

FIRST REGULAR SESSION

SENATE BILL NO. 67

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

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ADRIANE D. CROUSE, Secretary.

0588S.04I

AN ACT

To repeal sections 188.036, 188.047, 188.052, and 197.230, RSMo, and to enact in lieu thereof five 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 188.036, 188.047, 188.052, and 197.230, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 188.036, 188.047, 188.052, 188.160, and 197.230, to read as follows:

188.036. 1. **Sections 188.036, 188.047, 188.052, 188.160, and 197.230**
2 **shall be known and may be cited as the "Women's Health and Clinic**
3 **Safety Act".**

4 **2.** No physician shall perform an abortion on a woman if the physician
5 knows that the woman conceived the unborn child for the purpose of providing
6 fetal organs or tissue for medical transplantation to herself or another, and the
7 physician knows that the woman intends to procure the abortion to utilize those
8 organs or tissue for such use for herself or another.

9 **[2.] 3.** No person shall utilize the fetal organs or tissue resulting from an
10 abortion for medical transplantation, if the person knows that the abortion was
11 procured for the purpose of utilizing those organs or tissue for such use.

12 **[3.] 4.** No person shall offer any inducement, monetary or otherwise, to
13 a woman or a prospective father of an unborn child for the purpose of conceiving
14 an unborn child for the medical, scientific, experimental or therapeutic use of the
15 fetal organs or tissue.

16 **[4.] 5.** No person shall offer any inducement, monetary or otherwise, to
17 the mother or father of an unborn child for the purpose of procuring an abortion
18 for the medical, scientific, experimental or therapeutic use of the fetal organs or

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

19 tissue.

20 **[5.] 6. No person shall knowingly donate or make an anatomical**
21 **gift of the fetal organs or tissue resulting from an abortion to any**
22 **person or entity for medical, scientific, experimental, therapeutic, or**
23 **any other use.**

24 **7. No person shall knowingly offer or receive any valuable consideration**
25 **for the fetal organs or tissue resulting from an abortion, provided that nothing**
26 **in this subsection shall prohibit payment for burial or other final disposition of**
27 **the fetal remains so long as the final disposition does not include any**
28 **donation or anatomical gift of fetal organs or tissue, or payment for a**
29 **pathological examination, autopsy or postmortem examination of the fetal**
30 **remains.**

31 **[6.] 8. Any person who violates the provisions of subsections 4,**
32 **5, or 7 of this section shall be guilty of a class C felony, and the court**
33 **may impose a fine in an amount not less than twice the amount of any**
34 **valuable consideration received.**

35 **9. Nothing in this section shall prohibit the utilization of fetal**
36 **organs or tissue resulting from an abortion for medical or scientific**
37 **purposes to determine the cause or causes of any anomaly, illness,**
38 **death, or genetic condition of the fetus, the paternity of the fetus, or for**
39 **law enforcement purposes.**

40 **10. If any provision in this section or the application thereof to any**
41 **person, circumstance or period of gestation is held invalid, such invalidity shall**
42 **not affect the provisions or applications which can be given effect without the**
43 **invalid provision or application, and to this end the provisions of this section are**
44 **declared severable.**

 188.047. [A representative sample of] **1. Except as provided for in**
2 **subsection 9 of section 188.036, all fetal organs and tissue removed at the**
3 **time of abortion shall be submitted to a board eligible or certified pathologist[,**
4 **who] for gross and histopathological examination. The pathologist shall**
5 **file a copy of the fetal organs and tissue report with the state department of**
6 **health and senior services, and [who] shall provide a copy of the report to the**
7 **abortion facility or hospital in which the abortion was performed or induced**
8 **[and]. The pathologist's report shall be made a part of the patient's permanent**
9 **record.**

10 **2. The fetal organs and tissue report shall include:**

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

13 (2) Whether all fetal organs and tissue were received that would
14 be common for a specimen of such estimated gestational age;

15 (3) If the pathologist finds that all fetal organs and tissue were
16 not received, what portion of the fetal organs and tissue were not
17 received;

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

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

22 (6) A certification that all submitted fetal organs and tissue have
23 been disposed in accordance with state laws and regulations; and

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

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

33 4. A report shall be created and submitted to the department for
34 each specimen containing fetal organs and tissue at each facility that
35 handles the specimen, including the abortion facility or hospital where
36 the abortion was performed or induced, the pathology lab, and the
37 location of final disposition. Each report shall document, if applicable,
38 the date the specimen containing fetal organs and tissue was collected,
39 transported, received, and disposed. The report by the location of final
40 disposition shall verify that all fetal organs and tissue were received
41 and have been properly disposed according to state laws and
42 regulations.

43 5. The department shall reconcile each notice of abortion with
44 its corresponding fetal organs and tissue report. If the department
45 does not receive the notice of abortion and the fetal organs and tissue
46 report, the department shall conduct an investigation. If the
47 department finds that the abortion facility or hospital where the

48 abortion was performed or induced was not in compliance with the
49 provisions of this section, the department shall consider such
50 noncompliance a deficiency requiring an unscheduled inspection of the
51 facility to ensure the deficiency is remedied. If such deficiency is not
52 remedied, the department shall suspend the abortion facility's or
53 hospital's license for no less than one year, subject to the provisions of
54 chapter 197 regarding license suspensions, reviews, and appeals.

