

HCS HB 1238 -- ABORTIONS

SPONSOR: Davis

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Children and Families by a vote of 7 to 4.

This substitute changes the laws regarding consent requirements for obtaining an abortion, reporting abortions, and immunity from liability for pharmacies prescribing drugs or devices that cause an abortion and creates the crime of coercing an abortion.

CONSENT REQUIREMENTS FOR OBTAINING AN ABORTION

Abortions cannot be performed or induced without the voluntary and informed consent given freely and without coercion of the woman at least 24 hours prior to the abortion. The physician performing or inducing the abortion must provide orally and in writing:

- (1) The physician's name;
- (2) Medically accurate information including a description of the proposed abortion method, the medical risks, alternatives to the abortion, and follow-up care information;
- (3) The gestational age of the unborn child; and
- (4) The anatomical and physiological characteristics of the unborn child.

The physician performing or inducing the abortion or a qualified professional must:

- (1) Provide the pregnant woman with printed or video materials from the Department of Health and Senior Services that describe the anatomical and physiological characteristics of the unborn child's brain and heart functions, extremities, and internal organs; various methods of abortion and the risks associated with each method; the possibility of causing pain to the unborn child; alternatives to abortion; and that the father of an unborn child is liable to provide child support, even if he has offered to pay for an abortion. The materials must be available from the department by November 30, 2010, and must be legible, objective, unbiased, and scientifically accurate. All information provided to the pregnant woman must be given to her in a private room to ensure privacy, confidentiality, and no fear of coercion. If needed, an interpreter will be provided. All information must be provided at least 24 hours before payment for an abortion can be accepted;

(2) Provide the woman at least 24 hours prior to the abortion with a geographically indexed list maintained by the department of health care providers, facilities, and clinics where she would have an opportunity to view an ultrasound and hear the heartbeat of the unborn child. The list is to indicate those that provide the services free of charge;

(3) Explain that coercing a pregnant woman to get an abortion is illegal and she is free to withhold or withdraw her consent to the abortion at any time without fear of losing treatment and assistance benefits; and

(4) Prominently display statements encouraging a pregnant woman seeking an abortion to contact agencies that help women carry an unborn child to full term and that no one can coerce a person to have an abortion.

The woman must certify in writing on a checklist form provided by the department that she has received all of the required materials; had an opportunity to view an active ultrasound image of the unborn child and hear the heartbeat; and given her voluntary and informed consent, freely and without coercion, to the abortion procedure. No abortion will be performed or induced on an unborn child of 22 weeks gestational age or older unless the mother is given the opportunity to have a pain alleviating drug administered to the child. The physician must retain a copy of the form in the patient's medical record.

In the event of a medical emergency that results in an abortion, the physician must certify in writing the nature and circumstances of the emergency; and the certification must be kept in the abortion-performing facility's permanent file for seven years.

All abortion facilities must display a sign that notifies a pregnant woman that it is illegal to coerce a woman to have an abortion.

The department must maintain a toll-free, confidential, 24-hour hotline telephone number for callers to obtain regional information about abortions, risks, and alternatives to abortions and make the information available on the department's web site.

An employer cannot institute an occupational qualification that an employee or applicant seek or obtain an abortion.

Only licensed physicians can perform or induce an abortion. Anyone violating this provision will be guilty of a class B felony.

A person commits the crime of coercing an abortion if the person knowingly coerces a woman to have an abortion by:

- (1) Committing, attempting to commit, or conspiring to commit an unlawful act against her, her family, or a household member;
- (2) Assaulting, stalking, or perpetrating an act of domestic violence against her;
- (3) Forcibly or without her knowledge administering to or causing a woman to ingest any poison, drug, or other substance intended to cause an abortion or attempting or threatening to do so;
- (4) Terminating, attempting to terminate, or threatening to terminate her employment;
- (5) Discharging, attempting to discharge, or threatening to discharge or changing, attempting to change, or threatening to change her employment compensation terms, conditions, or privileges of employment; or
- (6) Revoking, attempting to revoke, or threatening to revoke a public or private college scholarship.

