

SECOND REGULAR SESSION

[CORRECTED]

HOUSE BILL NO. 914

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor), PHILLIPS, BEAN, SPRENG, LEMBKE, MUNZLINGER, RUPP, SANDER, MYERS, CUNNINGHAM (145), ENGLER, EMERY, BROWN, ICET, DEMPSEY, DUSENBERG, BIVINS, REINHART, STEVENSON, COOPER (120), BAKER, HUNTER, DAVIS (19), DEEKEN, GOODMAN, BEARDEN AND WRIGHT (Co-sponsors).

Pre-filed December 19, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3210L.02I

AN ACT

To repeal section 188.039, RSMo, and to enact in lieu thereof two new sections relating to disposition of human fetal remains.

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

Section A. Section 188.039, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.028 and 194.205, to read as follows:

188.039. 1. For purposes of this section, "medical emergency" means a condition which, on the basis of the 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 her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

2. Except in the case of medical emergency, no person shall perform or induce an abortion unless at least twenty-four hours prior thereto a treating physician has conferred with the patient and discussed with her the indicators and contraindicators, and risk factors including any physical, psychological, or situational factors for the proposed procedure and the use of medications, including but not limited to mifepristone, in light of her medical history and medical condition. For an abortion performed or an abortion induced by a drug or drugs, such conference shall take place at least twenty-four hours prior to the writing or communication of the first prescription for such drug or drugs in connection with inducing an abortion. Only one such conference shall be required for each abortion.

15 3. The patient shall be evaluated by a treating physician during the conference for
16 indicators and contraindicators, risk factors including any physical, psychological, or situational
17 factors which would predispose the patient to or increase the risk of experiencing one or more
18 adverse physical, emotional, or other health reactions to the proposed procedure or drug or drugs
19 in either the short or long term as compared with women who do not possess such risk factors.

20 4. At the end of the conference, and if the woman chooses to proceed with the abortion,
21 a treating physician shall:

22 **(1) Inform the patient of her rights regarding the disposition of the fetal remains**
23 **under section 194.205, RSMo; and**

24 **(2) Sign and shall cause the patient to sign a written statement that the woman gave her**
25 **informed consent freely and without coercion after the physician had discussed with her the**
26 **indicators and contraindicators, and risk factors, including any physical, psychological, or**
27 **situational factors. All such executed statements shall be maintained as part of the patient's**
28 **medical file, subject to the confidentiality laws and rules of this state.**

29 5. The director of the department of health and senior services shall disseminate a model
30 form that physicians may use as the written statement required by this section, but any lack or
31 unavailability of such a model form shall not affect the duties of the physician set forth in
32 subsections 2 to 4 of this section.

194.205. 1. As used in this section, "fetal death" means death prior to the complete
2 **expulsion or extraction from its mother of a product of human conception, irrespective of**
3 **the duration of pregnancy. The death is indicated by the fact that after such expulsion or**
4 **extraction the fetus does not breath or show any other evidence of life, such as beating of**
5 **the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.**

6 **2. In every instance of fetal death, the pregnant woman shall have the option of**
7 **treating the remains of a fetal death in the same manner as the remains of an expired**
8 **human life are treated in accordance with applicable law.**

9 **3. In every instance of fetal death, the health care provider, upon request of the**
10 **pregnant woman, shall release to the woman or the woman's designee the remains of a fetal**
11 **death for final disposition in accordance with applicable law. Such request shall be made**
12 **by the pregnant woman or her authorized representative prior to or immediately following**
13 **the expulsion or extraction of the fetal remains. Unless a timely request was made, nothing**
14 **in this section shall require the health care provider to maintain or preserve the fetal**
15 **remains.**

16 **4. (1) Nothing in this section shall prohibit a health care provider from conducting**
17 **or acquiring medical tests on the remains of a fetal death prior to release.**

18 **(2) Upon a request under subsection 3 of this section, whenever a medical test is**
19 **conducted under subdivision (1) of this subsection, the health care provider conducting the**
20 **test shall, where medically permissible and otherwise permitted by law, release to the**
21 **pregnant woman or the woman's designee the remains of a fetal death for final disposition.**

22 **5. Nothing in this section shall prohibit the health care provider from requiring a**
23 **release of liability for the release of the remains of a fetal death prior to such release.**

24 **6. A health care provider shall be immune from all civil or criminal liability, suit,**
25 **or sanction with regard to any action taken in good faith compliance with the provisions**
26 **of this section.**