procedure which would not pose a greater risk to the life or health of the woman, as defined by subdivision (7) of section 188.015.

2. Notwithstanding any other provision of the law to the contrary, a woman upon whom a partial birth abortion is performed shall not be prosecuted pursuant to this section or any other state law which would otherwise impose criminal responsibility on such woman for the performance of a partial birth abortion.

3. Any person who knowingly violates the provisions of subsection 1 of this section is guilty of murder in the second degree pursuant to section 565.021, RSMo.

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

565.021. 1. A person commits the crime of murder in the second degree if he:

(1) Knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person; or

(2) Commits or attempts to commit any felony, and, in the perpetration or the attempted perpetration of such felony or in the flight from the perpetration or attempted perpetration of such felony, another person is killed as a result of the perpetration or attempted perpetration of such felony or immediate flight from the perpetration of such felony or attempted perpetration of such felony; **or**

(3) Knowingly performs a procedure prohibited in section 188.041, RSMo.

2. Murder in the second degree is a class A felony, and the punishment for second degree murder shall be in addition to the punishment for commission of a related felony or attempted felony, other than murder or manslaughter.

3. Notwithstanding section 556.046, RSMo, and section 565.025, in any charge of murder in the second degree, the jury shall be instructed on, or, in a jury-waived trial, the judge shall consider, any and all of the subdivisions in subsection 1 of this section which are supported by the evidence and requested by one of the parties or the court.

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