

SECOND REGULAR SESSION

HOUSE BILL NO. 1238

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), KRAUS, DUGGER, NOLTE, ALLEN, COX, MUNZLINGER, BRUNS, BURLISON, McGHEE, GATSCHENBERGER AND SMITH (150) (Co-sponsors).

3479L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof five new sections relating to abortion, with penalty provisions.

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

Section A. Section 188.027, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 188.027, 188.108, 334.245, 565.310, and 565.315, to read as follows:

188.027. **1.** No abortion shall be performed [except with the prior, informed and written consent freely given of the pregnant woman.] **or induced on a woman without her voluntary and informed consent, given freely. Consent to an abortion is voluntary and informed and given freely, if and only if, at least twenty-four hours prior to the abortion:**

(1) The physician who is to perform or induce the abortion has informed the woman, orally, reduced to writing, and in person, of the following:

(a) The name of the physician who will perform or induce the abortion;

(b) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including:

a. A description of the proposed abortion method;

b. The immediate and long-term medical risks associated with the proposed abortion method including, but not limited to, the risks of infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and possible adverse psychological risks associated with the abortion;

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.

16 c. Alternatives to the abortion which shall include making the woman aware that
17 information and materials shall be provided to her detailing such alternatives to the
18 abortion;

19 d. A statement that the physician performing or inducing the abortion is available
20 for any questions concerning the abortion, together with the telephone number that the
21 physician may be later reached to answer any questions that the woman may have; and

22 e. The location of the hospital that offers obstetrical or gynecological care located
23 within thirty miles of the location where the abortion is performed or induced and at which
24 the physician performing or inducing the abortion has clinical privileges and where the
25 woman may receive follow-up care by the physician if complications arise;

26 (c) The gestational age of the unborn child at the time the abortion is to be
27 performed or induced;

28 (d) The anatomical and physiological characteristics of the unborn child at the time
29 the abortion is to be performed or induced;

30 (2) The physician who is to perform or induce the abortion or a qualified
31 professional has presented the woman, in person, printed materials provided by the
32 department or an informational video provided by the department, which describes the
33 probable anatomical and physiological characteristics of the unborn child at two-week
34 gestational increments from conception to full term, including color photographs or images
35 of the developing unborn child at two-week gestational increments. Such descriptions shall
36 include information about brain and heart functions, the presence of external members
37 and internal organs during the applicable stages of development and information on when
38 the unborn child is viable;

39 (3) The physician who is to perform or induce the abortion or a qualified
40 professional has presented the woman, in person, printed materials provided by the
41 department or an informational video provided by the department, which describes the
42 various surgical and drug-induced methods of abortion relevant to the stage of pregnancy,
43 as well as the immediate and long-term medical risks commonly associated with each
44 abortion method including, but not limited to, the risks of infection, hemorrhage, cervical
45 tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a
46 subsequent child to term, and the possible adverse psychological risks associated with an
47 abortion;

48 (4) The physician who is to perform or induce the abortion or a qualified
49 professional shall provide the woman with the opportunity to view an active ultrasound
50 of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible.
51 The woman shall be provided with a geographically indexed list maintained by the

52 department of health and senior services of health care providers, facilities, and clinics that
53 perform ultrasounds, including those that offer ultrasound services free of charge. Such
54 materials shall provide contact information for each provider, facility, or clinic including
55 telephone numbers and, if available, website addresses. Should the woman decide to
56 obtain an ultrasound from a provider, facility, or clinic other than the abortion facility, the
57 woman shall be offered a reasonable time to obtain the ultrasound examination before the
58 date and time set for performing or inducing an abortion. The person conducting the
59 ultrasound shall ensure that the active ultrasound image is of a quality consistent with
60 standard medical practice in the community, contains the dimensions of the unborn child,
61 and accurately portrays the presence of external members and internal organs, if present
62 or viewable, of the unborn child. The auscultation of fetal heart tone must also be of a
63 quality consistent with standard medical practice in the community;

64 (5) Prior to an abortion being performed or induced on an unborn child subsequent
65 to twenty-two weeks of gestational age, the physician who is to perform or induce the
66 abortion or a qualified professional has presented the woman, in person, printed materials
67 provided by the department or an informational video provided by the department that
68 offers information on the possibility of the abortion causing pain to the unborn child. This
69 information shall include, but not be limited to the following:

