

FIRST REGULAR SESSION

# SENATE BILL NO. 408

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Read 1st time February 9, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1770S.02I

## AN ACT

To repeal sections 188.027 and 188.052, RSMo, and to enact in lieu thereof three 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Section A. Sections 188.027 and 188.052, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 188.026, 188.027,  
3 and 188.052, to read as follows:

**188.026. 1. Except in cases of medical emergency, no abortion**  
2 **shall knowingly be performed or induced upon a pregnant woman if the**  
3 **fetal heartbeat of the unborn child has been detected in accordance**  
4 **with the provisions of this section.**

5 **2. A physician who intends to perform or induce an abortion**  
6 **upon a pregnant woman shall determine whether there is a detectable**  
7 **fetal heartbeat of the unborn child. The method of determining the**  
8 **presence of a fetal heartbeat shall be consistent with the physician's**  
9 **good faith understanding of standard medical practice. The physician**  
10 **shall record in the pregnant woman's medical record the estimated**  
11 **gestational age of the unborn child, the method used to test for the**  
12 **presence or absence of a fetal heartbeat, the date and time of the test,**  
13 **and the results of the test. The physician shall give the pregnant**  
14 **woman the option to view or hear the fetal heartbeat.**

15 **3. If a fetal heartbeat is detected, the physician shall, in writing,**  
16 **inform the pregnant woman that a fetal heartbeat has been detected**  
17 **and that an abortion may not be performed under Missouri law except**  
18 **in cases of medical emergency. If a fetal heartbeat is not detected, an**

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

19 **abortion may be performed or induced within ninety-six hours of the**  
20 **conclusion of the fetal heartbeat test in accordance with the provisions**  
21 **of this chapter and other applicable law. If an abortion is not**  
22 **performed within ninety-six hours of the conclusion of the fetal**  
23 **heartbeat detection test, a new fetal heartbeat detection test shall be**  
24 **conducted by a physician who intends to perform or induce an abortion**  
25 **on the pregnant woman.**

26 **4. Notwithstanding the provisions of section 188.075, a physician**  
27 **who fails to conduct a fetal heartbeat detection test prior to the**  
28 **performance or inducement of an abortion upon a pregnant woman**  
29 **shall, for each instance of failure, be subject to having his or her**  
30 **license or license application rejected, revoked, or suspended by the**  
31 **state board of registration for the healing arts in accordance with the**  
32 **provisions of section 334.100 for a period of six months and shall be**  
33 **subject to a fine of one thousand dollars.**

34 **5. Notwithstanding the provisions of section 188.075, a physician**  
35 **who performs or induces an abortion upon a pregnant woman after a**  
36 **fetal heartbeat detection test reveals the presence of a fetal heartbeat**  
37 **in the unborn child shall have his or her license revoked, and any**  
38 **future license application rejected, by the state board of registration**  
39 **for the healing arts in accordance with the provisions of section**  
40 **334.100.**

41 **6. A pregnant woman upon whom an abortion is performed or**  
42 **induced in violation of this section shall not be prosecuted for a**  
43 **conspiracy to violate the provisions of this section.**

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

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

9 (a) The name of the physician who will perform or induce the abortion;  
10 (b) Medically accurate information that a reasonable patient would  
11 consider material to the decision of whether or not to undergo the abortion,  
12 including:

- 13           a. A description of the proposed abortion method;
- 14           b. The immediate and long-term medical risks to the woman associated  
15 with the proposed abortion method including, but not limited to, infection,  
16 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies  
17 or the ability to carry a subsequent child to term, and possible adverse  
18 psychological effects associated with the abortion; and
- 19           c. The immediate and long-term medical risks to the woman, in light of  
20 the anesthesia and medication that is to be administered, the unborn child's  
21 gestational age, and the woman's medical history and medical condition;
- 22           (c) Alternatives to the abortion which shall include making the woman  
23 aware that information and materials shall be provided to her detailing such  
24 alternatives to the abortion;
- 25           (d) A statement that the physician performing or inducing the abortion  
26 is available for any questions concerning the abortion, together with the  
27 telephone number that the physician may be later reached to answer any  
28 questions that the woman may have;
- 29           (e) The location of the hospital that offers obstetrical or gynecological care  
30 located within thirty miles of the location where the abortion is performed or  
31 induced and at which the physician performing or inducing the abortion has  
32 clinical privileges and where the woman may receive follow-up care by the  
33 physician if complications arise;
- 34           (f) The gestational age of the unborn child at the time the abortion is to  
35 be performed or induced; and
- 36           (g) The anatomical and physiological characteristics of the unborn child  
37 at the time the abortion is to be performed or induced;
- 38           (2) The physician who is to perform or induce the abortion or a qualified  
39 professional has presented the woman, in person, printed materials provided by  
40 the department, which describe the probable anatomical and physiological  
41 characteristics of the unborn child at two-week gestational increments from  
42 conception to full term, including color photographs or images of the developing  
43 unborn child at two-week gestational increments. Such descriptions shall include  
44 information about brain and heart functions, the presence of external members  
45 and internal organs during the applicable stages of development and information  
46 on when the unborn child is viable. The printed materials shall prominently  
47 display the following statement: "The life of each human being begins at  
48 conception. Abortion will terminate the life of a separate, unique, living human

49 being.";

