

SECOND REGULAR SESSION

HOUSE BILL NO. 1472

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CUNNINGHAM (86) (Sponsor), COX, NIEVES, RUESTMAN,
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DAVIS AND COOPER (155) (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

3711L.02I

AN ACT

To repeal sections 188.015, 188.027, and 188.039, RSMo, and to enact in lieu thereof four new sections relating to informed consent for abortions.

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

Section A. Sections 188.015, 188.027, and 188.039, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 188.015, 188.027, 188.039, and
3 188.077, to read as follows:

188.015. As used in this chapter, the following terms mean:

- 2 (1) "Abortion", [the intentional destruction of the life of an embryo or fetus in his or her
3 mother's womb or the intentional termination of the pregnancy of a mother with an intention
4 other than to increase the probability of a live birth or to remove a dead or dying unborn child]
5 **the act of using or prescribing any instrument, medicine, drug, or any other substance,**
6 **device, or means with the intent to terminate the clinically diagnosable pregnancy of a**
7 **woman with knowledge that the termination by such means will, with reasonable**
8 **likelihood, cause the death of the unborn child. Such use, prescription, or means is not an**
9 **abortion if done with the intent to:**
- 10 (1) **Save the life or preserve the health of an unborn child;**
11 (2) **Remove a dead unborn child caused by spontaneous abortion; or**
12 (3) **Remove an ectopic pregnancy;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (2) "Abortion facility", [a] **any public or private** clinic, physician's office, or any other
14 place or facility in which abortions are performed or induced other than a hospital;

15 (3) **"Auscultation", the act of listening for sounds made by internal organs of the**
16 **fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer and fetal heart**
17 **rate (FHR) monitor;**

18 (4) "Conception", the fertilization of the ovum of a female by a sperm of a male;

19 [(4)] (5) "Department", the department of health and senior services;

20 [(5)] (6) "Gestational age", length of pregnancy as measured from the first day of the
21 woman's last menstrual period;

22 [(6)] (7) "Medical emergency", a condition which, on the basis of a physician's good faith
23 clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate
24 the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which
25 a delay will create a serious risk of substantial and irreversible impairment of a major bodily
26 function of the pregnant woman;

27 [(7)] (8) "Physician", any person licensed to practice medicine in this state by the state
28 board of registration for the healing arts;

29 [(8)] (9) **"Pregnant" or "pregnancy", that female reproductive condition of having**
30 **an unborn child in the mother's uterus;**

31 (10) **"Qualified person", an agent of a physician who is a psychologist, licensed**
32 **social worker, licensed professional counselor, registered nurse, or physician;**

33 (11) "Unborn child", the offspring of human beings from the moment of conception until
34 birth and at every stage of its biological development, including the human conceptus, zygote,
35 morula, blastocyst, embryo, and fetus;

36 [(9)] (12) **"Ultrasound", the use of ultrasonic waves for diagnostic or therapeutic**
37 **purposes, specifically to monitor a developing fetus;**

38 (13) "Viability", that stage of fetal development when the life of the unborn child may
39 be continued indefinitely outside the womb by natural or artificial life-supportive systems.

188.027. 1. No abortion shall be performed **or induced** except with the prior,
2 **voluntary**, informed and written consent freely given of the pregnant woman. **Except in the**
3 **case of a medical emergency, consent to an abortion is voluntary if and only if the**
4 **requirements in section 188.039 are met and:**

5 (1) **At least twenty-four hours prior to the performance of the abortion, the**
6 **physician who is to perform the abortion on the pregnant woman or the referring**
7 **physician or qualified person assisting the physician has informed the woman, orally and**
8 **in person, of the following:**

9 (a) That fetal ultrasound imaging and auscultation of fetal heart tone services are
10 available that enable a pregnant woman to view the image and hear the heartbeat of her
11 unborn child before the abortion is performed; and

12 (b) That she has the right to view an active ultrasound of the unborn child and hear
13 the heartbeat of the unborn child if the heartbeat is audible;

14 (2) At the woman's request, the physician or qualified person assisting the
15 physician shall, at least twenty-four hours prior to the performance of the abortion:

16 (a) Provide the real-time ultrasound image to the pregnant woman for her to view
17 and auscultation of fetal heart tone for her to hear or, alternatively;

18 (b) Provide a list of healthcare providers, facilities, and clinics that offer to perform
19 ultrasounds free of charge. The list shall be arranged geographically and shall include the
20 name, address, hours of operation, and telephone number of each listed entity;