70 (a) That, by twenty-two weeks of gestational age, the unborn child possesses all the
71 anatomical structures, including spinal cord, nerve tracts, thalamus, and cortex, that are
72 necessary in order to feel pain;

73 (b) A description of the actual steps in the abortion procedure to be performed or
74 induced, and at which steps in the abortion procedure the unborn child is capable of
75 feeling pain;

76 (c) That there is evidence that by twenty-two weeks of gestational age, unborn
77 children seek to evade certain stimuli in a manner that in an infant or an adult would be
78 interpreted as a response to pain;

79 (d) That anesthesia is routinely given to unborn children who are twenty weeks or
80 more gestational age who undergo prenatal surgery;

81 (e) That anesthesia is routinely given to premature children who are twenty weeks
82 or more gestational age who undergo surgery;

83 (f) That anesthesia or analgesic is available in order to minimize or alleviate the
84 pain to the unborn child;

85 (6) The physician who is to perform or induce the abortion or a qualified
86 professional has presented the woman, in person, printed materials provided by the

87 department explaining to the woman alternatives to abortion she may wish to consider.

88 Such materials shall:

89 (a) Identify on a geographical basis public and private agencies available to assist
90 a woman in carrying her unborn child to term, and to assist her in caring for her
91 dependent child or placing her child for adoption, including agencies commonly known
92 and generally referred to as pregnancy resource centers, crisis pregnancy centers,
93 maternity homes, and adoption agencies. Such materials shall provide a comprehensive
94 list by geographical area of the agencies, a description of the services they offer, and the
95 telephone numbers and addresses of the agencies; provided that such materials shall not
96 include any programs, services, organizations or affiliates of organizations that perform
97 or induce, or assist in the performing or inducing, of abortions or refer for abortions;

98 (b) Explain the Missouri alternatives to abortion services program under section
99 188.325, and any other programs and services available to pregnant women and mothers
100 of newborn children offered by state agencies or by private community-based
101 organizations which assist a woman in carrying her unborn child to term and assist her in
102 caring for her dependent child or placing her child for adoption, including, but not limited
103 to prenatal care; maternal health care; newborn or infant care; mental health services;
104 professional counseling services; housing programs; utility assistance; transportation
105 services; food, clothing, and supplies related to pregnancy; parenting skills; educational
106 programs; job training and placement services; drug and alcohol testing and treatment;
107 and adoption assistance;

108 (c) Identify the state website for the Missouri alternatives to abortion services
109 program under section 188.325, and any toll-free number established by the state operated
110 in conjunction with the program;

111 (d) Prominently display the statement: "There are many public and private
112 agencies willing and able to help you carry your child to term, and to assist you and your
113 child after your child is born, whether you choose to keep your child or place him or her
114 for adoption. The state of Missouri encourages you to contact those agencies before
115 making a final decision about abortion. State law requires that your physician or a
116 qualified health professional give you the opportunity to call agencies like these before you
117 undergo an abortion.";

118 (e) Prominently display the statement: "No one can coerce you to have an abortion.
119 It is against the law for a husband, a boyfriend, a parent, a friend, a medical care provider,
120 or any other person to coerce you in any way to have an abortion.";

121 (7) The physician who is to perform or induce the abortion or a qualified
122 professional has presented the woman, in person, printed materials provided by the

department or an informational video provided by the department explaining that the father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. Such materials shall include information on the legal duties and support obligations of the father of a child, including, but not limited to, child support payments, and the fact that paternity may be established by the father's name on a birth certificate or statement of paternity, or by court action. Such printed materials or video shall also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling the family support division within the Missouri department of social services;

(8) The physician who is to perform or induce the abortion or a qualified professional properly and adequately screens the woman for any physical, emotional, or psychological conditions or circumstances which would make the performance or inducement of an abortion contraindicated or against medical advice based on standard medical practice, including but not limited to assessing whether any person may be coercing the woman to seek or obtain an abortion;

(9) The physician who is to perform or induce the abortion or a qualified professional shall inform the woman that she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

2. All information required to be provided to a woman considering abortion by subsection 1 of this section shall be presented to the woman individually and in a private room to protect her privacy, to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that she is not a victim of coerced abortion. Should a woman be unable to read materials provided to her, they shall be read to her. Should a woman need an interpreter to understand the information presented in written materials or informational videos, an interpreter shall be provided to her. Should a woman ask questions concerning any of the information or materials, answers shall be provided in a language she can understand.

