

HJR 97 -- ABORTION

SPONSOR: Mayhew

This constitutional amendment, if approved by the voters, repeals Article I, Section 36, of the Missouri constitution, titled "The Right to Reproductive Freedom Initiative", and establishes provisions relating to abortion.

The amendment prohibits an abortion on a pregnant woman who is under fifteen years old unless the physician has secured the informed and written consent of the minor and one parent or guardian, and the consenting parent has notified any other custodial parent in writing. The bill lists situations in which the notice of another custodial parent is not required, as well as clarifies that notice is not required if the minor is emancipated.

The bill also prohibits an abortion on a pregnant woman or pregnant minor without her voluntary informed consent, which, except in the case of an emergency situation, requires that:

(1) The seeker of the abortion is told certain information by a physician, referring physician, physician assistant, or registered nurse at least 24 hours prior to the abortion, including associated medical risks of the abortion procedure and with carrying the child to term, the gestational age of the unborn child, and that consent can be withdrawn for an abortion;

(2) The seeker is instructed by a physician, referring physician, physician assistant, or registered nurse that she has the right to review printed materials developed by the Department of Health and Senior Services that describe the unborn child, alternatives to abortion, and information on finding medical assistance if she has changed her mind following the taking of mifepristone. If the person chooses to review the materials, they must be provided to her 24 hours prior to the abortion or mailed at least 72 hours before. The seeker must also be instructed that she has the right to view a comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by qualified providers; and

(3) If an abortion is to be performed using mifepristone, the seeker is given a notice at least 24 hours prior to the abortion that states "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on

the website of the Missouri Department of Health and Senior Services.".

The person providing the information to the person seeking an abortion is only deemed qualified to do so if he or she has had training in each of the following subjects: sexual and reproductive health, abortion technology, contraceptive technology, short-term counseling skills, community resources and referral, and informed consent.

The amendment describes the process by which ultrasound images must be displayed prior to the performance of an abortion but does not require the woman to view the displayed images.

This amendment requires, at least one hour prior to the performance of an abortion, the evaluation of the woman by a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, social worker, or licensed professional counselor in order to:

- (1) Identify if the woman felt pressured or coerced into getting an abortion;
- (2) Identify the presence of any risk factors associated with abortion and, if the woman is a minor, mandatory reporters must follow reporting laws and obligations under State law as well as the bill's specifications;
- (3) Inform the woman and the physician performing the abortion the results of this evaluation; and
- (4) Inform the pregnant woman, if any risk factors are identified during the evaluation, of each complication associated with each risk factor, and any quantifiable risk rates when relevant data exists.

The physician performing the abortion is required to have formed a reasonable medical judgment that the risk factors associated with abortion for patients with similar risk factors to the patient's identified risk factors are negligible, that continuing the pregnancy would involve risk of physical or mental injury to the woman more than if the pregnancy were to be terminated, or continuing the pregnancy would involve less risk than if the pregnancy were to be terminated.

The woman and her consenting parent must certify in writing prior to the abortion that the information described above has been furnished to her, she has been informed of her right to view that information, that the ultrasound requirements, if an ultrasound is

performed, have been followed, and the physician performing must retain a copy in the woman's medical record.

The amendment requires the Department to publish the following printed materials:

(1) Geographically indexed materials to provide information on public and private agencies and services available to assist women through pregnancy, upon childbirth, and while the child is dependent;

(2) Materials designed to provide information on the anatomical and physiological characteristics of unborn children at two-week gestational increments from the time the woman can be known to be pregnant to full term. These materials are also required to contain information describing the methods of abortion procedures commonly employed, their associated medical risks, the possible detrimental psychological effects thereof, and the medical risks associated with abortion as well as carrying a child to term;

(3) A list of health care providers, facilities, and clinics that offer to have ultrasounds performed by qualified providers;

(4) Materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone, which must include the following statement: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late."; and

(5) Materials that will assist the woman in finding a medical professional that can help her continue the pregnancy after taking mifepristone.

