

FIRST REGULAR SESSION

SENATE BILL NO. 170

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 12, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0053S.011

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Section A. Sections 188.027 and 188.039, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.027 and 188.039, to read as follows: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, 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 this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

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

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

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

50 (3) The physician who is to perform or induce the abortion, a qualified
51 professional, or the referring physician has presented the woman, in person,
52 printed materials provided by the department, which describe the various
53 surgical and drug-induced methods of abortion relevant to the stage of pregnancy,
54 as well as the immediate and long-term medical risks commonly associated with

55 each abortion method including, but not limited to, infection, hemorrhage,
56 cervical tear or uterine perforation, harm to subsequent pregnancies or the ability
57 to carry a subsequent child to term, and the possible adverse psychological effects
58 associated with an abortion;

59 (4) The physician who is to perform or induce the abortion or a qualified
60 professional shall provide the woman with the opportunity to view [at least
61 seventy-two hours], prior to the abortion, an active ultrasound of the unborn child
62 and hear the heartbeat of the unborn child if the heartbeat is audible. The
63 woman shall be provided with a geographically indexed list maintained by the
64 department of health care providers, facilities, and clinics that perform
65 ultrasounds, including those that offer ultrasound services free of charge. Such
66 materials shall provide contact information for each provider, facility, or clinic
67 including telephone numbers and, if available, website addresses. Should the
68 woman decide to obtain an ultrasound from a provider, facility, or clinic other
69 than the abortion facility, the woman shall be offered a reasonable time to obtain
70 the ultrasound examination before the date and time set for performing or
71 inducing an abortion. The person conducting the ultrasound shall ensure that
72 the active ultrasound image is of a quality consistent with standard medical
73 practice in the community, contains the dimensions of the unborn child, and
74 accurately portrays the presence of external members and internal organs, if
75 present or viewable, of the unborn child. The auscultation of fetal heart tone
76 must also be of a quality consistent with standard medical practice in the
77 community. If the woman chooses to view the ultrasound or hear the heartbeat
78 or both at the abortion facility, the viewing or hearing or both shall be provided
79 to her at the abortion facility [at least seventy-two hours] prior to the abortion
80 being performed or induced;

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

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

90 (b) A description of the actual steps in the abortion procedure to be

91 performed or induced, and at which steps the abortion procedure could be painful
92 to the unborn child;

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

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

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

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

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

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

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

126 (c) Identify the state website for the Missouri alternatives to abortion

127 services program under section 188.325, and any toll-free number established by
128 the state operated in conjunction with the program;

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

136 (7) The physician who is to perform or induce the abortion or a qualified
137 professional has presented the woman, in person, printed materials provided by
138 the department explaining that the father of the unborn child is liable to assist
139 in the support of the child, even in instances where he has offered to pay for the
140 abortion. Such materials shall include information on the legal duties and
141 support obligations of the father of a child, including, but not limited to, child
142 support payments, and the fact that paternity may be established by the father's
143 name on a birth certificate or statement of paternity, or by court action. Such
144 printed materials shall also state that more information concerning paternity
145 establishment and child support services and enforcement may be obtained by
146 calling the family support division within the Missouri department of social
147 services; and

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

153 2. All information required to be provided to a woman considering
154 abortion by subsection 1 of this section shall be presented to the woman
155 individually, in the physical presence of the woman and in a private room, to
156 protect her privacy, to maintain the confidentiality of her decision, to ensure that
157 the information focuses on her individual circumstances, to ensure she has an
158 adequate opportunity to ask questions, and to ensure that she is not a victim of
159 coerced abortion. Should a woman be unable to read materials provided to her,
160 they shall be read to her. Should a woman need an interpreter to understand the
161 information presented in the written materials, an interpreter shall be provided
162 to her. Should a woman ask questions concerning any of the information or

163 materials, answers shall be provided in a language she can understand.

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

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

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

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

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

189 and

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

191 6. The physician who is to perform or induce the abortion shall[, at least
192 seventy-two hours prior to such procedure,] inform the woman orally and in
193 person of:

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

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

202 7. No physician shall perform or induce an abortion unless and until the
203 physician has received and signed a copy of the form prescribed in subsection 3
204 of this section. The physician shall retain a copy of the form in the patient's
205 medical record.

206 8. In the event of a medical emergency as provided by section 188.039, the
207 physician who performed or induced the abortion shall clearly certify in writing
208 the nature and circumstances of the medical emergency. This certification shall
209 be signed by the physician who performed or induced the abortion, and shall be
210 maintained under section 188.060.