21 (3) The active ultrasound image shall be of a quality consistent with standard
22 medical practice in the community, shall contain the dimensions of the unborn child, and
23 shall accurately portray the presence of external members and internal organs, if present
24 or viewable, of the unborn child;

25 (4) The auscultation of fetal heart tone shall be of a quality consistent with standard
26 medical practice in the community;

27 (5) At least twenty-four hours prior to the performance of the abortion, a physician
28 or qualified person assisting the physician shall obtain the woman's signature on a
29 certification from stating the following:

30 (a) That the woman has been informed that the fetal ultrasound imaging and
31 auscultation of fetal heart tone services are available that enable a pregnant woman to view
32 the image and hear the heartbeat of her unborn child;

33 (b) That she has been informed that she has a right to view the active ultrasound
34 image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is
35 audible; and

36 (c) That the woman either:

37 a. Requested ultrasound imaging and auscultation of fetal heart tone services and
38 received the requested services or was provided with the list of entities outlined in
39 subdivision (2) of this subsection; or

40 b. Opted not to receive ultrasound imaging and auscultation of fetal heart tone
41 services;

42 (6) Before the abortion is performed or induced, the physician who is to perform
43 or induce the abortion shall receive a copy of the written certification prescribed in

44 **subdivision (5) of this subsection. The physician shall retain a copy of the signed**
45 **certification form in the woman's medical record; and**

46 **(7) The department of health and senior services shall enforce the provisions of this**
47 **subsection at all facilities that provide abortion services.**

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

6 2. Except in the case of medical emergency, no person shall perform or induce an
7 abortion unless at least twenty-four hours prior thereto a treating physician has conferred with
8 the patient and discussed with her the indicators and contraindicators, and risk factors including
9 any physical, psychological, or situational factors for the proposed procedure and the use of
10 medications, including but not limited to mifepristone, in light of her medical history and
11 medical condition. For an abortion performed or an abortion induced by a drug or drugs, such
12 conference shall take place at least twenty-four hours prior to the writing or communication of
13 the first prescription for such drug or drugs in connection with inducing an abortion. Only one
14 such conference shall be required for each abortion.

15 3. The patient shall be evaluated by a treating physician during the conference for
16 indicators and contraindicators, risk factors including any physical, psychological, or situational
17 factors which would predispose the patient to or increase the risk of experiencing one or more
18 adverse physical, emotional, or other health reactions to the proposed procedure or drug or drugs
19 in either the short or long term as compared with women who do not possess such risk factors.

20 4. At the end of the conference, and if the woman chooses to proceed with the abortion,
21 a treating physician shall sign and shall cause the patient to sign a written statement that the
22 woman gave her informed consent freely and without coercion after the physician had discussed
23 with her the indicators and contraindicators, and risk factors, including any physical,
24 psychological, or situational factors. All such executed statements shall be maintained as part
25 of the patient's medical file, subject to the confidentiality laws and rules of this state.

26 5. **In the case of a medical emergency which compels the performance of an**
27 **abortion, the physician shall inform the woman, before the abortion if possible, of the**
28 **medical indications supporting the physician's judgment that an immediate abortion is**
29 **necessary to avert her death or that a twenty-four hour delay will cause substantial and**
30 **irreversible impairment of a major bodily function.**

31 6. The director of the department of health and senior services shall disseminate a model
32 form that physicians may use as the written statement required by this section, but any lack or

33 unavailability of such a model form shall not affect the duties of the physician set forth in
34 subsections 2 to 4 of this section.

2 **188.077. In addition to any other remedies available under state law, failure to**
3 **comply with the requirements of sections 188.027 and 188.039 shall:**

4 **(1) Provide a basis for a civil malpractice action. Any intentional violation of**
5 **sections 188.027 and 188.039 shall be admissible in a civil suit as prima facie evidence of**
6 **a failure to obtain informed consent, which, except in the case of a medical emergency,**
7 **constitutes medical malpractice. When requested, the court shall allow a woman to**
8 **proceed using solely her initials or a pseudonym and may close any proceedings in the case**
9 **and enter other protective orders to preserve the privacy of the woman upon whom the**
10 **abortion was preformed;**

11 **(2) Provide a basis for professional disciplinary action under chapter 538, RSMo;**
12 **and**

13 **(3) Provide a basis for recovery for the woman for the wrongful death of her**
14 **unborn child, whether or not the unborn child was born alive or was viable at the time the**
15 **abortion was performed.**

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