

FIRST REGULAR SESSION

# SENATE BILL NO. 71

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0584S.011

## AN ACT

To repeal sections 188.027, 188.039, 188.080, and 197.200, RSMo, and to enact in lieu thereof four new sections relating to abortion, with an existing penalty provision.

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

Section A. Sections 188.027, 188.039, 188.080, and 197.200, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 188.027, 188.039, 188.080, and 197.200, to read as follows:

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

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

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

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

13 a. A description of the proposed abortion method;

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 psychological effects associated with the abortion; and

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  
30 care located within thirty miles of the location where the abortion is performed  
31 or 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)] (f) The anatomical and physiological characteristics of the unborn  
37 child 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 or a qualified  
51 professional has presented the woman, in person, printed materials provided by  
52 the department, which describe the various surgical and drug-induced methods  
53 of abortion relevant to the stage of pregnancy, as well as the immediate and

54 long-term medical risks commonly associated with each abortion method  
55 including, but not limited to, infection, hemorrhage, cervical tear or uterine  
56 perforation, harm to subsequent pregnancies or the ability to carry a subsequent  
57 child to term, and the possible adverse psychological effects associated with an  
58 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. No physician shall perform or induce an abortion unless and until the  
192 physician has received and signed a copy of the form prescribed in subsection 3  
193 of this section. The physician shall retain a copy of the form in the patient's  
194 medical record.

195 7. In the event of a medical emergency as provided by section 188.039, the  
196 physician who performed or induced the abortion shall clearly certify in writing  
197 the nature and circumstances of the medical emergency. This certification shall

198 be signed by the physician who performed or induced the abortion, and shall be  
199 maintained under section 188.060.

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

207 9. The term "qualified professional" as used in this section shall refer to  
208 a physician, physician assistant, registered nurse, licensed practical nurse,  
209 psychologist, licensed professional counselor, or licensed social worker, licensed  
210 or registered under chapter 334, 335, or 337, acting under the supervision of the  
211 physician performing or inducing the abortion, and acting within the course and  
212 scope of his or her authority provided by law. The provisions of this section shall  
213 not be construed to in any way expand the authority otherwise provided by law  
214 relating to the licensure, registration, or scope of practice of any such qualified  
215 professional.

216 10. By November 30, 2010, the department shall produce the written  
217 materials and forms described in this section. Any written materials produced  
218 shall be printed in a typeface large enough to be clearly legible. All information  
219 shall be presented in an objective, unbiased manner designed to convey only  
220 accurate scientific and medical information. The department shall furnish the  
221 written materials and forms at no cost and in sufficient quantity to any person  
222 who performs or induces abortions, or to any hospital or facility that provides  
223 abortions. The department shall make all information required by subsection 1  
224 of this section available to the public through its department website. The  
225 department shall maintain a toll-free, twenty-four-hour hotline telephone number  
226 where a caller can obtain information on a regional basis concerning the agencies  
227 and services described in subsection 1 of this section. No identifying information  
228 regarding persons who use the website shall be collected or maintained. The  
229 department shall monitor the website on a regular basis to prevent tampering  
230 and correct any operational deficiencies.

231 11. In order to preserve the compelling interest of the state to ensure that  
232 the choice to consent to an abortion is voluntary and informed, and given freely  
233 and without coercion, the department shall use the procedures for adoption of

234 emergency rules under section 536.025 in order to promulgate all necessary rules,  
235 forms, and other necessary material to implement this section by November 30,  
236 2010.

237 [12. If the provisions in subsections 1 and 8 of this section requiring a  
238 seventy-two-hour waiting period for an abortion are ever temporarily or  
239 permanently restrained or enjoined by judicial order, then the waiting period for  
240 an abortion shall be twenty-four hours; provided, however, that if such temporary  
241 or permanent restraining order or injunction is stayed or dissolved, or otherwise  
242 ceases to have effect, the waiting period for an abortion shall be seventy-two  
243 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 or a qualified professional has conferred  
10 with the patient and discussed with her the indicators and contraindicators, and  
11 risk factors including any physical, psychological, or situational factors for the  
12 proposed procedure and the use of medications, including but not limited to  
13 mifepristone, in light of her medical history and medical condition. For an  
14 abortion performed or an abortion induced by a drug or drugs, such conference  
15 shall take place [at least seventy-two hours] prior to the writing or  
16 communication of the first prescription for such drug or drugs in connection with  
17 inducing an abortion. Only one such conference shall be required for each  
18 abortion.

19 3. The patient shall be evaluated by the physician who is to perform or  
20 induce the abortion or a qualified professional during the conference for  
21 indicators and contraindicators, risk factors including any physical, psychological,  
22 or situational factors which would predispose the patient to or increase the risk  
23 of experiencing one or more adverse physical, emotional, or other health reactions  
24 to the proposed procedure or drug or drugs in either the short or long term as  
25 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 or a qualified  
28 professional shall sign and shall cause the patient to sign a written statement  
29 that the woman gave her informed consent freely and without coercion after the  
30 physician or qualified professional had discussed with her the indicators and  
31 contraindicators, and risk factors, including any physical, psychological, or  
32 situational factors. All such executed statements shall be maintained as part of  
33 the patient's medical file, subject to the confidentiality laws and rules of this  
34 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.]

188.080. Any person who is not a physician who performs or induces or  
2 attempts to perform or induce an abortion on another is guilty of a class B felony,  
3 and, upon conviction, shall be punished as provided by law. [Any physician  
4 performing or inducing an abortion who does not have clinical privileges at a  
5 hospital which offers obstetrical or gynecological care located within thirty miles  
6 of the location at which the abortion is performed or induced shall be guilty of a  
7 class A misdemeanor, and, upon conviction shall be punished as provided by law.]

197.200. As used in sections 197.200 to 197.240, unless the context clearly  
2 indicates otherwise, the following terms mean:

3 (1) "Ambulatory surgical center", any public or private establishment  
4 operated primarily for the purpose of performing surgical procedures or primarily  
5 for the purpose of performing childbirths, [or any establishment operated for the  
6 purpose of performing or inducing any second or third-trimester abortions or five  
7 or more first-trimester abortions per month,] and which does not provide services  
8 or other accommodations for patients to stay more than twenty-three hours within  
9 the establishment, provided, however, that nothing in this definition shall be  
10 construed to include the offices of dentists currently licensed pursuant to chapter  
11 **332 or facilities that are operated primarily for the purpose of**  
12 **providing abortions;**

13 (2) "Dentist", any person currently licensed to practice dentistry pursuant  
14 to chapter 332;

15 (3) "Department", the department of health and senior services;

16 (4) "Governmental unit", any city, county or other political subdivision of  
17 this state, or any department, division, board or other agency of any political  
18 subdivision of this state;

19 (5) "Person", any individual, firm, partnership, corporation, company, or  
20 association and the legal successors thereof;

21 (6) "Physician", any person currently licensed to practice medicine  
22 pursuant to chapter 334;

23 (7) "Podiatrist", any person currently licensed to practice podiatry  
24 pursuant to chapter 330.

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