

SECOND REGULAR SESSION

HOUSE BILL NO. 1452

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BILLINGTON.

3096H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof one new section relating to abortion.

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

Section A. Section 188.027, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.027, to read as follows:

188.027. 1. Except in cases of medical emergency, no abortion shall be performed or induced on a woman without her voluntary and informed consent, given freely and without coercion. Consent to an abortion is voluntary and informed and given freely and without coercion if, and only if, at least seventy-two hours prior to the abortion:

(1) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician has informed the woman orally, reduced to writing, and in person, of the following:

(a) The name of the physician who will perform or induce the abortion;

(b) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including:

a. A description of the proposed abortion method;

b. The immediate and long-term medical risks to the woman associated with the proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and possible adverse psychological effects associated with the abortion; and

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 c. The immediate and long-term medical risks to the woman, in light of the anesthesia
17 and medication that is to be administered, the unborn child's gestational age, and the woman's
18 medical history and medical condition;

19 (c) Alternatives to the abortion which shall include making the woman aware that
20 information and materials shall be provided to her detailing such alternatives to the abortion;

21 (d) A statement that the physician performing or inducing the abortion is available for
22 any questions concerning the abortion, together with the telephone number that the physician
23 may be later reached to answer any questions that the woman may have;

24 (e) The location of the hospital that offers obstetrical or gynecological care located
25 within thirty miles of the location where the abortion is performed or induced and at which
26 the physician performing or inducing the abortion has clinical privileges and where the
27 woman may receive follow-up care by the physician if complications arise;

28 (f) The gestational age of the unborn child at the time the abortion is to be performed
29 or induced; and

30 (g) The anatomical and physiological characteristics of the unborn child at the time
31 the abortion is to be performed or induced;

32 (2) The physician who is to perform or induce the abortion or a qualified professional
33 has presented the woman, in person, printed materials provided by the department, which
34 describe the probable anatomical and physiological characteristics of the unborn child at two-
35 week gestational increments from conception to full term, including color photographs or
36 images of the developing unborn child at two-week gestational increments. Such descriptions
37 shall include information about brain and heart functions, the presence of external members
38 and internal organs during the applicable stages of development and information on when the
39 unborn child is viable. The printed materials shall prominently display the following
40 statement: "The life of each human being begins at conception. Abortion will terminate the
41 life of a separate, unique, living human being.";

42 (3) The physician who is to perform or induce the abortion, a qualified professional,
43 or the referring physician has presented the woman, in person, printed materials provided by
44 the department, which describe the various surgical and drug-induced methods of abortion
45 relevant to the stage of pregnancy, as well as the immediate and long-term medical risks
46 commonly associated with each abortion method including, but not limited to, infection,
47 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability
48 to carry a subsequent child to term, and the possible adverse psychological effects associated
49 with an abortion;

50 (4) (a) The physician who is to perform or induce the abortion or a qualified
51 professional shall ~~provide the woman with the opportunity to view~~, at least seventy-two
52 hours prior to the abortion, **perform** an active ultrasound of the unborn child and ~~hear~~

53 **auscultate** the heartbeat of the unborn child **so that the woman may hear the heartbeat of**
54 **the unborn child** if the heartbeat is audible. The woman shall be provided with a
55 geographically indexed list maintained by the department of health care providers, facilities,
56 and clinics that perform ultrasounds, including those that offer ultrasound services free of
57 charge. Such materials shall provide contact information for each provider, facility, or clinic
58 including telephone numbers and, if available, website addresses. Should the woman decide
59 to obtain an **additional** ultrasound from ~~[a]~~ **another** provider, facility, or clinic ~~[other than the~~
60 ~~abortion facility]~~, the woman shall be offered a reasonable time to obtain the ultrasound
61 examination before the date and time set for performing or inducing an abortion[-];

62 (b) **The physician who is to perform or induce the abortion, or a qualified**
63 **professional, shall provide a simultaneous explanation during the ultrasound of what**
64 **the ultrasound is depicting, which shall include the presence and location of the unborn**
65 **child within the uterus and the number of unborn children depicted, and shall, if the**
66 **ultrasound image indicates that the death of the unborn child has occurred, inform the**
67 **woman of that fact.** The person conducting the ultrasound shall ensure that the active
68 ultrasound image is of a quality consistent with standard medical practice in the community,
69 contains the dimensions of the unborn child, and accurately portrays the presence of external
70 members and internal organs, if present or viewable, of the unborn child. The auscultation of
71 fetal heart tone must also be of a quality consistent with standard medical practice in the
72 community[- ~~If the woman chooses to view the ultrasound or hear the heartbeat or both at the~~
73 ~~abortion facility, the viewing or hearing or both shall be provided to her at the abortion~~
74 ~~facility at least seventy-two hours prior to the abortion being performed or induced];~~

