

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 793
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 25, 2010, with recommendation that the Senate Committee Substitute do pass.

4230S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof two new sections relating to abortion, with penalty provisions.

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Section A. Section 188.027, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 188.027 and 334.245, to read as
3 follows:

188.027. 1. No abortion shall be performed [except with the prior,
2 informed and written consent freely given of the pregnant woman.] **or induced**
3 **on a woman without her voluntary and informed consent, given freely**
4 **and without coercion. Consent to an abortion is voluntary and**
5 **informed and given freely and without coercion, if and only if, at least**
6 **twenty-four hours prior to the abortion:**

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

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

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

15 a. **A description of the proposed abortion method;**

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

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

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

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

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

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

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

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

43 **(2)** The physician who is to perform or induce the abortion or a
44 qualified professional has presented the woman, in person, printed
45 materials provided by the department or an informational video
46 provided by the department, which describes the probable anatomical
47 and physiological characteristics of the unborn child at two-week
48 gestational increments from conception to full term, including color
49 photographs or images of the developing unborn child at two-week
50 gestational increments. Such descriptions shall include information
51 about brain and heart functions, the presence of external members and
52 internal organs during the applicable stages of development and

53 information on when the unborn child is viable. The printed materials
54 or informational video shall prominently display the following
55 statement: "The life of each human being begins at
56 conception. Abortion will terminate the life of a separate, unique,
57 living human being.";

58 (3) The physician who is to perform or induce the abortion or a
59 qualified professional has presented the woman, in person, printed
60 materials provided by the department or an informational video
61 provided by the department, which describes the various surgical and
62 drug-induced methods of abortion relevant to the stage of pregnancy,
63 as well as the immediate and long-term medical risks commonly
64 associated with each abortion method including, but not limited to,
65 infection, hemorrhage, cervical tear or uterine perforation, harm to
66 subsequent pregnancies or the ability to carry a subsequent child to
67 term, and the possible adverse psychological effects associated with an
68 abortion;

69 (4) The physician who is to perform or induce the abortion or a
70 qualified professional shall provide the woman with the opportunity to
71 view at least twenty-four hours prior to the abortion an active
72 ultrasound of the unborn child and hear the heartbeat of the unborn
73 child if the heartbeat is audible. The woman shall be provided with a
74 geographically indexed list maintained by the department of health
75 care providers, facilities, and clinics that perform ultrasounds,
76 including those that offer ultrasound services free of charge. Such
77 materials shall provide contact information for each provider, facility,
78 or clinic including telephone numbers and, if available, web site
79 addresses. Should the woman decide to obtain an ultrasound from a
80 provider, facility, or clinic other than the abortion facility, the woman
81 shall be offered a reasonable time to obtain the ultrasound examination
82 before the date and time set for performing or inducing an
83 abortion. The person conducting the ultrasound shall ensure that the
84 active ultrasound image is of a quality consistent with standard
85 medical practice in the community, contains the dimensions of the
86 unborn child, and accurately portrays the presence of external
87 members and internal organs, if present or viewable, of the unborn
88 child. The auscultation of fetal heart tone must also be of a quality
89 consistent with standard medical practice in the community. If the

90 woman chooses to view the ultrasound or hear the heartbeat or both at
91 the abortion facility, the viewing or hearing or both shall be provided
92 to her at the abortion facility at least twenty-four hours prior to the
93 abortion being performed or induced;

94 (5) Prior to an abortion being performed or induced on an
95 unborn child of twenty-two weeks gestational age or older, the
96 physician who is to perform or induce the abortion or a qualified
97 professional has presented the woman, in person, printed materials
98 provided by the department or an informational video provided by the
99 department that offers information on the possibility of the abortion
100 causing pain to the unborn child. This information shall include, but
101 need not be limited to, the following:

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

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

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

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

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

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

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

122 (a) Identify on a geographical basis public and private agencies
123 available to assist a woman in carrying her unborn child to term, and
124 to assist her in caring for her dependent child or placing her child for
125 adoption, including agencies commonly known and generally referred
126 to as pregnancy resource centers, crisis pregnancy centers, maternity

127 homes, and adoption agencies. Such materials shall provide a
128 comprehensive list by geographical area of the agencies, a description
129 of the services they offer, and the telephone numbers and addresses of
130 the agencies; provided that such materials shall not include any
131 programs, services, organizations or affiliates of organizations, that
132 perform or induce, or assist in the performing or inducing, of abortions
133 or that refer for abortions;

134 (b) Explain the Missouri alternatives to abortion services
135 program under section 188.325, and any other programs and services
136 available to pregnant women and mothers of newborn children offered
137 by public or private agencies which assist a woman in carrying her
138 unborn child to term and assist her in caring for her dependent child
139 or placing her child for adoption, including, but not limited to prenatal
140 care; maternal health care; newborn or infant care; mental health
141 services; professional counseling services; housing programs; utility
142 assistance; transportation services; food, clothing, and supplies related
143 to pregnancy; parenting skills; educational programs; job training and
144 placement services; drug and alcohol testing and treatment; and
145 adoption assistance;

