

Legislative Wrap

Jim Cole, State Legislative Chair
Susan Klein, Legislative Liaison

Disappointment in 2008

Despite having a majority of legislators and leadership who call themselves pro-life, the Missouri General Assembly failed to send to the Governor a single new pro-life bill in 2008.

Worse yet, the Legislature increased its appropriations for life science that Amendment 2 makes available to use for cloning and killing new human beings. On the plus side, a bi-partisan majority in the House was willing to approve at least some new protections from abortions for unborn human beings, even though the Senate did not give abortion bills the time of day. Also, certain tax credits were steered away from the pro-cloning Missouri Technology Corporation (MTC); no pro-abortion measures were passed; and the state's funding of alternatives to abortion was increased by \$250,000.

It is instructive to compare state funding for alternatives to abortion with its funding of the Life Science Research Board. With the increase in funding, the appropriation for alternatives to abortion reached a total of \$1,949,512. In comparison, the Legislature increased the funding of the Life Science Research Board (LSRB) by \$7.5 million to \$21 million. The LSRB's money is legally vulnerable to a cloning industry lawsuit under Amendment 2, and MRL objected to any funding of LSRB for that very reason. (Amendment 2, now Art. III, Sec. 38(d) of the Missouri Constitution, overrides legislative language in the appropriations bill that legislators claimed would prevent the money from being used for cloning.) Rep. Belinda Harris and Rep. Therese Sander offered amendments that would have zeroed out the LSRB and MTC funding. They also proposed MRL's suggestion that the funding be redirected as an appropriation to the Department of Agriculture for plant and animal research, so that human medical research was not involved and Amendment 2 would not be triggered. The pro-life amendments were defeated, and MRL's objections were ignored, notwithstanding the fact that a lawsuit was already on file in Cole County Circuit Court attacking the State's failure to fund embryonic stem cell research in 2007.

The premier pro-life bill in 2008 was HB 1831 and its Senate counterpart, SB 1058, which would have strengthened the information that must be provided to a woman at least a day before an abortion, including among other things, an opportunity to see an ultrasound image and hear the baby's heartbeat. HB 1831 as finally approved by the House also outlawed coercion to force a woman to have an abortion, such as threatening physical violence if an abortion was not obtained, adverse employment actions, or adverse educational actions (e.g., deprivation of athletic scholarships). An earlier version of the bill provided that unlawful coercion would include additional behavior if done with an intent to force a woman to obtain an abortion: threatening to file for divorce or to walk out of a non-marital relationship, threatening to refuse or to cut off child support, or threatening to change the female's residence involuntarily.

Ironically, the provisions that caused so-called "pro-choice" organizations to object most vociferously were the provisions that outlawed coercion to preserve free choice. State senators rather thoughtlessly dismissed the concept out-of-hand, if the comments of formerly pro-life Senator Koster were typical. (See related article.) Another formerly pro-life state senator said after the session ended that he thought it was time to call a halt to all attempts to regulate abortion.

The Senate bill, SB 1058, was allowed only five minutes of speeches on the Senate floor in March, and it was never brought up again.

Pro-life bills that went nowhere included HB 1984 & HB 1922, which would have updated the State's statistical reports on abortion to specify the methods of abortion currently used; HB 1339, which would have removed abortion clinics from certain protections against medical malpractice lawsuits that are offered to legitimate medical providers by Missouri law; and HB 1625, which would have given protection to pharmacies for refusal to participate in any act or service in connection with any drug or device that causes an abortion. Missouri Right to Life testified in favor of all these bills in committee.

A bill to prohibit the formation of animal-human combinations using bio-technology was introduced on January 31 as HB 1953. Speaker Rod Jetton unilaterally killed it by waiting until the last day of the session, May 16, to assign it to a committee. It is assumed that the biotech industry opposed the bill behind the scenes. Recent legislation in Great Britain demonstrates that the biotech industry demands the right to perform the most repugnant types of experiments involving human life, so long as the researchers can then kill whatever humans or human-animal combinations they create.

