

HOUSE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1339

AN ACT

To repeal sections 188.015, 188.028, 188.075,  
188.080, and 197.200, RSMo, and to enact in  
lieu thereof seven new sections relating to  
abortion information, regulations, and  
services for minors, with penalty provisions.

---

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

Section A. Sections 188.015, 188.028, 188.075, 188.080, and  
197.200, RSMo, are repealed and seven new sections enacted in  
lieu thereof, to be known as sections 188.015, 188.028, 188.075,  
188.080, 188.250, 188.255, and 197.200, to read as follows:

188.015. [Unless the language or context clearly indicates  
a different meaning is intended, the following words or phrases  
for the purposes of sections 188.010 to 188.130 shall be given  
the meaning ascribed to them] As used in this chapter, the  
following terms mean:

(1) "Abortion", the intentional destruction of the life of  
an embryo or fetus in his or her mother's womb or the intentional  
termination of the pregnancy of a mother with an intention other  
than to increase the probability of a live birth or to remove a

1 dead or dying unborn child;

2 (2) "Abortion facility", a clinic, physician's office, or  
3 any other place or facility in which abortions are performed or  
4 induced other than a hospital;

5 (3) "Conception", the fertilization of the ovum of a female  
6 by a sperm of a male;

7 (4) "Department", the department of health and senior  
8 services;

9 [(4)] (5) "Gestational age", length of pregnancy as  
10 measured from the first day of the woman's last menstrual period;

11 (6) "Medical emergency", a condition which, on the basis of  
12 a physician's good faith clinical judgment, so complicates the  
13 medical condition of a pregnant woman as to necessitate the  
14 immediate abortion of her pregnancy to avert the death of the  
15 pregnant woman or for which a delay will create a serious risk of  
16 substantial and irreversible impairment of a major bodily  
17 function of the pregnant woman;

18 [(5)] (7) "Physician", any person licensed to practice  
19 medicine in this state by the state board of registration of the  
20 healing arts;

21 [(6)] (8) "Unborn child", the offspring of human beings  
22 from the moment of conception until birth and at every stage of  
23 its biological development, including the human conceptus,  
24 zygote, morula, blastocyst, embryo, and fetus;

25 [(7)] (9) "Viability", that stage of fetal development when

1 the life of the unborn child may be continued indefinitely  
2 outside the womb by natural or artificial life-supportive  
3 systems.

4 188.028. 1. No person shall knowingly perform an abortion  
5 upon a pregnant woman under the age of eighteen years unless:

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

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

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

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

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

23 (1) The minor or next friend shall make an application to  
24 the juvenile court which shall assist the minor or next friend in  
25 preparing the petition and notices required pursuant to this

1 section. The minor or the next friend of the minor shall  
2 thereafter file a petition setting forth the initials of the  
3 minor; the age of the minor; the names and addresses of each  
4 parent, guardian, or, if the minor's parents are deceased and no  
5 guardian has been appointed, any other person standing in loco  
6 parentis of the minor; that the minor has been fully informed of  
7 the risks and consequences of the abortion; that the minor is of  
8 sound mind and has sufficient intellectual capacity to consent to  
9 the abortion; that, if the court does not grant the minor  
10 majority rights for the purpose of consent to the abortion, the  
11 court should find that the abortion is in the best interest of  
12 the minor and give judicial consent to the abortion; that the  
13 court should appoint a guardian ad litem of the child; and if the  
14 minor does not have private counsel, that the court should  
15 appoint counsel. The petition shall be signed by the minor or  
16 the next friend;

17 (2) A hearing on the merits of the petition, to be held on  
18 the record, shall be held as soon as possible within five days of  
19 the filing of the petition. If any party is unable to afford  
20 counsel, the court shall appoint counsel at least twenty-four  
21 hours before the time of the hearing. At the hearing, the court  
22 shall hear evidence relating to the emotional development,  
23 maturity, intellect and understanding of the minor; the nature,  
24 possible consequences, and alternatives to the abortion; and any  
25 other evidence that the court may find useful in determining

1 whether the minor should be granted majority rights for the  
2 purpose of consenting to the abortion or whether the abortion is  
3 in the best interests of the minor;

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

5 (a) Grant the petition for majority rights for the purpose  
6 of consenting to the abortion; or

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

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

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

21 (5) An appeal from an order issued under the provisions of  
22 this section may be taken to the court of appeals of this state  
23 by the minor or by a parent or guardian of the minor. The notice  
24 of intent to appeal shall be given within twenty-four hours from  
25 the date of issuance of the order. The record on appeal shall be

1 completed and the appeal shall be perfected within five days from  
2 the filing of notice to appeal. Because time may be of the  
3 essence regarding the performance of the abortion, the supreme  
4 court of this state shall, by court rule, provide for expedited  
5 appellate review of cases appealed under this section.

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

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

19 188.075. 1. Any person who contrary to the provisions of  
20 sections 188.010 to 188.085 knowingly performs, induces, or aids  
21 in the performance or inducing of any abortion or knowingly fails  
22 to perform any action required by sections 188.010 to 188.085  
23 [shall be] is, unless a different penalty is provided for in a  
24 section, guilty of a class A misdemeanor and, upon conviction,  
25 shall be punished as provided by law.

