

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1192
97TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, May 6, 2014, with recommendation that the Senate Committee Substitute do pass.

4105S.06C

TERRY L. SPIELER, Secretary.

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Section A. Section 188.028, RSMo, is repealed and two new sections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

188.028. 1. **Except in the case of a medical emergency**, no person
2 shall knowingly perform **or induce** an abortion upon a pregnant woman under
3 the age of eighteen years unless:

4 (1) The attending physician has secured the informed written consent of
5 the minor and one parent or guardian **and the consenting parent or**
6 **guardian of the minor has notified any other custodial parent or**
7 **guardian in writing prior to the securing of the informed written**
8 **consent of the minor and one parent or guardian. For purposes of this**
9 **subdivision, "custodial parent" means any parent of a minor in a family**
10 **in which the parents have not separated or dissolved their marriage,**
11 **or any parent of a minor who has been awarded joint legal custody or**
12 **joint physical custody of such minor by a court of competent**
13 **jurisdiction. Notice shall not be required for any parent or guardian:**

14 (a) **Who has been found guilty of any offense in violation of**
15 **chapter 565, relating to offenses against the person, chapter 566,**
16 **relating to sexual offenses, chapter 567, relating to prostitution,**
17 **chapter 568, relating to offenses against the family, or chapter 573,**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 related to pornography and related offenses, when a child was a victim;

19 (b) Who has been found guilty of any offense in any other state
20 or foreign country, or under federal, tribal, or military jurisdiction
21 when a child was a victim, which would be a violation of chapter 565,
22 566, 567, 568, or 573 if committed in this state;

23 (c) Who is listed on the child abuse or neglect central registry
24 under sections 210.109 to 210.183 or on the sexual offender registry
25 under sections 589.400 to 589.425;

26 (d) Against whom an order of protection has been issued,
27 including a foreign order of protection given full faith and credit in
28 this state under section 455.067;

29 (e) Whose custodial, parental, or guardianship rights have been
30 terminated by a court of competent jurisdiction; or

31 (f) Whose whereabouts are unknown after reasonable inquiry, is
32 a fugitive from justice, is habitually in an intoxicated or drugged
33 condition, or who has been declared mentally incompetent or
34 incapacitated by a court of competent jurisdiction; or

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

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

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

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

48 (1) The minor or next friend shall make an application to the juvenile
49 court which shall assist the minor or next friend in preparing the petition and
50 notices required pursuant to this section. The minor or the next friend of the
51 minor shall thereafter file a petition setting forth the initials of the minor; the
52 age of the minor; the names and addresses of each parent, guardian, or, if the
53 minor's parents are deceased and no guardian has been appointed, any other

54 person standing in loco parentis of the minor; that the minor has been fully
55 informed of the risks and consequences of the abortion; that the minor is of sound
56 mind and has sufficient intellectual capacity to consent to the abortion; that, if
57 the court does not grant the minor majority rights for the purpose of consent to
58 the abortion, the court should find that the abortion is in the best interest of the
59 minor and give judicial consent to the abortion; that the court should appoint a
60 guardian ad litem of the child; and if the minor does not have private counsel,
61 that the court should appoint counsel. The petition shall be signed by the minor
62 or the next friend;

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

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

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

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

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

80 (4) If the petition is allowed, the informed consent of the minor, pursuant
81 to a court grant of majority rights, or the judicial consent, shall bar an action by
82 the parents or guardian of the minor on the grounds of battery of the minor by
83 those performing **or inducing** the abortion. The immunity granted shall only
84 extend to the performance **or inducement** of the abortion in accordance
85 herewith and any necessary accompanying services which are performed in a
86 competent manner. The costs of the action shall be borne by the parties;

87 (5) An appeal from an order issued under the provisions of this section
88 may be taken to the court of appeals of this state by the minor or by a parent or
89 guardian of the minor. The notice of intent to appeal shall be given within

90 twenty-four hours from the date of issuance of the order. The record on appeal
91 shall be completed and the appeal shall be perfected within five days from the
92 filing of notice to appeal. Because time may be of the essence regarding the
93 performance **or inducement** of the abortion, the supreme court of this state
94 shall, by court rule, provide for expedited appellate review of cases appealed
95 under this section.

96 3. If a minor desires an abortion, then she shall be orally informed of and,
97 if possible, sign the written consent required [by section 188.039] **under this**
98 **chapter** in the same manner as an adult person. No abortion shall be performed
99 **or induced** on any minor against her will, except that an abortion may be
100 performed **or induced** against the will of a minor pursuant to a court order
101 described in subdivision (4) of subsection 1 of this section that the abortion is
102 necessary to preserve the life of the minor.

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

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

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

23 4. In any action to enforce the provisions of this section, a court

24 of competent jurisdiction may order injunctive relief, recovery of
25 damages, or both, as well as payment of reasonable attorney's fees,
26 costs, and expenses. The remedies set forth shall not be deemed
27 exclusive and shall be in addition to any other remedies permitted by
28 law.

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

31 (1) A maternity home as defined in section 135.600;

32 (2) A pregnancy resource center as defined in section 135.630; or

33 (3) An agency or entity that has the primary purpose of
34 providing services or counseling to pregnant women to assist such
35 women in carrying their unborn children to term instead of having
36 abortions and to assist such women in caring for their dependent
37 children or placing their children for adoption, as described in section
38 188.325.

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