The amendment requires the Department to make available on its website, as well as update regularly, geographically indexed materials designed to provide information on agencies with services available to assist with mental health concerns following a risk factor evaluation, a toll-free and 24-hour telephone number to obtain the names of the agencies and the services provided, and materials designed to provide information that a woman may still have a viable pregnancy after taking mifepristone, which must include the following statement: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late."

The Department will also be required to prescribe a reporting form that must be used to report every attempt at continuing a woman's pregnancy after taking mifepristone, such form must include information specified in the bill and must be signed by the attending medical professional and sent to the Department within fifteen days after each reporting month. The bill specifies the content and requirements for these forms. A physician's failure to complete this form is a class B misdemeanor. The Department must prepare and keep on file compilations of the information submitted on abortion reporting forms and reporting forms on attempts to continue a woman's pregnancy after taking mifepristone, which are to be matters of public record.

When an emergency situation requires the performance of an abortion, the physician must inform the woman prior to the abortion, if practicable, of the medical indications supporting the abortion's necessity to avert her death or the substantial impairment of a bodily function.

The amendment prohibits civil liability from being imposed for failure to comply with certain provisions of this amendment, including the requirement of a written certification that the woman has been informed of her right to view information provided by the Department, unless the Department has published and made available those printed materials at the time the physician is required to inform the woman of her right to review them.

The amendment provides a civil cause of action for any person upon whom an abortion was performed or attempted in violation of the provisions of this amendment, and in every civil action brought, the court must rule whether the anonymity of any woman upon whom an abortion is performed or attempted is to be preserved. The amendment provides for additional remedies, examples of prima facie evidence of professional negligence and rebuttable presumption of full compliance, situations in which the physician must bear the burden of proof as it pertains to determining whether the pregnant woman was capable of independently evaluating the information given to her in accordance with the provisions of this amendment, and other applicable provisions in a civil action.

The amendment prohibits partial-birth or later-term abortions from being performed unless either procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, illness, or injury, including one arising from the pregnancy. While a woman upon whom an unlawful abortion is performed must not be prosecuted under this provision, the intentional and knowing performance of an unlawful partial-birth abortion will result in the automatic suspension and revocation of an attending physician's license to practice medicine in this state; this process will be

enacted upon the filing of criminal charges by the Attorney General or a county attorney.

The amendment prohibits any abortion from being performed after the time at which the unborn child clearly appears to have reached fetal viability, except when necessary to preserve the life of the mother. In any abortion that is performed for such reasons, all reasonable precautions must be taken to ensure the protection of the viable unborn child.

In situations in which a child is born alive as the result of an abortion, all reasonable steps that are consistent with sound medical judgment on the part of the attending physician must be employed to preserve that child's life, and the intentional and knowing violation of these provisions is a class D felony, as is the performing of an abortion by any person other than a licensed physician.

The amendment requires a physician that is performing the abortion to be physically present in the room with the patient at the time of the performance or inducement, and a violation thereof is a class D felony, as is the performing of an abortion by using anything other than accepted medical procedures.

The amendment provides that hospitals are not required to admit any patient for the purposes of performing an abortion, nor be required to allow the performance of an abortion therein, though patients must be informed of such policies. Additionally, no person is required to perform or participate in any abortion, and the refusal to do so is not a basis for civil liability to any person. Any violation of either of these provisions is a class B misdemeanor. A person whose employment has been altered, impaired, or terminated because of his or her refusal to participate in an abortion has the right to injunctive relief.

The sale, transfer, distribution, or giving away of any live or viable aborted child for any form of experimentation is a class C felony, as well as the consenting to, aiding, or abetting of any such action.

No person will knowingly, intentionally, or willfully use any premature infant aborted alive for any type of scientific, research, laboratory, or any other kind of experimentation except as necessary to preserve the life or health of the infant. A violation of this provision is a class D felony.