

SECOND REGULAR SESSION

# SENATE BILL NO. 671

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4680S.011

## AN ACT

To repeal sections 188.027 and 188.039, RSMo, and to enact in lieu thereof two new sections relating to abortion.

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

Section A. Sections 188.027 and 188.039, RSMo, are repealed and two new  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

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, a qualified  
7 professional, or the referring physician has informed the woman orally, reduced  
8 to writing, and in person, 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

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

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, a qualified  
51 professional, or the referring physician has presented the woman, in person,  
52 printed materials provided by the department, which describe the various  
53 surgical and drug-induced methods of abortion relevant to the stage of pregnancy,  
54 as well as the immediate and long-term medical risks commonly associated with

55 each abortion method including, but not limited to, infection, hemorrhage,  
56 cervical tear or uterine perforation, harm to subsequent pregnancies or the ability  
57 to carry a subsequent child to term, and the possible adverse psychological effects  
58 associated with an 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. The physician who is to perform or induce the abortion shall[, at least  
192 seventy-two hours prior to such procedure,] inform the woman orally and in  
193 person of:

194           (1) The immediate and long-term medical risks to the woman associated  
195 with the proposed abortion method including, but not limited to, infection,  
196 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies  
197 or the ability to carry a subsequent child to term, and possible adverse  
198 psychological effects associated with the abortion; and

199           (2) The immediate and long-term medical risks to the woman, in light of  
200 the anesthesia and medication that is to be administered, the unborn child's  
201 gestational age, and the woman's medical history and medical conditions.

202           7. No physician shall perform or induce an abortion unless and until the  
203 physician has received and signed a copy of the form prescribed in subsection 3  
204 of this section. The physician shall retain a copy of the form in the patient's  
205 medical record.

206           8. In the event of a medical emergency as provided by section 188.039, the  
207 physician who performed or induced the abortion shall clearly certify in writing  
208 the nature and circumstances of the medical emergency. This certification shall  
209 be signed by the physician who performed or induced the abortion, and shall be  
210 maintained under section 188.060.

211           9. No person or entity shall require, obtain, or accept payment for an  
212 abortion from or on behalf of a patient until [at least seventy-two hours have  
213 passed since the time that] the information required by subsection 1 of this  
214 section has been provided to the patient. Nothing in this subsection shall  
215 prohibit a person or entity from notifying the patient that payment for the  
216 abortion will be required [after the seventy-two-hour period has expired] if she  
217 voluntarily chooses to have the abortion.

218           10. The term "qualified professional" as used in this section shall refer to  
219 a physician, physician assistant, registered nurse, licensed practical nurse,  
220 psychologist, licensed professional counselor, or licensed social worker, licensed  
221 or registered under chapter 334, 335, or 337, acting under the supervision of the  
222 physician performing or inducing the abortion, and acting within the course and  
223 scope of his or her authority provided by law. The provisions of this section shall  
224 not be construed to in any way expand the authority otherwise provided by law  
225 relating to the licensure, registration, or scope of practice of any such qualified  
226 professional.

227           11. By November 30, 2010, the department shall produce the written  
228 materials and forms described in this section. Any written materials produced  
229 shall be printed in a typeface large enough to be clearly legible. All information  
230 shall be presented in an objective, unbiased manner designed to convey only  
231 accurate scientific and medical information. The department shall furnish the  
232 written materials and forms at no cost and in sufficient quantity to any person  
233 who performs or induces abortions, or to any hospital or facility that provides  
234 abortions. The department shall make all information required by subsection 1

235 of this section available to the public through its department website. The  
236 department shall maintain a toll-free, twenty-four-hour hotline telephone number  
237 where a caller can obtain information on a regional basis concerning the agencies  
238 and services described in subsection 1 of this section. No identifying information  
239 regarding persons who use the website shall be collected or maintained. The  
240 department shall monitor the website on a regular basis to prevent tampering  
241 and correct any operational deficiencies.

242         12. In order to preserve the compelling interest of the state to ensure that  
243 the choice to consent to an abortion is voluntary and informed, and given freely  
244 and without coercion, the department shall use the procedures for adoption of  
245 emergency rules under section 536.025 in order to promulgate all necessary rules,  
246 forms, and other necessary material to implement this section by November 30,  
247 2010.

248         [13. If the provisions in subsections 1 and 9 of this section requiring a  
249 seventy-two-hour waiting period for an abortion are ever temporarily or  
250 permanently restrained or enjoined by judicial order, then the waiting period for  
251 an abortion shall be twenty-four hours; provided, however, that if such temporary  
252 or permanent restraining order or injunction is stayed or dissolved, or otherwise  
253 ceases to have effect, the waiting period for an abortion shall be seventy-two  
254 hours.]

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

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



17 connection with inducing an abortion. Only one such conference shall be required  
18 for each abortion.

19         3. The patient shall be evaluated by the physician who is to perform or  
20 induce the abortion, a qualified professional, or the referring physician during the  
21 conference for indicators and contraindicators, risk factors including any physical,  
22 psychological, or situational factors which would predispose the patient to or  
23 increase the risk of experiencing one or more adverse physical, emotional, or  
24 other health reactions to the proposed procedure or drug or drugs in either the  
25 short or long term as compared with women who do not possess such risk factors.

26         4. At the end of the conference, and if the woman chooses to proceed with  
27 the abortion, the physician who is to perform or induce the abortion, a qualified  
28 professional, or the referring physician shall sign and shall cause the patient to  
29 sign a written statement that the woman gave her informed consent freely and  
30 without coercion after the physician or qualified professional had discussed with  
31 her the indicators and contraindicators, and risk factors, including any physical,  
32 psychological, or situational factors. All such executed statements shall be  
33 maintained as part of the patient's medical file, subject to the confidentiality laws  
34 and rules of this state.

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

40         6. As used in this section, the term "qualified professional" shall refer to  
41 a physician, physician assistant, registered nurse, licensed practical nurse,  
42 psychologist, licensed professional counselor, or licensed social worker, licensed  
43 or registered under chapter 334, 335, or 337, acting under the supervision of the  
44 physician performing or inducing the abortion, and acting within the course and  
45 scope of his or her authority provided by law. The provisions of this section shall  
46 not be construed to in any way expand the authority otherwise provided by law  
47 relating to the licensure, registration, or scope of practice of any such qualified  
48 professional.

49         [7. If the provisions in subsection 2 of this section requiring a  
50 seventy-two-hour waiting period for an abortion are ever temporarily or  
51 permanently restrained or enjoined by judicial order, then the waiting period for  
52 an abortion shall be twenty-four hours; provided, however, that if such temporary

53 or permanent restraining order or injunction is stayed or dissolved, or otherwise  
54 ceases to have effect, the waiting period for an abortion shall be seventy-two  
55 hours.]

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