1        2. It shall be a defense for any person alleged to have  
2        violated any provision of this chapter that the person performed  
3        an action or did not perform an action because of a medical  
4        emergency. This defense shall be available in criminal, civil,  
5        and administrative actions or proceedings. The defendant shall  
6        have the burden of injecting the issue of medical emergency as a  
7        defense.

8        188.080. Notwithstanding any other penalty provision in  
9        this chapter, any person who is not a licensed physician as  
10       defined in section 188.015 who performs or attempts to perform an  
11       abortion on another as defined in subdivision (1) of section  
12       188.015, is guilty of a class B felony, and, upon conviction,  
13       shall be punished as provided by law. Any physician performing  
14       an abortion who does not have [surgical] clinical privileges to  
15       provide obstetrical or gynecological care at a hospital located  
16       within thirty miles of the location at which the abortion is  
17       performed which offers obstetrical or gynecological care shall be  
18       guilty of a class B felony, and, upon conviction shall be  
19       punished as provided by law.

20       188.250. 1. No person shall intentionally cause, aid, or  
21       assist a minor to obtain an abortion without the consent or  
22       consents or judicial decree required by section 188.028, RSMo.

23       2. A person who is subject to the jurisdiction of this  
24       state and who violates subsection 1 of this section shall be  
25       civilly liable to the minor and to the person or persons required

1 to give the consent or consents pursuant to section 188.028. A  
2 court may award damages to any person adversely affected by a  
3 violation of this section, including compensation for emotional  
4 injury without the need for personal presence at the scene of any  
5 act or event, and the court may further award attorneys' fees,  
6 litigation costs, and punitive damages.

7 3. It shall not be a defense to a claim brought pursuant to  
8 this section that the abortion was performed or induced pursuant  
9 to consent to the abortion given in a manner that is otherwise  
10 lawful in the state or place where the abortion was performed or  
11 induced.

12 4. An unemancipated minor does not have capacity to consent  
13 to any action in violation of this section or section 188.028.

14 5. A court may enjoin conduct that would be in violation of  
15 this section upon petition by the attorney general, a prosecuting  
16 or circuit attorney, or any person adversely affected or who  
17 reasonably may be adversely affected by such conduct, upon a  
18 showing that such conduct:

19 (1) Is reasonably anticipated to occur in the future; or

20 (2) Has occurred in the past, whether with the same minor  
21 or others, and that it is not unreasonable to expect that under  
22 similar circumstances such conduct will be repeated.

23 188.255. 1. For purposes of this section, "emergency  
24 contraception" means any drug or device approved by the Food and  
25 Drug Administration that is prescribed or distributed to prevent



1 fertilization after intercourse or, if fertilization occurs, to  
2 prevent implantation of the resulting blastocyst or embryo.

3 2. The department of health and senior services shall  
4 endeavor to raise public awareness of the methods by which  
5 emergency contraception works, its risks and benefits, and to  
6 promote appropriate counseling for emergency contraception. The  
7 department shall develop and distribute information to hospitals,  
8 health care providers, pharmacists, and the community which  
9 describes the risks and effects of emergency contraception, the  
10 methods by which emergency contraception may prevent or affect  
11 pregnancy, the rate of effectiveness of emergency contraception  
12 when used correctly, and the increased risks to health of  
13 incorrect use of emergency contraception. The informational  
14 materials of the department shall stress that under state law and  
15 the findings of scientific research, a new human individual comes  
16 into being upon fertilization, that the new human individual  
17 grows and develops for approximately a week before implantation,  
18 and that if fertilization occurs, emergency contraception may  
19 result in the loss of the life of that new human individual by  
20 preventing implantation.

21 3. Emergency contraceptives shall not be distributed at  
22 state-funded institutions of higher education.

23 197.200. As used in sections 197.200 to 197.240, unless the  
24 context clearly indicates otherwise, the following terms mean:

25 (1) "Ambulatory surgical center", any public or private

1 establishment operated primarily for the purpose of performing  
2 surgical procedures or primarily for the purpose of performing  
3 childbirths or any establishment operated for the purpose of  
4 performing or inducing any second or third-trimester abortions or  
5 five or more first-trimester abortions per month, and which does  
6 not provide services or other accommodations for patients to stay  
7 more than twenty-three hours within the establishment, provided,  
8 however, that nothing in this definition shall be construed to  
9 include the offices of dentists currently licensed pursuant to  
10 chapter 332, RSMo;

11 (2) "Dentist", any person currently licensed to practice  
12 dentistry pursuant to chapter 332, RSMo;

13 (3) "Department", the department of health and senior  
14 services;

15 (4) "Governmental unit", any city, county or other  
16 political subdivision of this state, or any department, division,  
17 board or other agency of any political subdivision of this state;

18 (5) "Person", any individual, firm, partnership,  
19 corporation, company, or association and the legal successors  
20 thereof;

21 (6) "Physician", any person currently licensed to practice  
22 medicine pursuant to chapter 334, RSMo;

23 (7) "Podiatrist", any person currently licensed to practice  
24 podiatry pursuant to chapter 330, RSMo.