

HS HB 1339 -- INFORMED CONSENT FOR ABORTIONS (Cunningham, 86)

This substitute adds the definitions of "department" and "medical emergency" to the law regarding regulation of abortions. It specifies that the term "next friend" as it relates to consent to abortion for minors does not include another minor child or any person who has a financial interest or personal gain from a minor's decision to have an abortion.

The substitute revises a penalty provision pertaining to the performance of actions contrary to current law and the nonperformance of required actions under current law. It establishes the defense of performing or not performing an action because of a medical emergency. Under current law, a physician who performs an abortion and does not have surgical privileges at a hospital that offers obstetrical or gynecological care is guilty of a class B felony. The substitute specifies that a physician who performs an abortion and does not have clinical privileges to provide obstetrical or gynecological care at a hospital within 30 miles of the location where the abortion is performed is guilty of a class B felony.

The substitute also prohibits a person from intentionally causing, aiding, or assisting a minor to obtain an abortion without consent from a parent or a judicial decree. Any person who is subject to the jurisdiction of the state of Missouri and violates this provision will be civilly liable to persons individually adversely affected by the action. If civil liability is established, a court may award damages, including compensation for emotional injury, attorney fees, and court costs to any person adversely affected. However, damages may not be awarded to any person who has committed rape or incest or has knowingly allowed rape or incest to be committed against a minor who obtains an abortion.

The substitute does not allow a person to assert as a defense a claim that the abortion was performed in accordance with the required consent of the state or the place where the abortion was performed. The substitute also prohibits an unemancipated minor from having the capacity to consent to any action in violation of the substitute or Section 188.028, RSMo.

A court may enjoin conduct in violation of the substitute upon a petition by the Attorney General, a prosecuting attorney, a circuit attorney, or a person adversely affected or who may be adversely affected. In order for a court to enjoin any violation, the substitute requires that there must be a showing that the conduct has occurred in the past and that it is not unreasonable to expect that it will be repeated or that it is reasonably anticipated to occur in the future.

The substitute also adds establishments that perform or induce second- or third-trimester abortions or five or more first-trimester abortions per month to the definition of "ambulatory surgical center" for the purpose of regulating these centers.

FISCAL NOTE: No impact on state funds in FY 2005, FY 2006, and FY 2007.