3. No abortion shall be performed or induced unless and until the woman upon whom the abortion is to be performed or induced certifies in writing on a checklist form provided by the department that she has been presented all the information required in subsection 1 of this section, that she has been provided the opportunity to view an active ultrasound image of the unborn child and hear the heartbeat of the unborn child if it is

audible, and that she further certifies that she gives her voluntary and informed consent, freely and without coercion, to the abortion procedure.

4. No abortion shall be performed or induced on an unborn child of twenty-two weeks gestational age or more unless and until the woman upon whom the abortion is to be performed or induced has been provided the opportunity to choose to have an anesthetic or analgesic administered to eliminate or alleviate pain to the unborn child caused by the particular method of abortion to be performed or induced. The administration of anesthesia or analgesics shall be performed in a manner consistent with standard medical practice in the community.

5. No physician shall perform or induce an abortion unless and until the physician has obtained from the woman her voluntary and informed consent given freely. If the physician has reason to believe that the woman is a victim of a coerced abortion, the physician or qualified professional shall inform the woman that services are available for victims of coerced abortion, and shall provide her with private access to a telephone and information about such services.

6. No physician shall perform or induce an abortion unless and until the physician has received and signed a copy of the form prescribed in subsection 3 of this section. The physician shall retain a copy of the form in the patient's medical record.

7. In the event of a medical emergency as provided by section 188.075, the physician who performed or induced the abortion shall clearly certify in writing the nature and circumstances of the medical emergency. This certification shall be signed by the physician who performed or induced the abortion, and shall be maintained under section 188.060.

8. No person or entity shall require, obtain, or accept payment for an abortion from or on behalf of a patient until at least twenty-four hours has passed since the time that the information required by subsection 1 has been provided to the patient. Nothing in this subsection shall prohibit a person or entity from notifying the patient that payment for the abortion will be required after the twenty-four-hour period has expired if she voluntarily chooses to have the abortion.

9. The term "qualified professional" as used in this section shall refer to a physician, physician assistant, registered nurse, licensed practical nurse, licensed professional counselor, or licensed social worker, under the supervision of the physician performing or inducing the abortion, and acting within the course and scope of his or her authority provided by law. The provisions of this section shall not be construed to in any way expand the authority otherwise provided by law relating to the licensure, registration, or scope of practice of any such qualified professional.

10. By November 26, 2010, the department shall produce the written materials, signs, informational videos and forms described in this section. Any written materials produced shall be printed in a typeface large enough to be clearly legible. All information shall be presented in an objective, unbiased manner designed to convey only accurate scientific and medical information. The department shall furnish the written materials, signs, informational videos, and forms at no cost and in sufficient quantity to any person who performs or induces abortions, or to any hospital or facility that provides abortions. The department shall make all information required by subsection 1 of this section available to the public through its department website. The department shall maintain a toll-free, twenty-four-hour hotline telephone number where a caller can obtain information on a regional basis concerning the agencies and services described in subsection 1 of this section. No identifying information regarding persons who use the website shall be collected or maintained. The department shall monitor the website on a regular basis to prevent tampering and correct any operational deficiencies.

11. In order to preserve the compelling interest of the state to ensure that the choice to consent to an abortion is voluntary and informed, and given freely, the department shall use the procedures for adoption of emergency rules under section 536.025 in order to promulgate all necessary rules, forms and other necessary material to implement this section by November 26, 2010.

188.108. It shall never be a bona fide occupational qualification that an employee or applicant for employment seek or obtain an abortion.

334.245. 1. Notwithstanding any other provision of law to the contrary that may allow a physician to provide services relating to pregnancy, including prenatal, delivery, and postpartum services, no person other than a licensed physician is authorized to perform or induce an abortion.

