

FIRST REGULAR SESSION

SENATE BILL NO. 182

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS CAUTHORN, LOUDON, GROSS AND KENNEDY.

Pre-filed December 5, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0290S.02I

AN ACT

To repeal section 188.039, RSMo, relating to informed consent for abortion, and to enact in lieu thereof two new sections relating to the same subject, with an effective date for a certain section.

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

Section A. Section 188.039, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.039 and 188.043, to read as follows:

188.039. 1. [No physician shall perform an abortion unless, prior to such abortion, the physician certifies in writing that the woman gave her informed consent, freely and without coercion, after the attending physician had informed her of the information contained in subsection 2 of this section and shall further certify in writing the pregnant woman's age, based upon proof of age offered by her.

2. In order to insure that the consent for an abortion is truly informed consent, no abortion shall be performed or induced upon a pregnant woman unless she has signed a consent form that shall be supplied by the state department of health and senior services, acknowledging that she has been informed by the attending physician of the following facts:

(1) That according to the best medical judgment of her attending physician whether she is or is not pregnant;

(2) The particular risks associated with the abortion technique to be used;

(3) Alternatives to abortion shall be given by the attending physician.

3. The physician may inform the woman of any other material facts or opinions, or provide any explanation of the above information which, in the exercise of his best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.] **For purposes of this**

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

section, "medical emergency" is defined as 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, the treating physician has conferred with the patient and discussed with her the indicators and contra-indicators for the proposed procedure or drug or drugs in light of her medical history and medical condition. For 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 before prescribing two or more drugs which are intended to be used serially or in combination to induce and complete an abortion. The patient shall be screened prior to or during the conference for 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. At the end of the conference, the treating physician shall sign, and shall cause the patient to sign, a written statement certifying that such screening and discussion has been performed and that the woman gave her informed consent, freely and without coercion, after the physician had discussed with her the indicators and contra-indicators of the proposed procedure or drug or drugs in light of her medical history and medical condition. 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.

3. The director of the department of health and senior services shall disseminate a model form that physicians 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 set forth in subsection 2 of this section.

188.043. 1. It shall be unlawful for any person to perform an abortion unless such person has furnished and maintained proof of financial responsibility to the department of health and senior services pursuant to this section.

2. For the purpose of this section the following terms shall mean:

(1) "Medical malpractice insurance", insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim

arising out of the death or injury of any person as a result of the negligence or malpractice in rendering professional service by any health care provider;

(2) "Proof of financial responsibility", one of the following:

(a) The filing with the department of health and senior services a written certificate of an insurance carrier duly authorized to transact business in this state certifying that there is in effect a medical malpractice insurance policy with limits of not less than five hundred thousand dollars per occurrence and one million dollars in the annual aggregate, as to which the person required to furnish proof of financial responsibility is an insured; or

(b) The filing with the department of health and senior services a bond of a surety company duly authorized to transact business in this state, conditioned for payments in amounts and under the same circumstances as are required in a medical malpractice insurance policy pursuant to subdivision (1) of this subsection, as to which the person required to furnish proof of financial responsibility is a principal; or

(c) The filing with the department of health and senior services a certificate of the state treasurer that the person named therein has deposited with the state treasurer cash in the amount of five hundred thousand dollars or bonds of the United States or the state of Missouri of a market value not less than five hundred thousand dollars; provided, however, that the state treasurer shall not accept any such deposit and issue a certificate therefor and the department of health and senior services shall not accept any such certificate unless accompanied by evidence that there is no unsatisfied judgment against the depositor. Such deposit shall be held by the state treasurer to satisfy any execution on a judgment issued against the depositor for damages arising out of the death or injury of any person as a result of negligence or malpractice in rendering professional services in connection with an abortion.

3. (1) The insured under a medical malpractice insurance policy certified pursuant to this section shall file annually with the department of health and senior services a certificate of the insurance carrier that the policy remains in force or has been renewed without any decrease in coverage below the minimum limits required in this section. The principal of a surety bond shall file annually with the department of health a certificate of the surety company that the bond remains in full force and effect without any decrease in the amount of the bond below the minimum amounts required in this section.

(2) No insurer or surety may cancel a medical malpractice insurance policy or surety bond which provides financial responsibility pursuant to subsection 2 of this section, except after a ten-day notice to the director of the department of health and

senior services.

(3) A depositor shall not be permitted to withdraw a deposit with the state treasurer made pursuant to this section, or any portion thereof, without furnishing to the treasurer a certificate of the department of health and senior services certifying that the depositor has furnished proof of financial responsibility to the department of health and senior services pursuant to paragraphs (1) or (2) of subdivision (2) of subsection 2 of this section.

4. It shall be unlawful for an abortion facility or hospital to employ or engage the services of a person to perform one or more abortions if the person has failed to furnish or maintain proof of financial responsibility pursuant to this section.

5. The director of the department of health and senior services shall promulgate such rules and regulations as are necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

Section B. The effective date of section 188.043 of this act shall be January 1, 2004.

T

Copy