50 (3) The physician who is to perform or induce the abortion or a qualified  
51 professional has presented the woman, in person, printed materials provided by  
52 the department, which describe the various surgical and drug-induced methods  
53 of abortion relevant to the stage of pregnancy, as well as the immediate and  
54 long-term medical risks commonly associated with each abortion method  
55 including, but not limited to, infection, hemorrhage, cervical tear or uterine  
56 perforation, harm to subsequent pregnancies or the ability to carry a subsequent  
57 child to term, and the possible adverse psychological effects associated with an  
58 abortion;

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

81 (5) Prior to an abortion being performed or induced on an unborn child of  
82 twenty-two weeks gestational age or older, the physician who is to perform or  
83 induce the abortion or a qualified professional has presented the woman, in  
84 person, printed materials provided by the department that offer information on

85 the possibility of the abortion causing pain to the unborn child. This information  
86 shall include, but need not be limited to, the following:

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

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

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

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

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

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

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

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

116 (b) Explain the Missouri alternatives to abortion services program under  
117 section 188.325, and any other programs and services available to pregnant  
118 women and mothers of newborn children offered by public or private agencies  
119 which assist a woman in carrying her unborn child to term and assist her in  
120 caring for her dependent child or placing her child for adoption, including but not

121 limited to prenatal care; maternal health care; newborn or infant care; mental  
122 health services; professional counseling services; housing programs; utility  
123 assistance; transportation services; food, clothing, and supplies related to  
124 pregnancy; parenting skills; educational programs; job training and placement  
125 services; drug and alcohol testing and treatment; and adoption assistance;

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

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

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

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

153 2. All information required to be provided to a woman considering  
154 abortion by subsection 1 of this section shall be presented to the woman  
155 individually, in the physical presence of the woman and in a private room, to  
156 protect her privacy, to maintain the confidentiality of her decision, to ensure that

157 the information focuses on her individual circumstances, to ensure she has an  
158 adequate opportunity to ask questions, and to ensure that she is not a victim of  
159 coerced abortion. Should a woman be unable to read materials provided to her,  
160 they shall be read to her. Should a woman need an interpreter to understand the  
161 information presented in the written materials, an interpreter shall be provided  
162 to her. Should a woman ask questions concerning any of the information or  
163 materials, answers shall be provided in a language she can understand.

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

172         4. No abortion shall be performed or induced on an unborn child of  
173 twenty-two weeks gestational age or older unless and until the woman upon  
174 whom the abortion is to be performed or induced has been provided the  
175 opportunity to choose to have an anesthetic or analgesic administered to  
176 eliminate or alleviate pain to the unborn child caused by the particular method  
177 of abortion to be performed or induced. The administration of anesthesia or  
178 analgesics shall be performed in a manner consistent with standard medical  
179 practice in the community.

180         5. No physician shall perform or induce an abortion unless and until the  
181 physician has obtained from the woman her voluntary and informed consent given  
182 freely and without coercion. If the physician has reason to believe that the  
183 woman is being coerced into having an abortion, the physician or qualified  
184 professional shall inform the woman that services are available for her and shall  
185 provide her with private access to a telephone and information about such  
186 services, including but not limited to the following:

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

191         6. No physician shall perform or induce an abortion unless and until the  
192 physician has received and signed a copy of the form prescribed in subsection 3

193 of this section. The physician shall retain a copy of the form in the patient's  
194 medical record.

195           7. In the event of a medical emergency as provided by section 188.039, the  
196 physician who performed or induced the abortion shall clearly certify in writing  
197 the nature and circumstances of the medical emergency. This certification shall  
198 be signed by the physician who performed or induced the abortion, and shall be  
199 maintained under section 188.060.

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

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

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

229 department shall monitor the website on a regular basis to prevent tampering  
230 and correct any operational deficiencies.

231 11. In order to preserve the compelling interest of the state to ensure that  
232 the choice to consent to an abortion is voluntary and informed, and given freely  
233 and without coercion, the department shall use the procedures for adoption of  
234 emergency rules under section 536.025 in order to promulgate all necessary rules,  
235 forms, and other necessary material to implement this section by November 30,  
236 2010.

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

188.052. 1. An individual abortion report for each abortion performed or  
2 induced upon a woman shall be completed by her attending physician.

3 2. An individual complication report for any post-abortion care performed  
4 upon a woman shall be completed by the physician providing such post-abortion  
5 care. This report shall include:

6 (1) The date of the abortion;

7 (2) The name and address of the abortion facility or hospital where the  
8 abortion was performed;

9 (3) The nature of the abortion complication diagnosed or treated;

10 **(4) The time, date, method, and results of the fetal heartbeat**  
11 **detection test performed prior to the abortion.**

12 3. All abortion reports shall be signed by the attending physician, and  
13 submitted to the state department of health and senior services within forty-five  
14 days from the date of the abortion. All complication reports shall be signed by  
15 the physician providing the post-abortion care and submitted to the department  
16 of health and senior services within forty-five days from the date of the  
17 post-abortion care.

18 4. A copy of the abortion report shall be made a part of the medical record  
19 of the patient of the facility or hospital in which the abortion was performed.

20 5. The state department of health and senior services shall be responsible  
21 for collecting all abortion reports and complication reports and collating and

22 evaluating all data gathered therefrom and shall annually publish a statistical  
23 report based on such data from abortions performed in the previous calendar  
24 year.

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