

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 519

AN ACT

To repeal sections 188.027 and 188.039, RSMo, and to enact in lieu thereof two new sections relating to the required waiting period before having an abortion.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 188.027 and 188.039, RSMo, are repealed
2 and two new sections enacted in lieu thereof, to be known as
3 sections 188.027 and 188.039, to read as follows:

4 188.027. 1. Except in the case of medical emergency, no
5 abortion shall be performed or induced on a woman without her
6 voluntary and informed consent, given freely and without
7 coercion. Consent to an abortion is voluntary and informed and
8 given freely and without coercion[,] if, and only if, at least
9 ~~[twenty-four]~~ seventy-two hours prior to the abortion:

10 (1) The physician who is to perform or induce the abortion
11 or a qualified professional has informed the woman, orally,
12 reduced to writing, and in person, of the following:

13 (a) The name of the physician who will perform or induce
14 the abortion;

15 (b) Medically accurate information that a reasonable
16 patient would consider material to the decision of whether or not
17 to undergo the abortion, including:

18 a. A description of the proposed abortion method;

1 b. The immediate and long-term medical risks to the woman
2 associated with the proposed abortion method including, but not
3 limited to, infection, hemorrhage, cervical tear or uterine
4 perforation, harm to subsequent pregnancies or the ability to
5 carry a subsequent child to term, and possible adverse
6 psychological effects associated with the abortion; and

7 c. The immediate and long-term medical risks to the woman,
8 in light of the anesthesia and medication that is to be
9 administered, the unborn child's gestational age, and the woman's
10 medical history and medical condition;

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

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

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

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

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

1 induced;

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

16 (3) The physician who is to perform or induce the abortion
17 or a qualified professional has presented the woman, in person,
18 printed materials provided by the department, which describe the
19 various surgical and drug-induced methods of abortion relevant to
20 the stage of pregnancy, as well as the immediate and long-term
21 medical risks commonly associated with each abortion method
22 including, but not limited to, infection, hemorrhage, cervical
23 tear or uterine perforation, harm to subsequent pregnancies or
24 the ability to carry a subsequent child to term, and the possible
25 adverse psychological effects associated with an abortion;

26 (4) The physician who is to perform or induce the abortion
27 or a qualified professional shall provide the woman with the
28 opportunity to view at least [twenty-four] seventy-two hours

1 prior to the abortion an active ultrasound of the unborn child
2 and hear the heartbeat of the unborn child if the heartbeat is
3 audible. The woman shall be provided with a geographically
4 indexed list maintained by the department of health care
5 providers, facilities, and clinics that perform ultrasounds,
6 including those that offer ultrasound services free of charge.
7 Such materials shall provide contact information for each
8 provider, facility, or clinic including telephone numbers and, if
9 available, website addresses. Should the woman decide to obtain
10 an ultrasound from a provider, facility, or clinic other than the
11 abortion facility, the woman shall be offered a reasonable time
12 to obtain the ultrasound examination before the date and time set
13 for performing or inducing an abortion. The person conducting
14 the ultrasound shall ensure that the active ultrasound image is
15 of a quality consistent with standard medical practice in the
16 community, contains the dimensions of the unborn child, and
17 accurately portrays the presence of external members and internal
18 organs, if present or viewable, of the unborn child. The
19 auscultation of fetal heart tone must also be of a quality
20 consistent with standard medical practice in the community. If
21 the woman chooses to view the ultrasound or hear the heartbeat or
22 both at the abortion facility, the viewing or hearing or both
23 shall be provided to her at the abortion facility at least
24 [twenty-four] seventy-two hours prior to the abortion being
25 performed or induced;

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

1 professional has presented the woman, in person, printed
2 materials provided by the department that offer information on
3 the possibility of the abortion causing pain to the unborn child.
4 This information shall include, but need not be limited to, the
5 following:

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

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

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

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

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

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

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

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

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

27 (c) Identify the state website for the Missouri
28 alternatives to abortion services program under section 188.325,

1 and any toll-free number established by the state operated in
2 conjunction with the program;

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

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

26 (8) The physician who is to perform or induce the abortion
27 or a qualified professional shall inform the woman that she is
28 free to withhold or withdraw her consent to the abortion at any

1 time without affecting her right to future care or treatment and
2 without the loss of any state or federally funded benefits to
3 which she might otherwise be entitled.

