

## HCS SS SB 5 -- ABORTION

SPONSOR: Koenig (Franklin)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Children and Families by a vote of 7 to 3, with 1 present. Voted "Do Pass" by the Standing Committee on Rules - Legislative Oversight by a vote of 9 to 4.

This bill modifies several provisions relating to abortion, including: (1) tissue reports; (2) Attorney General jurisdiction; (3) the preemption of political subdivision authority regarding abortion; (4) whistleblower protections; (5) the definition of abortion facilities; and (6) inspections of abortion facilities.

### COMPLICATION PLANS

Under this bill, no physician may prescribe or administer to a patient any drug or chemical used for the purpose of inducing an abortion without first obtaining the Department of Health and Senior Services' approval of a complication plan if the Food and Drug Administration label of such drug or chemical includes a clinical study in which more than 1% of patients administered the drug or chemical required surgical intervention after administration. The department may adopt rules governing complication plans (Section 188.021, RSMo).

### CONSENT TO ABORTION PROCEDURES

This bill modifies the consent process for a woman seeking an abortion. Currently, the physician who is to perform or induce the abortion or a qualified professional shall hold a conference with the woman prior to the woman's consent. This bill specifies that discussions involving medical risks to the woman, potential abortion methods, and other medical factors shall only be undertaken by the woman and the physician who is to perform or induce the abortion or the referring physician (Sections 188.027 and 188.039).

### TISSUE REPORTS

This bill requires that all tissue that is removed at the time of an abortion and sent to a pathologist for examination shall be submitted within 72 hours for gross and histopathological examination. The pathologist shall provide a copy of the tissue report to the abortion facility or hospital within 72 hours. If the pathological examination does not reveal the presence of a completed abortion, the pathologist shall notify the abortion facility within 24 hours.

The department shall reconcile each notice of abortion with its corresponding tissue report. If the department does not receive either a notice or a report, the department shall conduct an investigation. If the department finds that the abortion facility or hospital was not in compliance with this provision, the department shall consider such noncompliance a deficiency requiring an unscheduled inspection of the facility to ensure the deficiency is remedied. If the deficiency is not remedied, the department shall suspend the abortion facility or hospital's license for no less than one year, subject to applicable licensure procedures.

This provision requires the department, beginning January 1, 2018, to make an annual report to the General Assembly. The report shall include all reports and information received under this provision and the following for each abortion procedure reported to the department the previous calendar year: (1) the abortion procedure used; (2) whether the department received the tissue report for that abortion; and (3) the existence and nature, if any, of any inconsistencies or concerns between the physician's abortion report to the department and the pathologist's submitted tissue report. The report shall not disclose any personal patient information prohibited by law and shall maintain the confidentiality of all personal information of patients, facility personnel, and facility physicians.

Nothing in this section prohibits using fetal tissue or organs from an abortion to determine the cause of any anomaly, illness, death, or genetic condition of the fetus, the paternity of the fetus, or for law enforcement purposes (Section 188.047).

#### ATTORNEY GENERAL JURISDICTION

This bill specifies that the Attorney General shall have concurrent original jurisdiction throughout the state, along with each prosecuting or circuit attorney within their respective jurisdictions, to an action for any violation of the state's abortion laws. The Attorney General, or each respective prosecuting or circuit attorney, may seek injunctive or any other relief as necessary (Section 188.075).

This provision is similar to SB 196 (2017).

#### PREEMPTION OF POLITICAL SUBDIVISION AUTHORITY REGARDING ABORTION

The bill specifies that the General Assembly acknowledges the rights of alternatives to abortion agencies to operate freely and engage in speech without government interference, as well as the right of a person not to be compelled by the government to

participate in abortion, and that the constitution and laws of the United States and Missouri shall be interpreted, construed, applied, and enforced to fully protect these rights.

This bill specifies that a political subdivision may not enact an order that:

(1) Prohibits, restricts, limits, controls, directs, interferes with, or otherwise adversely affects an alternatives to abortion agency or its officers', agents', employees', or volunteers' operations or speech. This shall not prevent a political subdivision from exercising its lawful authority to regulate zoning or land use or to enforce a building or fire code regulation, as long as that political subdivision treats an "alternatives to abortion" agency in the same manner as another similarly situated agency;

(2) Requires a person to directly or indirectly participate in abortion if such participation is contrary to their religious beliefs or moral convictions;

(3) Requires any person to conduct real estate transactions for or with an abortion facility or for or with a person for the purpose of performing or inducing an abortion not necessary to save the life of the mother if such requirement is contrary to their religious beliefs or moral convictions; and

(4) Requires any person to provide coverage for or to participate in a health plan that includes benefits that are not otherwise required by state law.

