

FIRST REGULAR SESSION

HOUSE BILL NO. 404

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUBRECHT.

0952H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 188.027, 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Section A. Section 188.027, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.027 and 188.077, to read as follows: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) The anatomical and physiological characteristics of the unborn child at the time the
30 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, **if the unborn child is at least ten weeks**
51 **gestational age**, hear the heartbeat of the unborn child if the heartbeat is audible. The woman
52 shall be provided with a geographically indexed list maintained by the department of health care
53 providers, facilities, and clinics that perform ultrasounds, including those that offer ultrasound

54 services free of charge. Such materials shall provide contact information for each provider,
55 facility, or clinic including telephone numbers and, if available, website addresses. Should the
56 woman decide to obtain an ultrasound from a provider, facility, or clinic other than the abortion
57 facility, the woman shall be offered a reasonable time to obtain the ultrasound examination
58 before the date and time set for performing or inducing an abortion. The person conducting the
59 ultrasound shall ensure that the active ultrasound image is of a quality consistent with standard
60 medical practice in the community, contains the dimensions of the unborn child, and accurately
61 portrays the presence of external members and internal organs, if present or viewable, of the
62 unborn child. **The person conducting the ultrasound shall provide a medical description
63 of the ultrasound images of the unborn child's cardiac activity, if present and viewable.**
64 The auscultation of fetal heart tone ~~must~~ **shall** also be of a quality consistent with standard
65 medical practice in the community. If the woman chooses to view the ultrasound or hear the
66 heartbeat or both at the abortion facility, the viewing or hearing or both shall be provided to her
67 at the abortion facility at least seventy-two hours prior to the abortion being performed or
68 induced. **Nothing in this subdivision shall be construed to prevent a woman from closing
69 or averting her eyes from the ultrasound images required to be displayed or from not
70 listening to the heartbeat. It shall not be considered a violation of this subdivision if an
71 attempt has been made, consistent with standard medical practice, to make the heartbeat
72 of the unborn child audible for the woman, that attempt does not result in the heartbeat
73 being made audible, and an offer to attempt to make the heartbeat audible at a subsequent
74 date has been made;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 7. In the event of a medical emergency as provided by section 188.039, the physician
174 who performed or induced the abortion shall clearly certify in writing the nature and
175 circumstances of the medical emergency. This certification shall be signed by the physician who
176 performed or induced the abortion, and shall be maintained under section 188.060. **A physician
177 who knowingly or recklessly falsifies a certification under this subsection shall be in
178 violation of the provisions of this section.**

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

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

192 10. By November 30, 2010, the department shall produce the written materials and forms
193 described in this section. Any written materials produced shall be printed in a typeface large
194 enough to be clearly legible. All information shall be presented in an objective, unbiased manner
195 designed to convey only accurate scientific and medical information. The department shall
196 furnish the written materials and forms at no cost and in sufficient quantity to any person who

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

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

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

**188.077. 1. Any woman upon whom an abortion has been performed or induced
2 in violation of this chapter, or the father of the unborn child who was the subject of such
3 an abortion, may maintain an action against the person who performed or induced the
4 abortion in intentional or reckless violation of this chapter for actual and punitive
5 damages. Any woman upon whom an abortion has been attempted in violation of this
6 chapter may maintain an action against the person who attempted to perform or induce
7 the abortion in an intentional or reckless violation of this chapter for actual and punitive
8 damages.**

9 **2. A cause of action for injunctive relief against any person who has intentionally
10 or recklessly violated this chapter may be maintained by the woman upon whom an
11 abortion is performed or induced in violation of this chapter; by any person who is the
12 spouse, parent, sibling, or guardian of, or a current or former licensed health care provider
13 of, the woman upon whom an abortion has been performed or induced in violation of this
14 chapter; by a prosecuting attorney with appropriate jurisdiction; or by the attorney
15 general. The injunction shall prevent the abortion provider from performing or inducing
16 further abortions in violation of this chapter in this state.**

17 **3. If judgment is rendered in favor of the plaintiff in an action under this section,**
18 **the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff**
19 **against the defendant. If judgment is rendered in favor of the defendant and the court**
20 **finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render**
21 **judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.**

22 **4. In every civil or criminal proceeding or action brought under this chapter, the**
23 **court shall rule whether the anonymity of any woman upon whom an abortion has been**
24 **performed or induced or attempted to be performed or induced shall be preserved from**
25 **public disclosure if she does not give her consent to such disclosure. The court, upon**
26 **motion or sua sponte, shall make such a ruling and, upon determining that her anonymity**
27 **should be preserved, shall issue orders to the parties, witnesses, and counsel and shall**
28 **direct the sealing of the record and exclusion of individuals from courtrooms or hearing**
29 **rooms to the extent necessary to safeguard her identity from public disclosure. Each such**
30 **order shall be accompanied by specific written findings explaining why the anonymity of**
31 **the woman should be preserved from public disclosure, why the order is essential to that**
32 **end, how the order is narrowly tailored to serve that interest, and why no reasonable, less**
33 **restrictive alternative exists.**

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