

FIRST REGULAR SESSION

# SENATE BILL NO. 279

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time January 22, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1576S.01I

## AN ACT

To repeal section 188.027, 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Section A. Section 188.027, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 188.027 and 188.375, to read as  
3 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  
82 of 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)] (6) The physician who is to perform or induce the abortion or a  
137 qualified professional has presented the woman, in person, printed materials  
138 provided by the department explaining that the father of the unborn child is  
139 liable to assist in the support of the child, even in instances where he has offered  
140 to pay for the abortion. Such materials shall include information on the legal  
141 duties and support obligations of the father of a child, including, but not limited  
142 to, child support payments, and the fact that paternity may be established by the  
143 father's name on a birth certificate or statement of paternity, or by court  
144 action. Such printed materials shall also state that more information concerning  
145 paternity establishment and child support services and enforcement may be  
146 obtained by calling the family support division within the Missouri department  
147 of social services; and

148 [(8)] (7) The physician who is to perform or induce the abortion or a  
149 qualified professional shall inform the woman that she is free to withhold or  
150 withdraw her consent to the abortion at any time without affecting her right to  
151 future care or treatment and without the loss of any state or federally funded  
152 benefits to which 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 person  
193 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 section  
214 has been provided to the patient. Nothing in this subsection shall prohibit a  
215 person or entity from notifying the patient that payment for the abortion will be  
216 required after the seventy-two-hour period has expired if she voluntarily chooses  
217 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.

**188.375. 1. The provisions of this section shall be known and may  
2 be cited as the "Pain Capable Unborn Child Protection Act".**

**3       2. For purposes of this section, the following terms shall mean:**

**4       (1) "Pain capable gestational age", twenty-two weeks since the  
5 first day of the woman's last menstrual period, generally consistent  
6 with the time that is twenty weeks after fertilization;**

**7       (2) "Unborn child", the unborn offspring of a human being in the  
8 postembryonic period from nine weeks after fertilization until birth.**

**9       3. Except in the case of a medical emergency, no abortion shall  
10 be performed or induced, or be attempted to be performed or induced,  
11 unless the physician performing or inducing the abortion has first  
12 made a determination of the probable gestational age of the unborn  
13 child or relied upon such a determination made by another physician.  
14 In making this determination, the physician shall make inquiries of the  
15 patient and perform or cause to be performed medical examinations  
16 and tests as a reasonably prudent physician knowledgeable about the**



17 case and the medical conditions involved would consider necessary to  
18 perform in making an accurate diagnosis with respect to gestational  
19 age.

20 4. (1) No person shall perform or induce, or attempt to perform  
21 or induce, an abortion if it has been determined by the physician  
22 performing or inducing, or attempting to perform or induce, the  
23 abortion, or by another physician upon whose determination that  
24 physician relies, that the probable gestational age of the unborn child  
25 has reached the pain capable gestational age, unless in the reasonable  
26 medical judgment of a reasonably prudent physician the patient has a  
27 condition that, on the basis of a reasonably prudent physician's  
28 reasonable medical judgment, so complicates her medical condition as  
29 to necessitate the abortion of her pregnancy to avert her death or to  
30 avert serious risk of substantial and irreversible physical impairment  
31 of a major bodily function, not including psychological or emotional  
32 conditions. No condition shall be deemed a medical emergency if based  
33 on a claim or diagnosis that the woman will engage in conduct that she  
34 intends to result in her death or in substantial and irreversible  
35 physical impairment of a major bodily function.

36 (2) If an abortion upon a patient whose unborn child has been  
37 determined to have a probable gestational age that has reached the  
38 pain capable gestational age is not prohibited by subdivision (1) of this  
39 subsection, the physician shall terminate the pregnancy in the manner  
40 that, in reasonable medical judgment, provides the best opportunity for  
41 the unborn child to survive unless, in reasonable medical judgment,  
42 termination of the pregnancy in that manner would pose a greater risk  
43 either of the death of the patient or of the substantial and irreversible  
44 physical impairment of a major bodily function of the patient than  
45 would other available methods.

46 5. (1) Any physician who performs or induces an abortion shall  
47 report to the department of health and senior services. The reporting  
48 shall be on a schedule and on forms set forth by the director of the  
49 department annually before December thirty-first. The reports shall  
50 include the following information:

51 (a) Probable gestational age:

52 a. If a determination of probable gestational age was made,  
53 whether ultrasound was employed in making the determination, and

54 the week of probable gestational age determined;

55           b. If a determination of probable gestational age was not made,  
56 the basis of the determination that a medical emergency existed;

57           (b) Method of abortion;

58           (c) If the probable gestational age was determined to have  
59 reached the pain capable gestational age, the basis of the determination  
60 that the patient had a condition that so complicated the medical  
61 condition of the patient that it necessitated the abortion of her  
62 pregnancy in order to avert her death or avert a serious risk of  
63 substantial and irreversible physical impairment of a major bodily  
64 function; and

65           (d) If the probable gestational age was determined to have  
66 reached the pain capable gestational age, whether the method of  
67 abortion used was one that, in reasonable medical judgment, provided  
68 the best opportunity for the unborn child to survive and, if such a  
69 method was not used, the basis of the determination that termination  
70 of the pregnancy in that manner would pose a greater risk either of the  
71 death of the patient or of the substantial and irreversible physical  
72 impairment of a major bodily function of the patient than would other  
73 available methods.

74           (2) Reports required under subdivision (1) of this subsection  
75 shall not contain the name or the address of the patient whose  
76 pregnancy was terminated, nor shall the report contain any  
77 information identifying the patient. Such reports shall be kept  
78 confidential by the department, shall not be available for public  
79 inspection, and shall not be made available except pursuant to court  
80 order.

81           (3) Beginning June 30, 2020, and annually thereafter, the  
82 department of health and senior services shall issue a public report  
83 providing statistics for the previous calendar year compiled from all of  
84 the reports covering that year submitted in accordance with this  
85 section for each of the items listed in subdivision (1) of this  
86 subsection. Each report shall provide the statistics for all previous  
87 calendar years from the effective date of this section, adjusted to  
88 reflect any additional information from late or corrected reports. The  
89 department shall ensure that none of the information included in the  
90 public reports could reasonably lead to the identification of any patient

91 upon whom an abortion was performed or induced.

92           6. (1) Any physician or other licensed medical practitioner who  
93 intentionally or recklessly performs or induces an abortion in violation  
94 of this section is considered to have acted outside the scope of practice  
95 permitted by law or otherwise in breach of the standard of care owed  
96 to patients and is subject to discipline from the applicable licensure  
97 board for such conduct including, but not limited to, loss of  
98 professional license to practice.

99           (2) Any person not subject to subdivision (1) of this subsection  
100 who intentionally or recklessly performs or induces an abortion in  
101 violation of this section is considered to have engaged in the  
102 unauthorized practice of medicine.

103           (3) In addition to the provisions set forth in subdivisions (1) and  
104 (2) of this subsection, a patient may seek any remedy otherwise  
105 available to such patient by applicable law.

106           (4) No penalty shall be assessed against any patient upon whom  
107 an abortion is performed or induced or attempted to be performed or  
108 induced.

✓