Certain bills that initially provided tax credits for new bio-technology research either failed or were amended before the end of the session to remove objectionable language. One bill that was approved, SB 2058, originally provided that state tax credits for certain new research initiatives would be under the control of Missouri Technology Corporation. That corporation was originally established in the 1980's for promotion of legitimate research and development. It operates as a *de facto* arm of the State, although it has the form of a private, non-profit corporation. The leadership of the MTC was turned over to the cloners a few years ago. Donn Rubin, the chair of the successful Amendment 2 campaign in 2006, serves as president of MTC. When the bill reached the House, Rep. David Pearce offered an amendment to remove Missouri Technology Corporation from having any role in the tax credits, and that amendment was adopted. The tax credits newly authorized by SB 2058, as amended, do not overtly include any biotechnology projects and do not appear to provide benefits to the cloners. Time will tell whether the cloners receive any benefits indirectly.

Finally, **the new health care coverage bill**, SB 1283, appears to have safeguards against the state's money being used for abortions.

As of the end of the session, Missouri Right to Life was still examining other enactments to determine whether there were any effects on pro-life concerns, especially in regard to cloning and embryonic stem cell research. Any new findings will be reported in future issues of MRL News.

Shallow Thinking About Coercing Abortion

When the House sent HB 1831 to the Senate, pro-abortion Senator Chris Koster, who claimed to be pro-life when he was elected, ridiculed the provisions that would have outlawed coercing a woman to have an abortion. He equated "coercion" to "conspiracy" and said that outlawing coercion to force an abortion was the same as outlawing a "conspiracy to commit free speech or conspiracy to incite voting."

It takes only a moment to see the absence of thought in Senator Koster's comments. HB 1831 would not have outlawed the free exercise of a constitutional right; it would have outlawed forcing a person to exercise a constitutional right in a certain way not chosen by that person. For example, there is freedom of contract in this country,

but to threaten someone with violence unless the person makes a certain contract is illegal intimidation. There is a constitutional right to marry, but forcing someone to exercise that right at gunpoint is illegal. Threatening violence if a woman does not have an abortion is no different.

If Senator Koster is now a proponent of “choice,” where is the “choice” in beating a woman, or just threatening to beat her, until she submits to an abortion?

There are lots of constitutional rights that people could be compelled to exercise under Senator Koster’s principle. He could make people exercise their constitutional right to vote by intimidating them into voting for him, as in the machine-politics days in the early 20th century, or to exercise their free speech rights by intimidating them into signing petitions or giving public statements supporting him. If those things are wrong and illegal—as they most certainly are—then intimidating women into abortion is wrong and should be illegal.

Aggressive New Organ Donation Law

Jim Cole, General Counsel

The Legislature approved revisions to the Uniform Anatomical Gift Act (organ donation law) in the 2008 session that will require careful thought on the part of all citizens, because consent to donate organs now has much wider implications than it used to have. The new law makes it quite easy to donate tissue, organs and body parts (all of which will be called “organs” for simplicity), and quite hard to refuse to donate them. While the new law does not directly implicate the concerns of Missouri Right to Life (death by abortion, infanticide, euthanasia, or cloning) the donation of organs is a subject closely related to life-and-death questions.

Under Revised Uniform Anatomical Gift Act, SB 1139, one may consent to donate organs by approving an indication to that effect on one’s driver’s license, by a clause in a will, or by signing up for a “donor registry” on the telephone or on the Internet. (Sec. 194.225) One may also make an oral donation in advance during a terminal illness or injury “by any form of communication addressed to at least two adults at least one of whom is a disinterested witness.” (Sec. 194.225)

In a departure from prior law, a minor who is old enough to obtain a driver’s license is old enough to make his or her own donation of organs without any notice to his or her parents. (Sec. 194.220.2(1)) (A “minor” for this purpose is a person under age 18 who is not married, in military service, or otherwise emancipated.)