75 (5) The printed materials provided by the department shall include information on the
76 possibility of an abortion causing pain in the unborn child. This information shall include, but
77 need not be limited to, the following:

78 (a) Unborn children as early as eight weeks gestational age start to show spontaneous
79 movements and unborn children at this stage in pregnancy show reflex responses to touch;

80 (b) In the unborn child, the area around his or her mouth and lips is the first part of the
81 unborn child's body to respond to touch and by fourteen weeks gestational age most of the
82 unborn child's body is responsive to touch;

83 (c) Pain receptors on the unborn child's skin develop around his or her mouth at
84 around seven to eight weeks gestational age, around the palms of his or her hands at ten to ten
85 and a half weeks, on the abdominal wall at fifteen weeks, and over all of his or her body at
86 sixteen weeks gestational age;

87 (d) Beginning at sixteen weeks gestational age and later, it is possible for pain to be
88 transmitted from receptors to the cortex of the unborn child's brain, where thinking and
89 perceiving occur;

90 (e) When a physician performs a life-saving surgery, he or she provides anesthesia to
91 unborn children as young as sixteen weeks gestational age in order to alleviate the unborn
92 child's pain; and

93 (f) A description of the actual steps in the abortion procedure to be performed or
94 induced and at which steps the abortion procedure could be painful to the unborn child;

95 (6) The physician who is to perform or induce the abortion or a qualified professional
96 has presented the woman, in person, printed materials provided by the department explaining
97 to the woman alternatives to abortion she may wish to consider. Such materials shall:

98 (a) Identify on a geographical basis public and private agencies available to assist a
99 woman in carrying her unborn child to term, and to assist her in caring for her dependent child
100 or placing her child for adoption, including agencies commonly known and generally referred
101 to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption
102 agencies. Such materials shall provide a comprehensive list by geographical area of the
103 agencies, a description of the services they offer, and the telephone numbers and addresses of
104 the agencies; provided that such materials shall not include any programs, services,
105 organizations, or affiliates of organizations that perform or induce, or assist in the performing
106 or inducing of, abortions or that refer for abortions;

107 (b) Explain the Missouri alternatives to abortion services program under section
108 188.325, and any other programs and services available to pregnant women and mothers of
109 newborn children offered by public or private agencies which assist a woman in carrying her
110 unborn child to term and assist her in caring for her dependent child or placing her child for
111 adoption, including but not limited to prenatal care; maternal health care; newborn or infant
112 care; mental health services; professional counseling services; housing programs; utility
113 assistance; transportation services; food, clothing, and supplies related to pregnancy;
114 parenting skills; educational programs; job training and placement services; drug and alcohol
115 testing and treatment; and adoption assistance;

116 (c) Identify the state website for the Missouri alternatives to abortion services
117 program under section 188.325, and any toll-free number established by the state operated in
118 conjunction with the program;

119 (d) Prominently display the statement: "There are public and private agencies willing
120 and able to help you carry your child to term, and to assist you and your child after your child
121 is born, whether you choose to keep your child or place him or her for adoption. The state of
122 Missouri encourages you to contact those agencies before making a final decision about
123 abortion. State law requires that your physician or a qualified professional give you the
124 opportunity to call agencies like these before you undergo an abortion.";

125 (7) The physician who is to perform or induce the abortion or a qualified professional
126 has presented the woman, in person, printed materials provided by the department explaining

127 that the father of the unborn child is liable to assist in the support of the child, even in
128 instances where he has offered to pay for the abortion. Such materials shall include
129 information on the legal duties and support obligations of the father of a child, including, but
130 not limited to, child support payments, and the fact that paternity may be established by the
131 father's name on a birth certificate or statement of paternity, or by court action. Such printed
132 materials shall also state that more information concerning paternity establishment and child
133 support services and enforcement may be obtained by calling the family support division
134 within the Missouri department of social services; and

135 (8) The physician who is to perform or induce the abortion or a qualified professional
136 shall inform the woman that she is free to withhold or withdraw her consent to the abortion at
137 any time without affecting her right to future care or treatment and without the loss of any
138 state or federally funded benefits to which she might otherwise be entitled.

139 2. All information required to be provided to a woman considering abortion by
140 subsection 1 of this section shall be presented to the woman individually, in the physical
141 presence of the woman and in a private room, to protect her privacy, to maintain the
142 confidentiality of her decision, to ensure that the information focuses on her individual
143 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that
144 she is not a victim of coerced abortion. Should a woman be unable to read materials provided
145 to her, they shall be read to her. Should a woman need an interpreter to understand the
146 information presented in the written materials, an interpreter shall be provided to her. Should
147 a woman ask questions concerning any of the information or materials, answers shall be
148 provided in a language she can understand.

