

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1192
97TH GENERAL ASSEMBLY

4105H.05P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 188.028, RSMo, and to enact in lieu thereof two new sections relating to abortion.

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

Section A. Section 188.028, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.028 and 188.125, to read as follows:

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

(1) The attending physician has secured the informed written consent of the minor and one parent or guardian **and the consenting parent or guardian of the minor has notified any other custodial parent or guardian in writing at least five days prior to the abortion. For purposes of this subdivision, "custodial parent" means a parent in an intact family or any parent of a minor who has been awarded sole or joint physical custody of such minor by a court of competent jurisdiction. Custodial parent does not include any parent who has been convicted of sexual abuse or a sexual offense against a minor, physical assault of a minor, a person against whom an order of protection has been entered, or a parent whose custodial or parental rights have been terminated by a court of competent jurisdiction;** or

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

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

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.

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

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

23 (1) The minor or next friend shall make an application to the juvenile court which shall
24 assist the minor or next friend in preparing the petition and notices required pursuant to this
25 section. The minor or the next friend of the minor shall thereafter file a petition setting forth the
26 initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or,
27 if the minor's parents are deceased and no guardian has been appointed, any other person
28 standing in loco parentis of the minor; that the minor has been fully informed of the risks and
29 consequences of the abortion; that the minor is of sound mind and has sufficient intellectual
30 capacity to consent to the abortion; that, if the court does not grant the minor majority rights for
31 the purpose of consent to the abortion, the court should find that the abortion is in the best
32 interest of the minor and give judicial consent to the abortion; that the court should appoint a
33 guardian ad litem of the child; and if the minor does not have private counsel, that the court
34 should appoint counsel. The petition shall be signed by the minor or the next friend;

35 (2) A hearing on the merits of the petition, to be held on the record, shall be held as soon
36 as possible within five days of the filing of the petition. If any party is unable to afford counsel,
37 the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the
38 hearing, the court shall hear evidence relating to the emotional development, maturity, intellect
39 and understanding of the minor; the nature, possible consequences, and alternatives to the
40 abortion; and any other evidence that the court may find useful in determining whether the minor
41 should be granted majority rights for the purpose of consenting to the abortion or whether the
42 abortion is in the best interests of the minor;

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

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

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

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

49 (4) If the petition is allowed, the informed consent of the minor, pursuant to a court grant
50 of majority rights, or the judicial consent, shall bar an action by the parents or guardian of the
51 minor on the grounds of battery of the minor by those performing the abortion. The immunity
52 granted shall only extend to the performance of the abortion in accordance herewith and any

53 necessary accompanying services which are performed in a competent manner. The costs of the
54 action shall be borne by the parties;

55 (5) An appeal from an order issued under the provisions of this section may be taken to
56 the court of appeals of this state by the minor or by a parent or guardian of the minor. The notice
57 of intent to appeal shall be given within twenty-four hours from the date of issuance of the order.
58 The record on appeal shall be completed and the appeal shall be perfected within five days from
59 the filing of notice to appeal. Because time may be of the essence regarding the performance of
60 the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate
61 review of cases appealed under this section.

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

**188.125. 1. It is the intent of the general assembly to acknowledge the rights of an
2 alternatives-to-abortion agency and its officers, agents, employees, and volunteers to freely
3 assemble and to freely engage in religious practices and speech without governmental
4 interference and that the constitutions and laws of the United States and the state of
5 Missouri shall be interpreted, construed, applied, and enforced to fully protect such rights.**

**6 2. A political subdivision of this state is preempted from enacting, adopting,
7 maintaining, or enforcing any order, ordinance, rule, regulation, policy, or other similar
8 measure that prohibits, restricts, limits, controls, directs, interferes with, or otherwise
9 adversely affects an alternatives-to-abortion agency or its officers, agents, employees, or
10 volunteers' assembly, religious practices, or speech, including but not limited to counseling,
11 referrals, or education of, advertising or information to, or other communications with,
12 clients, patients, other persons, or the public.**

**13 3. Nothing in this section shall preclude or preempt a political subdivision of this
14 state from exercising its lawful authority to regulate zoning or land use or to enforce a
15 building or fire code regulation, provided that such political subdivision treats an
16 alternatives-to-abortion agency in the same manner as a similarly situated agency and that
17 such authority is not used to circumvent the intent of this section.**

**18 4. In any action to enforce the provisions of this section, a court of competent
19 jurisdiction may order injunctive relief, recovery of damages, or both, as well as payment
20 of reasonable attorney's fees, costs, and expenses. The remedies set forth shall not be
21 deemed exclusive and shall be in addition to any other remedies permitted by law.**

22 5. As used in this section, "alternatives-to-abortion agency" means:

- 23 **(1) A maternity home as defined in section 135.600;**
- 24 **(2) A pregnancy resource center as defined in section 135.630; or**
- 25 **(3) An agency or entity that has the primary purpose of providing services or**
26 **counseling to pregnant women to assist such women in carrying their unborn children to**
27 **term instead of having abortions and to assist such women in caring for their dependent**
28 **children or placing their children for adoption, as described in section 188.325.**

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