211 9. No person or entity shall require, obtain, or accept payment for an
212 abortion from or on behalf of a patient until [at least seventy-two hours have
213 passed since the time that] the information required by subsection 1 of this
214 section has been provided to the patient. Nothing in this subsection shall
215 prohibit a person or entity from notifying the patient that payment for the
216 abortion will be required [after the seventy-two-hour period has expired] if she
217 voluntarily chooses to have the abortion.

218 10. The term "qualified professional" as used in this section shall refer to
219 a physician, physician assistant, registered nurse, licensed practical nurse,
220 psychologist, licensed professional counselor, or licensed social worker, licensed
221 or registered under chapter 334, 335, or 337, acting under the supervision of the
222 physician performing or inducing the abortion, and acting within the course and
223 scope of his or her authority provided by law. The provisions of this section shall
224 not be construed to in any way expand the authority otherwise provided by law
225 relating to the licensure, registration, or scope of practice of any such qualified
226 professional.

227 11. By November 30, 2010, the department shall produce the written
228 materials and forms described in this section. Any written materials produced
229 shall be printed in a typeface large enough to be clearly legible. All information
230 shall be presented in an objective, unbiased manner designed to convey only
231 accurate scientific and medical information. The department shall furnish the
232 written materials and forms at no cost and in sufficient quantity to any person
233 who performs or induces abortions, or to any hospital or facility that provides
234 abortions. The department shall make all information required by subsection 1

235 of this section available to the public through its department website. The
236 department shall maintain a toll-free, twenty-four-hour hotline telephone number
237 where a caller can obtain information on a regional basis concerning the agencies
238 and services described in subsection 1 of this section. No identifying information
239 regarding persons who use the website shall be collected or maintained. The
240 department shall monitor the website on a regular basis to prevent tampering
241 and correct any operational deficiencies.

242 12. In order to preserve the compelling interest of the state to ensure that
243 the choice to consent to an abortion is voluntary and informed, and given freely
244 and without coercion, the department shall use the procedures for adoption of
245 emergency rules under section 536.025 in order to promulgate all necessary rules,
246 forms, and other necessary material to implement this section by November 30,
247 2010.

248 [13. If the provisions in subsections 1 and 9 of this section requiring a
249 seventy-two-hour waiting period for an abortion are ever temporarily or
250 permanently restrained or enjoined by judicial order, then the waiting period for
251 an abortion shall be twenty-four hours; provided, however, that if such temporary
252 or permanent restraining order or injunction is stayed or dissolved, or otherwise
253 ceases to have effect, the waiting period for an abortion shall be seventy-two
254 hours.]

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

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

17 connection with inducing an abortion. Only one such conference shall be required
18 for each abortion.

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

26 4. At the end of the conference, and if the woman chooses to proceed with
27 the abortion, the physician who is to perform or induce the abortion, a qualified
28 professional, or the referring physician shall sign and shall cause the patient to
29 sign a written statement that the woman gave her informed consent freely and
30 without coercion after the physician or qualified professional had discussed with
31 her the indicators and contraindicators, and risk factors, including any physical,
32 psychological, or situational factors. All such executed statements shall be
33 maintained as part of the patient's medical file, subject to the confidentiality laws
34 and rules of this state.

35 5. The director of the department of health and senior services shall
36 disseminate a model form that physicians or qualified professionals may use as
37 the written statement required by this section, but any lack or unavailability of
38 such a model form shall not affect the duties of the physician or qualified
39 professional set forth in subsections 2 to 4 of this section.

40 6. As used in this section, the term "qualified professional" shall refer to
41 a physician, physician assistant, registered nurse, licensed practical nurse,
42 psychologist, licensed professional counselor, or licensed social worker, licensed
43 or registered under chapter 334, 335, or 337, acting under the supervision of the
44 physician performing or inducing the abortion, and acting within the course and
45 scope of his or her authority provided by law. The provisions of this section shall
46 not be construed to in any way expand the authority otherwise provided by law
47 relating to the licensure, registration, or scope of practice of any such qualified
48 professional.

49 [7. If the provisions in subsection 2 of this section requiring a
50 seventy-two-hour waiting period for an abortion are ever temporarily or
51 permanently restrained or enjoined by judicial order, then the waiting period for
52 an abortion shall be twenty-four hours; provided, however, that if such temporary

53 or permanent restraining order or injunction is stayed or dissolved, or otherwise
54 ceases to have effect, the waiting period for an abortion shall be seventy-two
55 hours.]

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