149 3. No abortion shall be performed or induced unless and until the woman upon whom
150 the abortion is to be performed or induced certifies in writing on a checklist form provided by
151 the department that she has been presented all the information required in subsection 1 of this
152 section, that she has ~~[been provided the opportunity to view]~~ **viewed** an active ultrasound
153 image of the unborn child and ~~[hear]~~ **heard** the heartbeat of the unborn child if it is audible,
154 **or declined to do so**, and that she further certifies that she gives her voluntary and informed
155 consent, freely and without coercion, to the abortion procedure.

156 4. No physician shall perform or induce an abortion unless and until the physician has
157 obtained from the woman her voluntary and informed consent given freely and without
158 coercion. If the physician has reason to believe that the woman is being coerced into having
159 an abortion, the physician or qualified professional shall inform the woman that services are
160 available for her and shall provide her with private access to a telephone and information
161 about such services, including but not limited to the following:

162 (1) Rape crisis centers, as defined in section 455.003;

163 (2) Shelters for victims of domestic violence, as defined in section 455.200; and

164 (3) Orders of protection, pursuant to chapter 455.

165 5. The physician who is to perform or induce the abortion shall, at least seventy-two
166 hours prior to such procedure, inform the woman orally and in person of:

167 (1) The immediate and long-term medical risks to the woman associated with the
168 proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear
169 or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent
170 child to term, and possible adverse psychological effects associated with the abortion; and

171 (2) The immediate and long-term medical risks to the woman, in light of the
172 anesthesia and medication that is to be administered, the unborn child's gestational age, and
173 the woman's medical history and medical conditions.

174 6. No physician shall perform or induce an abortion unless and until the physician has
175 received and signed a copy of the form prescribed in subsection 3 of this section. The
176 physician shall retain a copy of the form in the patient's medical record.

177 7. In the event of a medical emergency, the physician who performed or induced the
178 abortion shall clearly certify in writing the nature and circumstances of the medical
179 emergency. This certification shall be signed by the physician who performed or induced the
180 abortion, and shall be maintained under section 188.060.

181 8. No person or entity shall require, obtain, or accept payment for an abortion from or
182 on behalf of a patient until at least seventy-two hours have passed since the time that the
183 information required by subsection 1 of this section has been provided to the patient. Nothing
184 in this subsection shall prohibit a person or entity from notifying the patient that payment for
185 the abortion will be required after the seventy-two-hour period has expired if she voluntarily
186 chooses to have the abortion.

187 9. The term "qualified professional" as used in this section shall refer to a physician,
188 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed
189 professional counselor, or licensed social worker, licensed or registered under chapter 334,
190 335, or 337, acting under the supervision of the physician performing or inducing the
191 abortion, and acting within the course and scope of his or her authority provided by law. The
192 provisions of this section shall not be construed to in any way expand the authority otherwise
193 provided by law relating to the licensure, registration, or scope of practice of any such
194 qualified professional.

195 10. By November 30, 2010, the department shall produce the written materials and
196 forms described in this section. Any written materials produced shall be printed in a typeface
197 large enough to be clearly legible. All information shall be presented in an objective,
198 unbiased manner designed to convey only accurate scientific and medical information. The
199 department shall furnish the written materials and forms at no cost and in sufficient quantity
200 to any person who performs or induces abortions, or to any hospital or facility that provides

201 abortions. The department shall make all information required by subsection 1 of this section
202 available to the public through its department website. The department shall maintain a toll-
203 free, twenty-four-hour hotline telephone number where a caller can obtain information on a
204 regional basis concerning the agencies and services described in subsection 1 of this section.
205 No identifying information regarding persons who use the website shall be collected or
206 maintained. The department shall monitor the website on a regular basis to prevent tampering
207 and correct any operational deficiencies.

208 11. In order to preserve the compelling interest of the state to ensure that the choice to
209 consent to an abortion is voluntary and informed, and given freely and without coercion, the
210 department shall use the procedures for adoption of emergency rules under section 536.025 in
211 order to promulgate all necessary rules, forms, and other necessary material to implement this
212 section by November 30, 2010.

213 12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-
214 hour waiting period for an abortion are ever temporarily or permanently restrained or
215 enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours;
216 provided, however, that if such temporary or permanent restraining order or injunction is
217 stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall
218 be seventy-two hours.

219 **13. It is the intent of the general assembly that this section be severable as noted**
220 **in section 1.140. In the event that any section, subsection, subdivision, paragraph,**
221 **sentence, or clause of this section be declared invalid under the Constitution of the**
222 **United States or the Constitution of the state of Missouri, it is the intent of the general**
223 **assembly that the remaining provisions of this section remain in force and effect as far**
224 **as capable of being carried into execution as intended by the general assembly.**

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