A person will be guilty of coercing an abortion if he or she performs a prohibited act designed to cause a woman to seek an abortion against her will or commits a prohibited act in retaliation for a woman's refusal to have an abortion. The offender will be subject to:

- (1) A class A felony with a maximum prison term of 10 years, a fine of up to \$10,000, or both when the offense committed was a class A felony;
- (2) A class A felony when the offense committed was a class B felony;
- (3) A class B felony when the offense committed was a class C felony;
- (4) A class C felony when the offense committed was a class D felony;
- (5) A class D felony when the offense committed was a class A misdemeanor; or
- (6) A class A misdemeanor when the offense committed was a class B or class C misdemeanor or an infraction.

Any person who performs or induces an abortion and knows that the pregnant woman has been coerced will be guilty of a class C felony, except in the case of a medical emergency. If the abortion provider has cause to believe that a woman has been a victim of a coerced abortion and the victim is:

- (1) Younger than 18 years of age, a report of suspected abuse must be made to the Department of Social Services;
- (2) A person in the care or custody of the Department of Mental Health, a report of suspected abuse must be made to the department;
- (3) A person 60 years of age or older who needs assistance to perform activities to meet his or her essential human needs, a report of suspected abuse must be made to the Department of Health and Senior Services; or
- (4) An adult who has been abused or stalked by a present or former family or household member, the abortion provider must give the woman information about orders of protection.

If an individual younger than 18 years of age who has not obtained a court-ordered consent to an abortion seeks to obtain an abortion, the facility or physician who would perform or induce the abortion must notify the prosecuting attorney for the county in which the abortion procedure is to be performed within one business day before the abortion. If an abortion is performed or induced, a tissue sample must be retained by the facility for DNA identification purposes.

REPORTING ABORTIONS

The substitute changes the requirements for reporting abortions to the Department of Health and Senior Services. The report which the attending physician completes after performing or inducing an abortion must contain:

- (1) Information required by the United States Standard Report of Induced Termination of Pregnancy;
- (2) Information regarding the type of abortion procedure used and any drugs that were taken; and
- (3) The reason the pregnant woman sought the abortion and any method of family planning the pregnant woman was using when she became pregnant if the information was provided by the woman. Information provided by the woman must be voluntary, but the abortion facility or physician should make all reasonable efforts to collect the information and should no way discourage the woman

from providing it.

The department must add non-identifying statistical data to its annual report regarding post-abortion care and the weekly gestational age of the unborn child when the abortion was performed. A person who knowingly violates the confidentiality of any reports, records, or documents maintained by the hospital or abortion facility or received by the department involving an abortion will be guilty of a class D felony.

IMMUNITY FROM LIABILITY FOR PHARMACIES

The substitute specifies that no licensed pharmacy can be required to perform, assist, recommend, refer to, or participate in any act or service in connection with any drug or device that causes a pregnancy to end prematurely resulting in an abortion and that it will be immune from civil and criminal liability; license denial, revocation, or suspension; or public assistance ineligibility for refusing to do any of those activities.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Could exceed \$755,119 in FY 2011, Could exceed \$893,496 in FY 2012, and Could exceed \$917,301 in FY 2013. No impact on Other State Funds in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that women are traumatized by an abortion and need proper screening for risk factors prior to obtaining informed consent. Without accurate screening, it is impossible for medical staff to properly advise about potential risks. Every woman should receive standard information, but in addition to that, every woman needs further information based on her own unique background. Basic responsibility rests with the physician; and if a physician does not do his or her job right, he or she should be subject to liability. Psycho-social screening should be done. Proper screening is not a ban on abortions, but an attempt to get the right information to the woman. Many abortion providers have compromised the standard of care in order to increase their profits.

Testifying for the bill were Representative Davis; Paula Tally; Dr. Rachel MacNair; Dr. David Reardon, Elliot Institute; Missouri Right to Life; and Concerned Women for America of Missouri.

OPPOSERS: Those who oppose the bill say that the legal ramifications of the bill are unconstitutional given the United States Supreme Court's ruling in Roe v. Wade. The bill will exact exorbitant paternalism by removing the woman's ability to give informed consent and giving the physician a veto power, which is inconsistent with Roe v. Wade. The bill is based on incorrect science and robs women of choice. Abortion Trauma

Syndrome has been debunked in three separate studies, and instead, what most women feel is relief. There is no link between suicide and abortion. If a woman was depressed and abused before her abortion, she will probably be depressed and abused after her abortion.

Testifying against the bill were NARAL Pro-Choice Missouri; and Planned Parenthood Affiliates in Missouri.