

FIRST REGULAR SESSION

HOUSE BILL NO. 368

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEWMAN.

0851H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 188.027 and 188.039, RSMo, and to enact in lieu thereof two new sections relating to abortion.

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

Section A. Sections 188.027 and 188.039, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.027 and 188.039, to read as follows:

188.027. 1. Except in the case 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 or a qualified professional 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

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

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.

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

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

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

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

29 ~~[(g)]~~ (f) The anatomical and physiological characteristics of the unborn child at the time
30 the abortion is to be performed or induced;

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

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

48 (4) The physician who is to perform or induce the abortion or a qualified professional
49 shall provide the woman with the opportunity to view ~~[at least seventy-two hours]~~, prior to the
50 abortion, an active ultrasound of the unborn child and hear the heartbeat of the unborn child if
51 the heartbeat is audible. The woman shall be provided with a geographically indexed list
52 maintained by the department of health care providers, facilities, and clinics that perform
53 ultrasounds, including those that offer ultrasound services free of charge. Such materials shall

54 provide contact information for each provider, facility, or clinic including telephone numbers
55 and, if available, website addresses. Should the woman decide to obtain an ultrasound from a
56 provider, facility, or clinic other than the abortion facility, the woman shall be offered a
57 reasonable time to obtain the ultrasound examination before the date and time set for performing
58 or inducing an abortion. The person conducting the ultrasound shall ensure that the active
59 ultrasound image is of a quality consistent with standard medical practice in the community,
60 contains the dimensions of the unborn child, and accurately portrays the presence of external
61 members and internal organs, if present or viewable, of the unborn child. The auscultation of
62 fetal heart tone must also be of a quality consistent with standard medical practice in the
63 community. If the woman chooses to view the ultrasound or hear the heartbeat or both at the
64 abortion facility, the viewing or hearing or both shall be provided to her at the abortion facility
65 ~~[at least seventy-two hours]~~ prior to the abortion being performed or induced;

66 (5) Prior to an abortion being performed or induced on an unborn child of twenty-two
67 weeks gestational age or older, the physician who is to perform or induce the abortion or a
68 qualified professional has presented the woman, in person, printed materials provided by the
69 department that offer information on the possibility of the abortion causing pain to the unborn
70 child. This information shall include, but need not be limited to, the following:

71 (a) At least by twenty-two weeks of gestational age, the unborn child possesses all the
72 anatomical structures, including pain receptors, spinal cord, nerve tracts, thalamus, and cortex,
73 that are necessary in order to feel pain;

74 (b) A description of the actual steps in the abortion procedure to be performed or
75 induced, and at which steps the abortion procedure could be painful to the unborn child;

76 (c) There is evidence that by twenty-two weeks of gestational age, unborn children seek
77 to evade certain stimuli in a manner that in an infant or an adult would be interpreted as a
78 response to pain;

79 (d) Anesthesia is given to unborn children who are twenty-two weeks or more gestational
80 age who undergo prenatal surgery;

81 (e) Anesthesia is given to premature children who are twenty-two weeks or more
82 gestational age who undergo surgery;

83 (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to
84 the unborn child;

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

88 (a) Identify on a geographical basis public and private agencies available to assist a
89 woman in carrying her unborn child to term, and to assist her in caring for her dependent child

90 or placing her child for adoption, including agencies commonly known and generally referred
91 to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption
92 agencies. Such materials shall provide a comprehensive list by geographical area of the agencies,
93 a description of the services they offer, and the telephone numbers and addresses of the agencies;
94 provided that such materials shall not include any programs, services, organizations, or affiliates
95 of organizations that perform or induce, or assist in the performing or inducing of, abortions or
96 that refer for abortions;

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

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

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

115 (7) The physician who is to perform or induce the abortion or a qualified professional
116 has presented the woman, in person, printed materials provided by the department explaining that
117 the father of the unborn child is liable to assist in the support of the child, even in instances
118 where he has offered to pay for the abortion. Such materials shall include information on the
119 legal duties and support obligations of the father of a child, including, but not limited to, child
120 support payments, and the fact that paternity may be established by the father's name on a birth
121 certificate or statement of paternity, or by court action. Such printed materials shall also state
122 that more information concerning paternity establishment and child support services and
123 enforcement may be obtained by calling the family support division within the Missouri
124 department of social services; and

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

129 2. All information required to be provided to a woman considering abortion by
130 subsection 1 of this section shall be presented to the woman individually, in the physical
131 presence of the woman and in a private room, to protect her privacy, to maintain the
132 confidentiality of her decision, to ensure that the information focuses on her individual
133 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that she
134 is not a victim of coerced abortion. Should a woman be unable to read materials provided to her,
135 they shall be read to her. Should a woman need an interpreter to understand the information
136 presented in the written materials, an interpreter shall be provided to her. Should a woman ask
137 questions concerning any of the information or materials, answers shall be provided in a
138 language she can understand.

139 3. No abortion shall be performed or induced unless and until the woman upon whom
140 the abortion is to be performed or induced certifies in writing on a checklist form provided by
141 the department that she has been presented all the information required in subsection 1 of this
142 section, that she has been provided the opportunity to view an active ultrasound image of the
143 unborn child and hear the heartbeat of the unborn child if it is audible, and that she further
144 certifies that she gives her voluntary and informed consent, freely and without coercion, to the
145 abortion procedure.