55 6. Beginning January 1, 2018, the department shall make an
56 annual report to the general assembly. The report shall include, but
57 not be limited to, all reports and information received by the
58 department under the provisions of this section, the number of any
59 deficiencies of each abortion facility in the calendar year and whether
60 such deficiencies were remedied, and the following for each abortion
61 procedure reported to the department the previous calendar year:

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

64 (2) Whether the department received the fetal organs and tissue
65 report for that abortion, along with a certification of the disposal of the
66 fetal organs and tissue; and

67 (3) The existence and nature, if any, of any inconsistencies or
68 concerns between the abortion report submitted under section 188.052
69 and the fetal organs and tissue report submitted under this section.

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

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

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

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

9 (3) If the attending physician finds that all fetal organs and
10 tissue were not removed, what portion of the fetal organs and tissue
11 were not removed.

12 2. An individual complication report for any post-abortion care performed
13 upon a woman shall be completed by the physician providing such post-abortion

14 care. This report shall include:

15 (1) The date of the abortion;

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

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

19 3. All abortion reports shall be signed by the attending physician, and
20 submitted to the state department of health and senior services within forty-five
21 days from the date of the abortion. All complication reports shall be signed by
22 the physician providing the post-abortion care and submitted to the department
23 of health and senior services within forty-five days from the date of the
24 post-abortion care.

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

27 5. The state department of health and senior services shall be responsible
28 for collecting all abortion reports and complication reports and collating and
29 evaluating all data gathered therefrom and shall annually publish a statistical
30 report based on such data from abortions performed in the previous calendar
31 year.

**188.160. 1. Each hospital, ambulatory surgical center, pathology
2 lab, medical research entity, and disposal facility involved in handling
3 fetal organs or tissue from an elective abortion shall establish and
4 implement a written policy adopted by each hospital, ambulatory
5 surgical center, pathology lab, medical research entity, and disposal
6 facility relating to the protections for employees who disclose
7 information under subsection 2 of this section. This policy shall
8 include a time frame for completion of investigations related to
9 complaints, not to exceed thirty days, and a method for notifying the
10 complainant of the disposition of the investigation. This policy shall be
11 submitted to the department of health and senior services to verify
12 implementation. At a minimum, such policy shall include the following
13 provisions:**

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

18 (2) No supervisor or individual with authority to hire or fire in

19 a hospital, ambulatory surgical center, pathology lab, medical research
20 entity, or disposal facility shall use or threaten to use his or her
21 supervisory authority to knowingly discriminate against, dismiss,
22 penalize, or in any way retaliate against or harass an employee because
23 the employee in good faith reported or disclosed any information under
24 subsection 2 of this section, or in any way attempt to dissuade, prevent,
25 or interfere with an employee who wishes to report or disclose such
26 information; and

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

31 2. The provisions of this section shall apply to information
32 disclosed or reported in good faith by an employee concerning alleged
33 violations of applicable federal or state laws or administrative rules
34 concerning the handling of fetal organs or tissue. All information
35 disclosed, collected, and maintained under this subsection and under
36 the written policy requirements of this section shall be accessible to the
37 department at all times and shall be reviewed by the department at
38 least annually. Complainants shall be notified of the department's
39 access to such information and of the complainant's right to notify the
40 department of any information concerning alleged violations of
41 applicable federal or state laws or administrative rules concerning
42 abortions or the handling of fetal organs or tissue.

43 3. Prior to any disclosure to individuals or agencies other than
44 the department, employees wishing to make a disclosure under the
45 provisions of this section shall first report to the individual or
46 individuals designated by the hospital, ambulatory surgical center,
47 pathology lab, medical research entity, or disposal facility under
48 subsection 1 of this section.

49 4. If the compliance officer, compliance committee, or
50 management official discovers credible evidence of misconduct from
51 any source and, after a reasonable inquiry, has reason to believe that
52 the misconduct may violate criminal, civil, or administrative law, the
53 hospital, ambulatory surgical center, pathology lab, medical research
54 entity, or disposal facility shall report the existence of misconduct to
55 the appropriate governmental authority within a reasonable period, but

56 not more than seven days after determining that there is credible
57 evidence of a violation.

58 5. Reports made to the department shall be subject to the
59 provisions of section 197.477; provided that, the restrictions of section
60 197.477 shall not be construed to limit the employee's ability to
61 subpoena from the original source the information reported to the
62 department under this section.

63 6. Each written policy shall allow employees making a report
64 who wish to remain anonymous to do so, and shall include safeguards
65 to protect the confidentiality of the employee making the report, the
66 confidentiality of patients, and the integrity of data, information, and
67 medical records.

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

73 8. Beginning December 1, 2017, each hospital, ambulatory
74 surgical center, pathology lab, medical research entity, and disposal
75 facility involved in handling fetal organs or tissue from an elective
76 abortion shall post a notice at their place of employment, in a sufficient
77 number of places on the premises to assure that such notice will
78 reasonably be seen by all employees. A hospital, ambulatory surgical
79 center, pathology lab, medical research entity, or disposal facility
80 involved in handling fetal organs or tissue from an elective abortion for
81 whom services are performed by individuals who may not reasonably
82 be expected to see a posted notice shall notify each such employee in
83 writing of the contents of such notice. The notice shall include all
84 information provided in this section.

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

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

27 **(4) Compliance with sections 188.205, 188.210, and 188.215**
28 **prohibiting the use of public funds, facilities, and employees to perform**
29 **or to assist a prohibited abortion or to encourage or to counsel a**
30 **woman to have a prohibited abortion; and**

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

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

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