

HOUSE BILL NO. 915

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor), LEMBKE, PHILLIPS, SPRENG, MOORE, DEMPSEY, MUNZLINGER, REINHART, HANAWAY, YATES, EMERY, BROWN, ICET, DAVIS (122), DEEKEN, STEVENSON, COOPER (120), CUNNINGHAM (145), BAKER, ENGLER, HUNTER, SMITH (14), BEARDEN, GOODMAN, WRIGHT AND BRUNS (Co-sponsors).

Pre-filed December 19, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3333L.011

AN ACT

To repeal section 188.028, RSMo, and to enact in lieu thereof one new section relating to informed consent for abortion.

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

Section A. Section 188.028, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.028, to read as follows:

188.028. 1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

(1) The attending physician has secured the informed written consent of the minor and one parent or guardian; or

(2) The minor is emancipated and the attending physician has received the informed written consent of the minor; or

(3) The minor has been granted the right to self-consent to the abortion by court order pursuant to subsection 2 of this section, and the attending physician has received the informed written consent of the minor; or

(4) The minor has been granted consent to the abortion by court order, and the court has given its informed written consent in accordance with subsection 2 of this section, and the minor is having the abortion willingly, in compliance with subsection 3 of this section.

2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be granted by a court pursuant to the following procedures:

(1) The minor or next friend shall make an application to the juvenile court which shall

17 assist the minor or next friend in preparing the petition and notices required pursuant to this
18 section. The minor or the next friend of the minor shall thereafter file a petition setting forth the
19 initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or,
20 if the minor's parents are deceased and no guardian has been appointed, any other person
21 standing in loco parentis of the minor; that the minor has been fully informed of the risks and
22 consequences of the abortion; that the minor is of sound mind and has sufficient intellectual
23 capacity to consent to the abortion; that, if the court does not grant the minor majority rights for
24 the purpose of consent to the abortion, the court should find that the abortion is in the best
25 interest of the minor and give judicial consent to the abortion; that the court should appoint a
26 guardian ad litem of the child; and if the minor does not have private counsel, that the court
27 should appoint counsel. The petition shall be signed by the minor or the next friend;

28 (2) A hearing on the merits of the petition, to be held on the record, shall be held as soon
29 as possible within five days of the filing of the petition. If any party is unable to afford counsel,
30 the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the
31 hearing, the court shall hear evidence relating to the emotional development, maturity, intellect
32 and understanding of the minor; the nature, possible consequences, and alternatives to the
33 abortion; and any other evidence that the court may find useful in determining whether the minor
34 should be granted majority rights for the purpose of consenting to the abortion or whether the
35 abortion is in the best interests of the minor;

36 (3) In the decree, the court shall for good cause:

37 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;

38 or

39 (b) Find the abortion to be in the best interests of the minor and give judicial consent to
40 the abortion, setting forth the grounds for so finding; or

41 (c) Deny the petition, setting forth the grounds on which the petition is denied;

42 (4) If the petition is allowed, the informed consent of the minor, pursuant to a court grant
43 of majority rights, or the judicial consent, shall bar an action by the parents or guardian of the
44 minor on the grounds of battery of the minor by those performing the abortion. The immunity
45 granted shall only extend to the performance of the abortion in accordance herewith and any
46 necessary accompanying services which are performed in a competent manner. The costs of the
47 action shall be borne by the parties;

48 (5) An appeal from an order issued under the provisions of this section may be taken to
49 the court of appeals of this state by the minor or by a parent or guardian of the minor. The notice
50 of intent to appeal shall be given within twenty-four hours from the date of issuance of the order.
51 The record on appeal shall be completed and the appeal shall be perfected within five days from
52 the filing of notice to appeal. Because time may be of the essence regarding the performance of

53 the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate
54 review of cases appealed under this section.

55 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
56 sign the written consent required by section 188.039 in the same manner as an adult person. No
57 abortion shall be performed on any minor against her will, except that an abortion may be
58 performed against the will of a minor pursuant to a court order described in subdivision (4) of
59 subsection 1 of this section that the abortion is necessary to preserve the life of the minor.

60 **4. For purposes of this section, the term "next friend" shall not include another**
61 **minor child or any person, party, conservator, or business entity that has a financial**
62 **interest or potential gain from the minor child's decision to have an abortion.**