

SECOND REGULAR SESSION

SENATE BILL NO. 1058

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time January 30, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4412S.02I

AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof five 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Section A. Section 188.027, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 188.027, 188.108, 565.305, 565.310, and 565.315, to read as follows:

188.027. **1. 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 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 associated with the proposed abortion method including, but not limited to, the risks of infection, hemorrhage, cervical tear or uterine perforation, harm to

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

19 subsequent pregnancies or the ability to carry a subsequent child to
20 term, and possible adverse psychological risks associated with the
21 abortion;

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

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

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

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

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

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

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

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

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

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

90 (a) That, by twenty-two weeks of gestational age, the unborn
91 child possesses all the anatomical structures, including spinal cord,
92 nerve tracts, thalamus, and cortex, that are necessary in order to feel

93 **pain;**

94 **(b) A description of the actual steps in the abortion procedure**
95 **to be performed or induced, and at which steps in the abortion**
96 **procedure the unborn child is capable of feeling pain;**

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

101 **(d) That anesthesia is routinely given to unborn children who**
102 **are twenty weeks or more gestational age who undergo prenatal**
103 **surgery;**

104 **(e) That anesthesia is routinely given to premature children who**
105 **are twenty weeks or more gestational age who undergo surgery;**

106 **(f) That anesthesia or analgesic is available in order to minimize**
107 **or alleviate the pain to the unborn child;**

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

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

124 **(b) Explain the Missouri alternatives to abortion services**
125 **program under section 188.325, and any other programs and services**
126 **available to pregnant women and mothers of newborn children offered**
127 **by state agencies or by private community-based organizations which**
128 **assist a woman in carrying her unborn child to term and assist her in**
129 **caring for her dependent child or placing her child for adoption,**

130 including, but not limited to prenatal care; maternal health care;
131 newborn or infant care; mental health services; professional counseling
132 services; housing programs; utility assistance; transportation services;
133 food, clothing, and supplies related to pregnancy; parenting skills;
134 educational programs; job training and placement services; drug and
135 alcohol testing and treatment; and adoption assistance;

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

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

148 (e) Prominently display the statement: "No one can coerce you
149 to have an abortion. It is against the law for a husband, a boyfriend,
150 a parent, a friend, a medical care provider, or any other person to
151 coerce you in any way to have an abortion.";

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

166 (8) The physician who is to perform or induce the abortion or a

167 qualified professional shall inform the woman that it is unlawful for
168 any person to coerce a woman to seek or obtain an abortion;

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

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

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

197 4. No abortion shall be performed or induced on an unborn child
198 of twenty-two weeks gestational age or more unless and until the
199 woman upon whom the abortion is to be performed or induced has been
200 provided the opportunity to choose to have an anesthetic or analgesic
201 administered to eliminate or alleviate pain to the unborn child caused
202 by the particular method of abortion to be performed or induced. The
203 administration of anesthesia or analgesics shall be performed in a

204 manner consistent with standard medical practice in the community.

205 5. No physician shall perform or induce an abortion unless and
206 until the physician has obtained from the woman her voluntary and
207 informed consent given freely and without coercion. If the physician
208 has reason to believe that the woman is a victim of a coerced abortion,
209 the physician or qualified professional shall inform the woman that
210 services are available for victims of coerced abortion, and shall provide
211 her with private access to a telephone and information about such
212 services.

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

217 7. In the event of a medical emergency as provided by section
218 188.075, the physician who performed or induced the abortion shall
219 clearly certify in writing the nature and circumstances of the medical
220 emergency. This certification shall be signed by the physician who
221 performed or induced the abortion, and shall be maintained pursuant
222 to section 188.060.

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

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

239 10. Every abortion facility shall display signs that contain
240 exclusively the following words: "NOTICE: No one can force you to

241 have an abortion. It is against the law for a spouse, a boyfriend, a
242 parent, a friend, a medical care provider, or any other person to in any
243 way force you to have an abortion." The signs shall be designed and
244 located so that such signs can be easily read and ensure maximum
245 visibility to women who enter the abortion facility considering whether
246 to have an abortion; to women at the abortion facility receiving the
247 information required by this section; and to women at the time that
248 they give their consent to an abortion. The location of such signs in
249 abortion facilities shall be specified by rules promulgated by the
250 department and shall be a condition of licensure of any abortion
251 facility pursuant to chapter 197, RSMo. The display of signs pursuant
252 to this subsection does not discharge the duty to conduct an individual
253 private consultation with a woman considering abortion pursuant to
254 subsection 2 of this section.