146 (c) Identify the state web site for the Missouri alternatives to
147 abortion services program under section 188.325, and any toll-free
148 number established by the state operated in conjunction with the
149 program;

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

158 (7) The physician who is to perform or induce the abortion or a
159 qualified professional has presented the woman, in person, printed
160 materials provided by the department or an informational video
161 provided by the department explaining that the father of the unborn
162 child is liable to assist in the support of the child, even in instances
163 where he has offered to pay for the abortion. Such materials shall

164 include information on the legal duties and support obligations of the
165 father of a child, including, but not limited to, child support payments,
166 and the fact that paternity may be established by the father's name on
167 a birth certificate or statement of paternity, or by court action. Such
168 printed materials or video shall also state that more information
169 concerning paternity establishment and child support services and
170 enforcement may be obtained by calling the family support division
171 within the Missouri department of social services; and

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

178 2. All information required to be provided to a woman
179 considering abortion by subsection 1 of this section shall be presented
180 to the woman individually, in the physical presence of the woman and
181 in a private room, to protect her privacy, to maintain the
182 confidentiality of her decision, to ensure that the information focuses
183 on her individual circumstances, to ensure she has an adequate
184 opportunity to ask questions, and to ensure that she is not a victim of
185 coerced abortion. Should a woman be unable to read materials
186 provided to her, they shall be read to her. Should a woman need an
187 interpreter to understand the information presented in written
188 materials or informational videos, an interpreter shall be provided to
189 her. Should a woman ask questions concerning any of the information
190 or materials, answers shall be provided in a language she can
191 understand.

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

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

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

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

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

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

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

225 7. In the event of a medical emergency as provided by section
226 188.075, the physician who performed or induced the abortion shall
227 clearly certify in writing the nature and circumstances of the medical
228 emergency. This certification shall be signed by the physician who
229 performed or induced the abortion, and shall be maintained under
230 section 188.060.

231 8. No person or entity shall require, obtain, or accept payment
232 for an abortion from or on behalf of a patient until at least twenty-four
233 hours has passed since the time that the information required by
234 subsection 1 has been provided to the patient. Nothing in this
235 subsection shall prohibit a person or entity from notifying the patient
236 that payment for the abortion will be required after the twenty-four-
237 hour period has expired if she voluntarily chooses to have the abortion.

238 **9. The term "qualified professional" as used in this section shall**
239 **refer to a physician, physician assistant, registered nurse, licensed**
240 **practical nurse, psychologist, licensed professional counselor, or**
241 **licensed social worker, licensed or registered under chapter 334, 335,**
242 **or 337, acting under the supervision of the physician performing or**
243 **inducing the abortion, and acting within the course and scope of his or**
244 **her authority provided by law. The provisions of this section shall not**
245 **be construed to in any way expand the authority otherwise provided by**
246 **law relating to the licensure, registration, or scope of practice of any**
247 **such qualified professional.**

248 **10. By November 30, 2010, the department shall produce the**
249 **written materials, signs, informational videos, and forms described in**
250 **this section. Any written materials produced shall be printed in a**
251 **typeface large enough to be clearly legible. All information shall be**
252 **presented in an objective, unbiased manner designed to convey only**
253 **accurate scientific and medical information. The department shall**
254 **furnish the written materials, signs, informational videos, and forms at**
255 **no cost and in sufficient quantity to any person who performs or**
256 **induces abortions, or to any hospital or facility that provides**
257 **abortions. The department shall make all information required by**
258 **subsection 1 of this section available to the public through its**
259 **department web site. The department shall maintain a toll-free,**
260 **twenty-four-hour hotline telephone number where a caller can obtain**
261 **information on a regional basis concerning the agencies and services**
262 **described in subsection 1 of this section. No identifying information**
263 **regarding persons who use the web site shall be collected or**
264 **maintained. The department shall monitor the web site on a regular**
265 **basis to prevent tampering and correct any operational deficiencies.**

266 **11. In order to preserve the compelling interest of the state to**
267 **ensure that the choice to consent to an abortion is voluntary and**
268 **informed, and given freely and without coercion, the department shall**
269 **use the procedures for adoption of emergency rules under section**
270 **536.025 in order to promulgate all necessary rules, forms, and other**
271 **necessary material to implement this section by November 30, 2010.**

334.245. 1. Notwithstanding any other provision of law to the
2 **contrary that may allow a person to provide services relating to**
3 **pregnancy, including prenatal, delivery, and postpartum services, no**

4 **person other than a licensed physician is authorized to perform or**
5 **induce an abortion.**

6 **2. Any person who violates the provisions of this section is guilty**
7 **of a class B felony.**

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Bill

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