SECOND REGULAR SESSION
[PERFECTED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 793
95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Offered April 15, 2010.
Senate Substitute adopted, April 15, 2010.
Taken up for Perfection April 15, 2010. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 188.027, 188.039, and 376.805, RSMo, and to enact in lieu thereof four new sections relating to abortion, with penalty provisions.

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

Section A. Sections 188.027, 188.039, and 376.805, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 188.027, 188.039, 334.245, and 376.805, to read as follows:

188.027. 1. Except in the case of medical emergency, no abortion shall be performed [except with the prior, informed and written consent freely given of the pregnant woman.] 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 twenty-four 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

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

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

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

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

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

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

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

(3) The physician who is to perform or induce the abortion or a
qualified professional has presented the woman, in person, printed
materials provided by the department, which describe the various
surgical and drug-induced methods of abortion relevant to the stage of
pregnancy, as well as the immediate and long-term medical risks
commonly associated with each 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 the possible adverse psychological effects associated
with an abortion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. No abortion shall be performed or induced on an unborn child
of twenty-two weeks gestational age or older unless and until the
woman upon whom the abortion is to be performed or induced has been
provided the opportunity to choose to have an anesthetic or analgesic
administered to eliminate or alleviate pain to the unborn child caused
by the particular method of abortion to be performed or induced. The
administration of anesthesia or analgesics shall be performed in a
manner consistent with standard medical practice in the community.
5. No physician shall perform or induce an abortion unless and until the physician has obtained from the woman her voluntary and informed consent given freely and without coercion. If the physician has reason to believe that the woman is being coerced into having an abortion, the physician or qualified professional shall inform the woman that services are available for her and shall provide her with private access to a telephone and information about such services, including but not limited to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

334.245. 1. Notwithstanding any other provision of law to the
contrary that may allow a person to provide services relating to
pregnancy, including prenatal, delivery, and postpartum services, no person other than a licensed physician is authorized to perform or induce an abortion.

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

376.805. 1. No health insurance contracts, plans, or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium. For purposes of this section, an "elective abortion" means an abortion for any reason other than a spontaneous abortion or to prevent the death of the female upon whom the abortion is performed.

2. Subsection 1 of this section shall be applicable to all contracts, plans or policies of:
   (1) All health insurers subject to this chapter; and
   (2) All nonprofit hospital, medical, surgical, dental, and health service corporations subject to chapter 354, RSMo; and
   (3) All health maintenance organizations.

3. No health insurance exchange established within this state or any health insurance exchange administered by the federal government or its agencies within this state shall offer health insurance contracts, plans, or policies that provide coverage for elective abortions, nor shall any health insurance exchange operating within this state offer coverage for elective abortions through the purchase of an optional rider.

4. This section shall be applicable only to contracts, plans or policies written, issued, renewed or revised, after September 28, 1983. For the purposes of this subsection, if new premiums are charged for a contract, plan or policy, it shall be determined to be a new contract, plan or policy.