

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1831 & 1472

94TH GENERAL ASSEMBLY

Reported from the Committee on Health Care Policy April 1, 2008 with recommendation that House Committee Substitute for House Bill Nos. 1831 & 1472 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules April 7, 2008 with recommendation that House Committee Substitute for House Bill Nos. 1831 & 1472 Do Pass with 2 ¹/₂ hours time limit for debate on Perfection.

Taken up for Perfection April 15, 2008. House Committee Substitute for House Bill Nos. 1831 & 1472 ordered Perfected and printed, as amended.

D. ADAM CRUMBLISS, Chief Clerk

4449L.06P

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Section A. Section 188.027, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 188.027, 188.108, 565.305, 565.310, and 565.315, to read as follows: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 and without coercion. Consent to an abortion is voluntary and informed and given freely and without coercion, 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;

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.

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

11 a. **A description of the proposed abortion method;**

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

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

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

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

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

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

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

40 (3) **The physician who is to perform or induce the abortion or a qualified**
41 **professional has presented the woman, in person, printed materials provided by the**
42 **department or an informational video provided by the department, which describes the**
43 **various surgical and drug-induced methods of abortion relevant to the stage of pregnancy,**
44 **as well as the immediate and long-term medical risks commonly associated with each**

45 **abortion method including, but not limited to, the risks of infection, hemorrhage, cervical**
46 **tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a**
47 **subsequent child to term, and the possible adverse psychological risks associated with an**
48 **abortion;**

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

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

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

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

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

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

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

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

86 (6) The physician who is to perform or induce the abortion or a qualified
87 professional has presented the woman, in person, printed materials provided by the
88 department explaining to the woman alternatives to abortion she may wish to consider.
89 Such materials shall:

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

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

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

112 (d) Prominently display the statement: "There are many public and private
113 agencies willing and able to help you carry your child to term, and to assist you and your
114 child after your child is born until twelve months of age, whether you choose to keep your
115 child or place him or her for adoption. The state of Missouri encourages you to contact

116 those agencies before making a final decision about abortion. State law requires that your
117 physician or a qualified health professional give you the opportunity to call agencies like
118 these before you undergo an abortion.";

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

122 (7) The physician who is to perform or induce the abortion or a qualified
123 professional has presented the woman, in person, printed materials provided by the
124 department or an informational video provided by the department explaining that the
125 father of the unborn child is liable to assist in the support of the child, even in instances
126 where he has offered to pay for the abortion. Such materials shall include information on
127 the legal duties and support obligations of the father of a child, including, but not limited
128 to, child support payments, and the fact that paternity may be established by the father's
129 name on a birth certificate or statement of paternity, or by court action. Such printed
130 materials or video shall also state that more information concerning paternity
131 establishment and child support services and enforcement may be obtained by calling the
132 family support division within the Missouri department of social services;

133 (8) The physician who is to perform or induce the abortion or a qualified
134 professional shall inform the woman that it is unlawful for any person to coerce a woman
135 to seek or obtain an abortion;

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

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

151 **3. No abortion shall be performed or induced unless and until the woman upon**
152 **whom the abortion is to be performed or induced certifies in writing on a checklist form**
153 **provided by the department that she has been presented all the information required in**
154 **subsection 1 of this section, that she has been provided the opportunity to view an active**
155 **ultrasound image of the unborn child and hear the heartbeat of the unborn child if it is**
156 **audible, and that she further certifies that she gives her voluntary and informed consent,**
157 **freely and without coercion, to the abortion procedure.**

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

165 **5. No physician shall perform or induce an abortion unless and until the physician**
166 **has obtained from the woman her voluntary and informed consent given freely and**
167 **without coercion. If the physician has reason to believe that the woman is a victim of a**
168 **coerced abortion, the physician or qualified professional shall inform the woman that**
169 **services are available for victims of coerced abortion, and shall provide her with private**
170 **access to a telephone and information about such services.**

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

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

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

184 **9. The term "qualified professional" as used in this section shall refer to a**
185 **physician, physician assistant, registered nurse, licensed practical nurse, licensed**
186 **professional counselor, or licensed social worker, under the supervision of the physician**

187 performing or inducing the abortion, and acting within the course and scope of his or her
188 authority provided by law. The provisions of this section shall not be construed to in any
189 way expand the authority otherwise provided by law relating to the licensure, registration,
190 or scope of practice of any such qualified professional.

191 **10. Every abortion facility shall display signs that contain exclusively the following**
192 **words: "NOTICE: No one can force you to have an abortion. It is against the law for a**
193 **spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in**
194 **any way force you to have an abortion.".** The signs shall be designed and located so that
195 such signs can be easily read and ensure maximum visibility to women who enter the
196 abortion facility considering whether to have an abortion; to women at the abortion facility
197 receiving the information required by this section; and to women at the time that they give
198 their consent to an abortion. The location of such signs in abortion facilities shall be
199 specified by rules promulgated by the department and shall be a condition of licensure of
200 any abortion facility under chapter 197, RSMo. The display of signs under this subsection
201 does not discharge the duty to conduct an individual private consultation with a woman
202 considering abortion under subsection 2 of this section.

