

FIRST REGULAR SESSION

SENATE BILL NO. 264

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time January 28, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0908S.011

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Section A. 188.027, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 188.027, 188.108, 565.305, 565.310, and 565.315, to read as follows: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 to the woman associated with the proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation,**

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

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;

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: "It is the public policy of the state of Missouri that the life

56 of each human being begins at conception, and that unborn children
57 have protectable interests in life, health, and well-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, website
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;

90 (5) Prior to an abortion being performed or induced on an
91 unborn child of twenty-two weeks gestational age or older, the
92 physician who is to perform or induce the abortion or a qualified

93 professional has presented the woman, in person, printed materials
94 provided by the department or an informational video provided by the
95 department that offers information on the possibility of the abortion
96 causing pain to the unborn child. This information shall include, but
97 need not be limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

172 (8) The physician who is to perform or induce the abortion or a
173 qualified professional shall inform the woman that it is unlawful for
174 any person to coerce a woman to seek or obtain an abortion;

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

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

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

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

212 5. No physician shall perform or induce an abortion unless and
213 until the physician has obtained from the woman her voluntary and
214 informed consent given freely and without coercion. If the physician
215 has reason to believe that the woman is a victim of a coerced abortion,
216 the physician or qualified professional shall inform the woman that
217 services are available for victims of coerced abortion, and shall provide
218 her with private access to a telephone and information about such
219 services.

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

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

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

237 9. The term "qualified professional" as used in this section shall
238 refer to a physician, physician assistant, registered nurse, licensed
239 practical nurse, psychologist, licensed professional counselor, or
240 licensed social worker, licensed or registered under chapter 334, 335,

241 or 337, RSMo, acting under the supervision of the physician performing
242 or inducing the abortion, and acting within the course and scope of his
243 or her authority provided by law. The provisions of this section shall
244 not be construed to in any way expand the authority otherwise
245 provided by law relating to the licensure, registration, or scope of
246 practice of any such qualified professional.

247 10. Every abortion facility shall display signs that contain
248 exclusively the following words: "NOTICE: No one can coerce you to
249 have an abortion. It is against the law for a husband, a boyfriend, a
250 parent, a friend, a medical care provider, or any other person to coerce
251 you in any way to have an abortion.". The signs shall be designed and
252 located so that such signs can be easily read and ensure maximum
253 visibility to women who enter the abortion facility considering whether
254 to have an abortion; to women at the abortion facility receiving the
255 information required by this section; and to women at the time that
256 they give their consent to an abortion. The location of such signs in
257 abortion facilities shall be specified by rules promulgated by the
258 department and shall be a condition of licensure of any abortion
259 facility under chapter 197, RSMo. The display of signs under this
260 subsection does not discharge the duty to conduct an individual private
261 consultation with a woman considering abortion under subsection 2 of
262 this section.

263 11. By November 30, 2009, the department shall produce the
264 written materials, signs, informational videos, and forms described in
265 this section. Any written materials produced shall be printed in a
266 typeface large enough to be clearly legible. All information shall be
267 presented in an objective, unbiased manner designed to convey only
268 accurate scientific and medical information. The department shall
269 furnish the written materials, signs, informational videos, and forms at
270 no cost and in sufficient quantity to any person who performs or
271 induces abortions, or to any hospital or facility that provides
272 abortions. The department shall make all information required by
273 subsection 1 of this section available to the public through its
274 department web site. The department shall maintain a toll-free,
275 twenty-four-hour hotline telephone number where a caller can obtain
276 information on a regional basis concerning the agencies and services
277 described in subsection 1 of this section. No identifying information

278 regarding persons who use the web site shall be collected or
279 maintained. The department shall monitor the web site on a regular
280 basis to prevent tampering and correct any operational deficiencies.

281 12. In order to preserve the compelling interest of the state to
282 ensure that the choice to consent to an abortion is voluntary and
283 informed, and given freely and without coercion, the department shall
284 use the procedures for adoption of emergency rules under section
285 536.025, RSMo, in order to promulgate all necessary rules, forms, and
286 other necessary material to implement this section by November 30,
287 2009.

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) "Coerces a woman to seek or obtain an abortion", performs an
11 act intended to cause a woman to seek or obtain an abortion against
12 her will, or performs an act conditioned upon or precipitated by a
13 woman disregarding or refusing a demand that she seek or obtain an
14 abortion;

15 (4) "Family or household member", spouses, former spouses,
16 adults related by blood or marriage, adults who are presently residing
17 together or have resided together in the past, an adult who is or has
18 been in a continuing social relationship of a romantic or intimate
19 nature with the victim, and adults who have a child in common
20 regardless of whether they have been married or have resided together
21 at any time;

22 (5) "Unborn child", the offspring of human beings from the
23 moment of conception until birth and at every stage of his or her
24 biological development, including the human conceptus, zygote, morula,

25 blastocyst, embryo, and fetus;

26 (6) "Victim of coerced abortion", the victim of the crime of
27 coercing an abortion, whether or not the victim has reported the crime
28 prior to seeking or obtaining an abortion.

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 (a) A criminal offense defined by any other statute of this state
6 against the woman or her family or household member;

7 (b) Assault as defined in sections 565.050, 565.060, or 565.070;

8 (c) Domestic assault as defined in sections 565.072, 565.073, or
9 565.074; or

10 (d) Stalking or aggravated stalking as defined in section 565.225;

11 (2) Forcibly or without her knowledge administering to or
12 causing a woman to ingest any poison, drug, or other substance
13 intended to cause an abortion, or attempting or threatening to do so;

14 (3) Discharging, attempting to discharge, or threatening to
15 discharge a female employee; or changing, attempting to change, or
16 threatening to change her compensation, terms, conditions, or
17 privileges of employment; or

18 (4) Revoking, attempting to revoke, or threatening to revoke a
19 scholarship awarded to the woman by a public or private institution of
20 higher education.

21 2. Coercing an abortion is classified as follows if it is done by the
22 commission of any of the acts specified in subsection 1 of this section
23 and the act is otherwise an offense defined by any other statute of this
24 state:

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

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

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

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

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

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

36 **3. This section shall not be construed as creating, expanding, or**
37 **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 **under 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 under 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 under sections 198.070,**
18 **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 under sections 455.010 to 455.085, RSMo.**

24 **3. Under 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.**