In any action to enforce these provisions, a court may order injunctive or other equitable relief, recovery of damages, legal remedies, and payment of reasonable attorney's fees, costs, and expenses. In addition to a private cause of action, the Attorney General is also authorized to bring a cause of action under these provisions.

Nothing in the bill prohibits a political subdivision from enforcing any order to assist a pregnant woman to carry their unborn child to term or assist a woman in caring for her children or placing her children for adoption (Section 188.125).

This provision is the same as SS SB 41 and SCS HCS HB 174 (2017).

#### WHISTLEBLOWER PROTECTIONS

Every hospital, abortion facility, pathology laboratory, medical research entity, and any other facility involved in abortion shall

establish and implement a written policy relating to protections for employees who disclose information concerning actual, potential, or alleged violations of applicable federal or state laws or administrative rules, regulations, or standards. The department may adopt rules, regulations, or standards regarding the establishment and implementation of such policies (Section 188.160).

#### DEFINITIONS

This bill modifies the definition of an ambulatory surgical center to remove any reference to establishments operated for the purpose of performing or inducing an abortion. The bill defines an "abortion facility" as the term is defined in Section 188.015: a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital (Section 197.200).

#### LICENSED PHYSICIANS

In order to receive a license from the department, the bill requires an abortion facility to provide affirmative evidence that each person authorized to perform abortions is a physician currently licensed to practice in Missouri (Section 197.215).

#### RULES FOR AMBULATORY SURGICAL CENTERS AND ABORTION FACILITIES

The bill allows the department to adopt separate rules to apply to ambulatory surgical centers and to apply to abortion facilities. Abortion facilities are required to maintain a written protocol for managing patients who require transfer for further emergency care to a hospital within a reasonable distance from the abortion facility (Section 197.225).

#### ABORTION FACILITY INSPECTIONS

The department shall make an unannounced on-site inspection of any abortion facility at least annually. The inspection shall include: compliance with statutory and regulatory requirements, including requirements that the facility maintain adequate staffing and equipment to respond to medical emergencies; compliance with the provisions of Chapter 188; and compliance with the requirement that continuous physician services or registered professional nursing services be provided whenever a patient is in the facility. Inspection and investigation reports shall be available to the public, but information not subject to disclosure under the law may be redacted (Section 197.230).

This provision is similar to SS SB 67 (2017) and similar to SCS SB

644 (2016) and HCS HBs 2069 & 2371 (2016).

#### INTERFERENCE WITH MEDICAL ASSISTANCE

A person commits the offense of interference with medical assistance if he or she, while working as an employee of an abortion facility: knowingly orders or requests medical personnel to deviate from any applicable standard of care or ordinary practice while providing medical assistance to a patient for reasons unrelated to the patient's health or welfare; or knowingly attempts to prevent medical personnel from providing medical assistance to a patient in accordance with all applicable standards of care or ordinary practice for reasons unrelated to the patient's health or welfare. This offense is a class A misdemeanor (Section 574.200).

PROPOSERS: Supporters say that this bill is necessary because there has been a history with infractions in abortion facilities. The opportunity to develop health and safety guidelines for women's health was not struck down by the United States Supreme Court, so it is constitutional to create such regulations. Regardless of how a person feels on the issue of abortion, no one should be compelled to violate their convictions.

Testifying for the bill were Senator Koenig; Campaign Life Missouri; 1st Amendment Partnership; Missouri Catholic Conference; and Missouri Right To Life.

OPPONENTS: Those who oppose the bill say that statute regulates the speech of physicians when discussing abortion options, but this bill gives alternatives to abortion centers unregulated free speech. In defining abortion facilities separately from ambulatory surgical centers, the bill singles out the procedure of abortion. These regulations are an undue burden and would not meet constitutional muster.

Testifying against the bill were Rachel Zigler; Anna Shabsin; NARAL Pro-Choice Missouri; and Colleen McNicholas.

Others testifying on the bill say that it is politically motivated, and instead women and families need to be at the heart and center of the issue.

Testifying on the bill was the Advocates of Planned Parenthood of the St. Louis Region and Southwest Missouri.