2. Any person who violates the provisions of this section is guilty of a class B felony.

565.310. As used in this section and section 565.315, the following words and phrases shall 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 dead or dying unborn child;

(2) "Abuse", includes but is not limited to any of the following acts, attempts or threats against another person, whether or not the other person seeks relief under chapter 455 in connection with such abuse:

(a) Intentionally placing or attempting to place another in fear of physical harm;

- 11 (b) Intentionally causing physical harm to another, with or without a deadly
12 weapon;
- 13 (c) Compelling another by force or threat of force to engage in conduct from which
14 the other person has a right to abstain or to abstain from conduct in which the other
15 person has a right to engage;
- 16 (d) Intentionally engaging in a course of conduct that alarms or causes distress to
17 another person and serves no legitimate purpose. The course of conduct must be such as
18 would cause a reasonable adult to suffer substantial emotional distress and must actually
19 cause substantial emotional distress to the person. Such conduct might include, but is not
20 limited to:
- 21 a. Intentionally following another about in a public place;
- 22 b. Peering in the window or lingering outside the residence of another; but not
23 including constitutionally protected activity;
- 24 (e) Causing or attempting to cause another to engage involuntarily in any sexual
25 act by force, threat of force, or duress;
- 26 (f) Intentionally holding, confining, detaining or abducting another person against
27 that person's will;
- 28 (g) Any physical injury, sexual abuse, or emotional abuse inflicted on a child under
29 eighteen years of age other than by accidental means by any person eighteen years of age
30 or older or an emancipated child who resides with the child in the same dwelling unit, or
31 stalking of a child. Discipline including spanking of a child administered in a reasonable
32 manner shall not be construed to be abuse;
- 33 (3) "Being coerced to seek or obtain an abortion", performs an act intended to
34 cause a woman to seek or obtain an abortion against her will, or performs an act
35 conditioned upon or precipitated by a woman disregarding or refusing a demand that she
36 seek or obtain an abortion;
- 37 (4) "Course of conduct", a pattern of conduct composed of two or more acts over
38 a period of time, however short, evidencing a continuity of purpose;
- 39 (5) "Domestic violence", causing or attempting to cause bodily injury to a family
40 or household member, or placing a family or household member by threat of force in fear
41 of imminent physical harm;
- 42 (6) "Family or household member", spouses, former spouses, adults related by
43 blood or marriage, adults who are presently residing together or have resided together in
44 the past, an adult who is or has been in a continuing social relationship of a romantic or
45 intimate nature with the victim, and adults who have a child in common regardless of
46 whether they have been married or have resided together at any time;

47 (7) "Stalking", intentionally and repeatedly engaging in a course of conduct that
48 reasonably causes fear of danger of physical harm to another person, whether or not the
49 other person seeks relief under chapter 455 in connection with such stalking;

50 (8) "Threatening", two or more communications by any means, or a course of
51 conduct, that would cause a reasonable person to believe that the person is likely to act in
52 accordance with the communications or as implied by the course of conduct. Threatening
53 does not include constitutionally protected speech or any generalized statement regarding
54 abortion such as an emotional expression by a family or household member of the woman;

55 (9) "Unborn child", the offspring of human beings from the moment of conception
56 until birth and at every stage of his or her biological development, including the human
57 conceptus, zygote, morula, blastocyst, embryo, and fetus;

58 (10) "Woman", a female of any age.

565.315. 1. Any person who knowingly performs or induces or assists in
2 performing or inducing an abortion on a woman, with knowledge that the predominant
3 reason the woman is seeking or obtaining the abortion is that the woman is being coerced
4 to seek or obtain an abortion, is guilty of a class C felony.

5 2. Whenever a physician, abortion facility, hospital, or other health care provider
6 has reasonable cause to suspect that a woman is being coerced to seek or obtain an
7 abortion and the woman is:

8 (1) A child as defined in section 210.110, a report of suspected abuse shall be made
9 to the department of social services under section 210.115;

10 (2) A vulnerable person as defined in section 630.005, a report of a suspected abuse
11 shall be made to the department of mental health under sections 565.218 and 630.163;

12 (3) An adult with a disability as defined by "eligible adult" in section 660.250, a
13 report of suspected abuse shall be made to the department of health and senior services
14 under sections 198.070, 565.188, and 660.255;

15 (4) An adult who has been subject to abuse by a present or former adult family or
16 household member, or who has been the victim of stalking, the physician, abortion facility,
17 hospital, or other health care provider shall provide the woman with information on orders
18 of protection under sections 455.010 to 455.085.

19 3. Under the provisions of chapter 188, or any other provision of law requiring that
20 a woman give her consent freely prior to an abortion, whenever a physician knows that the
21 predominant reason the woman is seeking or obtaining an abortion is that the woman is
22 being coerced to have an abortion, the physician shall certify that the woman lacks the
23 consent required by law.

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