255 11. By November 26, 2008, the department shall produce the
256 written materials, signs, informational videos and forms described in
257 this section. Any written materials produced shall be printed in a
258 typeface large enough to be clearly legible. All information shall be
259 presented in an objective, unbiased manner designed to convey only
260 accurate scientific and medical information. The department shall
261 furnish the written materials, signs, informational videos, and forms at
262 no cost and in sufficient quantity to any person who performs or
263 induces abortions, or to any hospital or facility that provides
264 abortions. The department shall make all information required by
265 subsection 1 of this section available to the public through its
266 department website. The department shall maintain a toll-free, twenty-
267 four-hour hotline telephone number where a caller can obtain
268 information on a regional basis concerning the agencies and services
269 described in subsection 1 of this section. No identifying information
270 regarding persons who use the website shall be collected or
271 maintained. The department shall monitor the website on a regular
272 basis to prevent tampering and correct any operational deficiencies.

273 12. In order to preserve the compelling interest of the state to
274 ensure that the choice to consent to an abortion is voluntary and
275 informed, and given freely and without coercion, the department shall
276 use the procedures for adoption of emergency rules pursuant to section
277 536.025, RSMo, in order to promulgate all necessary rules, forms and

278 other necessary material to implement this section by November 26,
279 2008.

188.108. It shall never be a bona fide occupational qualification
2 that an employee or applicant for employment seek or obtain an
3 abortion.

565.305. As used in sections 565.305 to 565.315, the following
2 words and phrases shall mean:

3 (1) "Abortion", the intentional destruction of the life of an embryo
4 or fetus in his or her mother's womb or the intentional termination of
5 the pregnancy of a mother with an intention other than to increase the
6 probability of a live birth or to remove a dead or dying unborn child;

7 (2) "Abortion facility", a clinic, physician's office, or any other
8 place or facility in which abortions are performed or induced other
9 than a hospital;

10 (3) "Abuse", includes but is not limited to any of the following
11 acts, attempts or threats against another person, whether or not the
12 other person seeks relief pursuant to chapter 455, RSMo, in connection
13 with such abuse:

14 (a) Intentionally placing or attempting to place another in fear
15 of physical harm;

16 (b) Intentionally causing physical harm to another, with or
17 without a deadly weapon;

18 (c) Compelling another by force or threat of force to engage in
19 conduct from which the other person has a right to abstain or to
20 abstain from conduct in which the other person has a right to engage;

21 (d) Intentionally engaging in a course of conduct that alarms or
22 causes distress to another person and serves no legitimate
23 purpose. The course of conduct must be such as would cause a
24 reasonable adult to suffer substantial emotional distress and must
25 actually cause substantial emotional distress to the person. Such
26 conduct might include, but is not limited to:

27 a. Intentionally following another about in a public place;

28 b. Peering in the window or lingering outside the residence of
29 another; but not including constitutionally protected activity;

30 (e) Causing or attempting to cause another to engage
31 involuntarily in any sexual act by force, threat of force, or duress;

32 (f) Intentionally holding, confining, detaining or abducting

33 another person against that person's will;

34 (g) Any physical injury, sexual abuse, or emotional abuse
35 inflicted on a child under eighteen years of age other than by
36 accidental means by any person eighteen years of age or older or an
37 emancipated child who resides with the child in the same dwelling unit,
38 or stalking of a child. Discipline, including spanking of a child
39 administered in a reasonable manner, shall not be construed to be
40 abuse;

41 (4) "Coerces a woman to seek or obtain an abortion", performs an
42 act intended to cause a woman to seek or obtain an abortion against
43 her will, or performs an act conditioned upon or precipitated by a
44 woman disregarding or refusing a demand that she seek or obtain an
45 abortion;

46 (5) "Course of conduct", a pattern of conduct composed of two or
47 more acts over a period of time, however short, evidencing a continuity
48 of purpose;

49 (6) "Domestic violence", causing or attempting to cause bodily
50 injury to a family or household member, or placing a family or
51 household member by threat of force in fear of imminent physical
52 harm;

53 (7) "Family or household member", spouses, former spouses,
54 adults related by blood or marriage, adults who are presently residing
55 together or have resided together in the past, an adult who is or has
56 been in a continuing social relationship of a romantic or intimate
57 nature with the victim, and adults who have a child in common
58 regardless of whether they have been married or have resided together
59 at any time;

60 (8) "Stalking", intentionally and repeatedly engaging in a course
61 of conduct that reasonably causes fear of danger of physical harm to
62 another person, whether or not the other person seeks relief pursuant
63 to chapter 455, RSMo, in connection with such stalking;

64 (9) "Threatening", two or more communications by any means, or
65 a course of conduct, that would cause a reasonable person to believe
66 that the person is likely to act in accordance with the communications
67 or as implied by the course of conduct. "Threatening" does not include
68 constitutionally protected speech, or any generalized statement
69 regarding abortion such as an emotional expression by a family or

70 household member of the woman;

71 (10) "Unborn child", the offspring of human beings from the
72 moment of conception until birth and at every stage of his or her
73 biological development, including the human conceptus, zygote, morula,
74 blastocyst, embryo, and fetus;

75 (11) "Victim of coerced abortion", the victim of the crime of
76 coercing an abortion, whether or not the victim has reported the crime
77 prior to seeking or obtaining an abortion;

78 (12) "Woman", a female of any age.