146 4. No abortion shall be performed or induced on an unborn child of twenty-two weeks
147 gestational age or older unless and until the woman upon whom the abortion is to be performed
148 or induced has been provided the opportunity to choose to have an anesthetic or analgesic
149 administered to eliminate or alleviate pain to the unborn child caused by the particular method
150 of abortion to be performed or induced. The administration of anesthesia or analgesics shall be
151 performed in a manner consistent with standard medical practice in the community.

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

- 158 (1) Rape crisis centers, as defined in section 455.003;
159 (2) Shelters for victims of domestic violence, as defined in section 455.200; and
160 (3) Orders of protection, pursuant to chapter 455.

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

164 7. In the event of a medical emergency as provided by section 188.039, the physician
165 who performed or induced the abortion shall clearly certify in writing the nature and
166 circumstances of the medical emergency. This certification shall be signed by the physician who
167 performed or induced the abortion, and shall be maintained under section 188.060.

168 8. No person or entity shall require, obtain, or accept payment for an abortion from or
169 on behalf of a patient until ~~[at least seventy-two hours have passed since the time that]~~ the
170 information required by subsection 1 of this section has been provided to the patient. Nothing
171 in this subsection shall prohibit a person or entity from notifying the patient that payment for the
172 abortion will be required ~~[after the seventy-two hour period has expired]~~ if she voluntarily
173 chooses to have the abortion.

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

181 10. By November 30, 2010, the department shall produce the written materials and forms
182 described in this section. Any written materials produced shall be printed in a typeface large
183 enough to be clearly legible. All information shall be presented in an objective, unbiased manner
184 designed to convey only accurate scientific and medical information. The department shall
185 furnish the written materials and forms at no cost and in sufficient quantity to any person who
186 performs or induces abortions, or to any hospital or facility that provides abortions. The
187 department shall make all information required by subsection 1 of this section available to the
188 public through its department website. The department shall maintain a toll-free,
189 twenty-four-hour hotline telephone number where a caller can obtain information on a regional
190 basis concerning the agencies and services described in subsection 1 of this section. No
191 identifying information regarding persons who use the website shall be collected or maintained.
192 The department shall monitor the website on a regular basis to prevent tampering and correct any
193 operational deficiencies.

194 11. In order to preserve the compelling interest of the state to ensure that the choice to
195 consent to an abortion is voluntary and informed, and given freely and without coercion, the
196 department shall use the procedures for adoption of emergency rules under section 536.025 in

197 order to promulgate all necessary rules, forms, and other necessary material to implement this
198 section by November 30, 2010.

199 ~~[12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-hour~~
200 ~~waiting period for an abortion are ever temporarily or permanently restrained or enjoined by~~
201 ~~judicial order, then the waiting period for an abortion shall be twenty-four hours; provided,~~
202 ~~however, that if such temporary or permanent restraining order or injunction is stayed or~~
203 ~~dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be~~
204 ~~seventy-two hours.]~~

188.039. 1. For purposes of this section, "medical emergency" means a condition which,
2 on the basis of the physician's good faith clinical judgment, so complicates the medical condition
3 of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death
4 or for which a delay will create a serious risk of substantial and irreversible impairment of a
5 major bodily function.

6 2. Except in the case of medical emergency, no person shall perform or induce an
7 abortion unless ~~[at least seventy-two hours prior thereto]~~ the physician who is to perform or
8 induce the abortion or a qualified professional has conferred with the patient and discussed with
9 her the indicators and contraindicators, and risk factors including any physical, psychological,
10 or situational factors for the proposed procedure and the use of medications, including but not
11 limited to mifepristone, in light of her medical history and medical condition. For an abortion
12 performed or an abortion induced by a drug or drugs, such conference shall take place ~~[at least~~
13 ~~seventy-two hours]~~ prior to the writing or communication of the first prescription for such drug
14 or drugs in connection with inducing an abortion. Only one such conference shall be required
15 for each abortion.

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

22 4. At the end of the conference, and if the woman chooses to proceed with the abortion,
23 the physician who is to perform or induce the abortion or a qualified professional shall sign and
24 shall cause the patient to sign a written statement that the woman gave her informed consent
25 freely and without coercion after the physician or qualified professional had discussed with her
26 the 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 or qualified professionals may use as the written statement required by this
31 section, but any lack or unavailability of such a model form shall not affect the duties of the
32 physician or qualified professional set forth in subsections 2 to 4 of this section.

33 6. As used in this section, the term "qualified professional" shall refer to a physician,
34 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed professional
35 counselor, or licensed social worker, licensed or registered under chapter 334, 335, or 337, acting
36 under the supervision of the physician performing or inducing the abortion, and acting within the
37 course and scope of his or her authority provided by law. The provisions of this section shall not
38 be construed to in any way expand the authority otherwise provided by law relating to the
39 licensure, registration, or scope of practice of any such qualified professional.

40 ~~[7. If the provisions in subsection 2 of this section requiring a seventy-two-hour waiting~~
41 ~~period for an abortion are ever temporarily or permanently restrained or enjoined by judicial~~
42 ~~order, then the waiting period for an abortion shall be twenty-four hours; provided, however, that~~
43 ~~if such temporary or permanent restraining order or injunction is stayed or dissolved, or~~
44 ~~otherwise ceases to have effect, the waiting period for an abortion shall be seventy-two hours.]~~

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