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

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

28 4. No abortion shall be performed or induced on an unborn

1 child of twenty-two weeks gestational age or older unless and
2 until the woman upon whom the abortion is to be performed or
3 induced has been provided the opportunity to choose to have an
4 anesthetic or analgesic administered to eliminate or alleviate
5 pain to the unborn child caused by the particular method of
6 abortion to be performed or induced. The administration of
7 anesthesia or analgesics shall be performed in a manner
8 consistent with standard medical practice in the community.

9 5. No physician shall perform or induce an abortion unless
10 and until the physician has obtained from the woman her voluntary
11 and informed consent given freely and without coercion. If the
12 physician has reason to believe that the woman is being coerced
13 into having an abortion, the physician or qualified professional
14 shall inform the woman that services are available for her and
15 shall provide her with private access to a telephone and
16 information about such services, including but not limited to the
17 following:

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

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

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

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

26 7. In the event of a medical emergency as provided by
27 section [188.075] 188.039, the physician who performed or induced
28 the abortion shall clearly certify in writing the nature and

1 circumstances of the medical emergency. This certification shall
2 be signed by the physician who performed or induced the abortion,
3 and shall be maintained under section 188.060.

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

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

24 10. By November 30, 2010, the department shall produce the
25 written materials and forms described in this section. Any
26 written materials produced shall be printed in a typeface large
27 enough to be clearly legible. All information shall be presented
28 in an objective, unbiased manner designed to convey only accurate

1 scientific and medical information. The department shall furnish
2 the written materials and forms at no cost and in sufficient
3 quantity to any person who performs or induces abortions, or to
4 any hospital or facility that provides abortions. The department
5 shall make all information required by subsection 1 of this
6 section available to the public through its department website.
7 The department shall maintain a toll-free, twenty-four-hour
8 hotline telephone number where a caller can obtain information on
9 a regional basis concerning the agencies and services described
10 in subsection 1 of this section. No identifying information
11 regarding persons who use the website shall be collected or
12 maintained. The department shall monitor the website on a
13 regular basis to prevent tampering and correct any operational
14 deficiencies.

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

22 12. If the provisions in subsections 1 and 8 of this
23 section requiring a seventy-two-hour waiting period for an
24 abortion are ever temporarily or permanently restrained or
25 enjoined by judicial order, then the waiting period for an
26 abortion shall be twenty-four hours; provided, however, that if
27 such temporary or permanent restraining order or injunction is
28 stayed or dissolved, or otherwise ceases to have effect, the

1 waiting period for an abortion shall be seventy-two hours.

2 188.039. 1. For purposes of this section, "medical
3 emergency" means a condition which, on the basis of the
4 physician's good faith clinical judgment, so complicates the
5 medical condition of a pregnant woman as to necessitate the
6 immediate abortion of her pregnancy to avert her death or for
7 which a delay will create a serious risk of substantial and
8 irreversible impairment of a major bodily function.

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

24 3. The patient shall be evaluated by the physician who is
25 to perform or induce the abortion or a qualified professional
26 during the conference for indicators and contraindicators, risk
27 factors including any physical, psychological, or situational
28 factors which would predispose the patient to or increase the

1 risk of experiencing one or more adverse physical, emotional, or
2 other health reactions to the proposed procedure or drug or drugs
3 in either the short or long term as compared with women who do
4 not possess such risk factors.

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

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

22 6. As used in this section, the term "qualified
23 professional" shall refer to a physician, physician assistant,
24 registered nurse, licensed practical nurse, psychologist,
25 licensed professional counselor, or licensed social worker,
26 licensed or registered under chapter 334, 335, or 337, acting
27 under the supervision of the physician performing or inducing the
28 abortion, and acting within the course and scope of his or her

1 authority provided by law. The provisions of this section shall
2 not be construed to in any way expand the authority otherwise
3 provided by law relating to the licensure, registration, or scope
4 of practice of any such qualified professional.

5 7. If the provisions in subsection 2 of this section
6 requiring a seventy-two-hour waiting period for an abortion are
7 ever temporarily or permanently restrained or enjoined by
8 judicial order, then the waiting period for an abortion shall be
9 twenty-four hours; provided, however, that if such temporary or
10 permanent restraining order or injunction is stayed or dissolved,
11 or otherwise ceases to have effect, the waiting period for an
12 abortion shall be seventy-two hours.