565.310. 1. A person commits the crime of coercing an abortion
2 if the person knowingly coerces a woman to seek or obtain an abortion
3 by:

4 (1) Committing, attempting to commit, or conspiring to commit
5 an offense defined by any other statute of this state against the woman
6 or her family or household member;

7 (2) Engaging in abuse or stalking of the woman;

8 (3) Perpetrating an act of domestic violence against the woman;

9 (4) Filing, attempting to file, or threatening to file for dissolution
10 of marriage or legal separation from the woman;

11 (5) Refusing, attempting to refuse, or threatening to refuse to
12 pay child support to the woman in connection with her unborn child or
13 any other child or children of the woman for which the person is
14 obligated to pay child support, whether or not that obligation has been
15 established by law at the time of the refusal;

16 (6) Threatening before the child is born to take legal action after
17 the child is born to deprive the woman of custody of her child;

18 (7) Withdrawing, attempting to withdraw, or threatening to
19 withdraw financial support from or on behalf of the woman that had
20 previously been supplied or offered to or on behalf of the woman;

21 (8) Changing, attempting to change, or threatening to change the
22 woman's existing housing or residence;

23 (9) Discharging, attempting to discharge, or threatening to
24 discharge a female employee; or changing, attempting to change, or
25 threatening to change her compensation, terms, conditions, or
26 privileges of employment; or

27 (10) Revoking, attempting to revoke, or threatening to revoke a
28 scholarship awarded to the woman by a public or private institution of

29 higher education.

30 2. Coercing an abortion is a class A misdemeanor if it is done by
31 the commission of any of the acts specified in subdivisions (2) to (10) of
32 subsection 1 of this section and the act is not otherwise an offense
33 defined by any other statute of this state. Coercing an abortion is
34 classified as follows if it is done by the commission of any of the acts
35 specified in subdivisions (1) to (10) of subsection 1 of this section and
36 the act is otherwise an offense defined by any other statute of this
37 state:

38 (1) Class A felony in which the court may impose an additional
39 term of imprisonment not to exceed ten years, or an additional fine not
40 to exceed ten thousand dollars, or both, if the offense committed is a
41 class A felony;

42 (2) Class A felony, if the offense committed is a class B felony;

43 (3) Class B felony, if the offense committed is a class C felony;

44 (4) Class C felony, if the offense committed is a class D felony;

45 (5) Class D felony, if the offense committed is a class A
46 misdemeanor;

47 (6) Class A misdemeanor, if the offense committed is a class B or
48 C misdemeanor or an infraction.

49 3. The assent of the woman who is a victim of coerced abortion
50 to seek or obtain an abortion does not constitute consent, and is not a
51 defense to a prosecution under subsection 1 of this section. The
52 mistaken belief that the woman is pregnant when she is not is not a
53 defense to a prosecution under subsection 1 of this section.

54 4. This section shall not be construed as creating, expanding, or
55 otherwise endorsing a right to an abortion.

565.315. 1. Any person who knowingly performs or induces or
2 assists in performing or inducing an abortion on a woman, with
3 knowledge that the predominant reason the woman is seeking or
4 obtaining the abortion is that the woman is a victim of coerced
5 abortion, is guilty of a class C felony.

6 2. Whenever a physician, abortion facility, hospital, or other
7 health care provider has reasonable cause to suspect that a woman is
8 a victim of a coerced abortion and the victim is:

9 (1) A child as defined in section 210.110, RSMo, then a report of
10 suspected abuse shall be made to the department of social services

11 pursuant to section 210.115, RSMo;

12 (2) A vulnerable person as defined in section 630.005, RSMo, then
13 a report of a suspected abuse shall be made to the department of
14 mental health pursuant to sections 565.218 and 630.163, RSMo;

15 (3) An adult with a disability as defined by "eligible adult" in
16 section 660.250, RSMo, then a report of suspected abuse shall be made
17 to the department of health and senior services pursuant to sections
18 198.070, 565.188, and 660.255, RSMo;

19 (4) An adult who has been subject to abuse by a present or
20 former adult family or household member, or who has been the victim
21 of stalking, then the physician, abortion facility, hospital, or other
22 health care provider shall provide the woman with information on
23 orders of protection pursuant to sections 455.010 to 455.085, RSMo.

24 3. Pursuant to the provisions of chapter 188, RSMo, or any other
25 provision of law requiring that a woman give her consent freely and
26 without coercion prior to an abortion, whenever a physician knows that
27 the predominant reason the woman is seeking or obtaining an abortion
28 is that the woman is a victim of coerced abortion, the physician shall
29 certify that the woman lacks the consent required by law.

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