Also in a departure from prior law, parents may make advance gifts of body tissues and parts for their minor children. (Sec. 194.220.2(3)) Furthermore, a guardian may do so for his ward. (Sec. 194.220.2(4)) An attorney-in-fact (i.e., one who holds a power of attorney to act for another person) or other agent may do so for her principal, unless specifically prohibited in the power of attorney or another document. (Sec. 194.220.2(4)) The document establishing the powers of the agent does not have to be a “health care” power of attorney or durable power of attorney in order to authorize an organ donation. (Id.)

Once consent to organ donation is noted on the appropriate records, it remains in effect until revoked. (“Revocation” includes a subsequent amendment that is so contrary to the original donation that it is deemed a revocation. Section 194.230.1.) It is not as easy to revoke a donation as it is to make one. Generally, a written document signed by the donor is required. (Sec. 194.230.1) The new law does not provide for revocation by telephone or by the Internet, except that an

oral revocation may be made during a terminal illness or injury by a communication “addressed to at least two adults at least one of whom is a disinterested witness.” (Sec. 194.230.4) It is hazardous to rely on such oral communications, however.

When parents make organ donations in advance for their unemancipated children, the donation continues in effect when the children become adults at age 18. (See National Conference of Commissioners on Uniform State Laws, Official Comment to Section 4, Uniform Anatomical Gift Act (2006).) After the children become adults, in fact, the parents who made the donation cannot revoke it. (Id.) Thus, there is a potential abuse that a child who becomes an adult in future years will be deemed to have made an organ donation because of what his or her parents have done, without the child’s knowing it. Only the new adult may revoke any such donation, once he or she finds out about it. (Sec. 194.230.)

If a minor child has made his or her own donation, and then death occurs, the parents may revoke it, if they are reached in time to prevent the taking of the organs or body parts. (Sec. 194.240.7) The new law requires organ transplant agencies to attempt to find the parents for this purpose. (Sec. 194.265.6)

If a person has not made his or her own organ donation in advance (or a parent has not done so for a minor), then an attorney-in-fact or certain relatives may make such a donation after the death of a person. (Sec. 194.245) However, no agent or relative may revoke a donation made by the decedent before death (sec. 194.240.1), unless it is the parents revoking a donation of a child who is still a minor at death. (Sec. 194.240.7)

The only way that a living person may prevent any gift of his or her organs after death by his agent or relatives is to sign a “refusal”. (Sec. 194.235.4) Only when the person is in a terminal illness or injury may the refusal be made orally, and it requires a communication “addressed to at least two adults at least one of whom is a disinterested witness.” (Sec. 194.235.1(3)) Again, the hazards of using this procedure are obvious.

In another counter-intuitive surprise, the new law specifically says that one’s revocation of a donation that was made in advance is not a refusal to allow a donation to be made by one’s agent or relatives. (Sec. 194.240.2) This means that if one makes a donation via one’s driver’s license, then later has second thoughts and revokes the donation, one’s organs may still be taken if one’s agent or relatives give consent after death. (Id.) For someone who contracts a disease later in life that leaves a permanent residue in the body (e.g., malaria or hepatitis), making an organ donation dangerous to any recipient of organs, it will not suffice to cancel the organ donation. One will need to sign a refusal document, too.

Finally, the scope of donations is wider than people might think. When a donation specifies that a certain organ or body part is to be taken (e.g., the corneas of the eyes), that is not deemed a refusal to a donation of any other organ, unless a specific refusal to donate anything else is contained in the same document. (Sec. 194.240.5) Likewise, when a donor’s gift document mentions a purpose for an organ donation, there is no limitation on using the organ for any other purpose allowed by the new law “in the absence of an express, contrary indication by the donor.” (Sec. 194.240.6)

There are many other provisions in the new organ donation law, and citizens who are interested in making organ donations (or who have already done so) are urged to obtain professional legal advice about its provisions. (Nothing said in this article constitutes such legal advice.) Quite clearly, a person is well advised to be **cautious in this area.**