203 **11. By November 26, 2008, the department shall produce the written materials,**
204 **signs, informational videos and forms described in this section. Any written materials**
205 **produced shall be printed in a typeface large enough to be clearly legible. All information**
206 **shall be presented in an objective, unbiased manner designed to convey only accurate**
207 **scientific and medical information. All information for the materials shall be supported**
208 **by peer-reviewed data, studies published in reputable medical or scientific journals,**
209 **surgery, obstetrical, gynecologic, anesthesia, medical, biology, neurology, or physiology**
210 **textbooks, practice parameters, hospital protocols, or other materials deemed relevant by**
211 **the department. The department shall furnish the written materials, signs, informational**
212 **videos, and forms at no cost and in sufficient quantity to any person who performs or**
213 **induces abortions, or to any hospital or facility that provides abortions. The department**
214 **shall make all information required by subsection 1 of this section available to the public**
215 **through its department web site. The department shall maintain a toll-free, twenty-four-**
216 **hour hotline telephone number where a caller can obtain information on a regional basis**
217 **concerning the agencies and services described in subsection 1 of this section. No**
218 **identifying information regarding persons who use the web site shall be collected or**
219 **maintained. The department shall monitor the web site on a regular basis to prevent**
220 **tampering and correct any operational deficiencies.**

221 **12. In order to preserve the compelling interest of the state to ensure that the choice**
222 **to consent to an abortion is voluntary and informed, and given freely and without coercion,**

223 the department shall use the procedures for adoption of emergency rules under section
224 536.025, RSMo, in order to promulgate all necessary rules, forms and other necessary
225 material to implement this section by November 26, 2008.

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

565.305. As used in sections 565.305 to 565.315, the following words and phrases
2 shall mean:

3 (1) "Abortion", the intentional destruction of the life of an embryo or fetus in his
4 or her mother's womb or the intentional termination of the pregnancy of a mother with an
5 intention other than to increase the probability of a live birth or to remove a dead or dying
6 unborn child;

7 (2) "Abortion facility", a clinic, physician's office, or any other place or facility in
8 which abortions are performed or induced other than a hospital;

9 (3) "Abuse", includes but is not limited to any of the following acts, attempts or
10 threats against another person, whether or not the other person seeks relief under chapter
11 455, RSMo, in connection with such abuse:

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

13 (b) Intentionally causing physical harm to another, with or without a deadly
14 weapon;

15 (c) Compelling another by force or threat of force to engage in conduct from which
16 the other person has a right to abstain or to abstain from conduct in which the other
17 person has a right to engage;

18 (d) Intentionally engaging in a course of conduct that alarms or causes distress to
19 another person and serves no legitimate purpose. The course of conduct must be such as
20 would cause a reasonable adult to suffer substantial emotional distress and must actually
21 cause substantial emotional distress to the person. Such conduct might include, but is not
22 limited to:

23 a. Intentionally following another about in a public place;

24 b. Peering in the window or lingering outside the residence of another; but not
25 including constitutionally protected activity;

26 (e) Causing or attempting to cause another to engage involuntarily in any sexual
27 act by force, threat of force, or duress;

28 (f) Intentionally holding, confining, detaining or abducting another person against
29 that person's will;

30 (g) Any physical injury, sexual abuse, or emotional abuse inflicted on a child under
31 eighteen years of age other than by accidental means by any person eighteen years of age

32 or older or an emancipated child who resides with the child in the same dwelling unit, or
33 stalking of a child. Discipline including spanking of a child administered in a reasonable
34 manner shall not be construed to be abuse;

35 (4) "Coerces a woman to seek or obtain an abortion", performs an act intended to
36 cause a woman to seek or obtain an abortion against her will, or performs an act
37 conditioned upon or precipitated by a woman disregarding or refusing a demand that she
38 seek or obtain an abortion;

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", the same meaning as such term is defined in section 455.010, RSMo;

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

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

57 (10) "Victim of coerced abortion", the victim of the crime of coercing an abortion,
58 whether or not the victim has reported the crime prior to seeking or obtaining an abortion;

59 (11) "Woman", a female of any age.

565.310. 1. A person commits the crime of coercing an abortion if the person
2 knowingly coerces a woman to seek or obtain an abortion by:

3 (1) Committing, attempting to commit, or conspiring to commit an offense defined
4 by any other statute of this state against the woman or her family or household member;

5 (2) Engaging in abuse or stalking of the woman;

6 (3) Perpetrating an act of domestic violence against the woman;

7 (4) Discharging, attempting to discharge, or threatening to discharge a female
8 employee; or changing, attempting to change, or threatening to change her compensation,
9 terms, conditions, or privileges of employment; or

10 (5) Revoking, attempting to revoke, or threatening to revoke a scholarship awarded
11 to the woman by a public or private institution of higher education.

12 2. Coercing an abortion is a class A misdemeanor if it is done by the commission
13 of any of the acts specified in subdivisions (2) to (5) of subsection 1 of this section and the
14 act is not otherwise an offense defined by any other statute of this state. Coercing an
15 abortion is classified as follows if it is done by the commission of any of the acts specified
16 in subdivisions (1) to (5) of subsection 1 of this section and the act is otherwise an offense
17 defined by any other statute of this state:

18 (1) Class A felony in which the court may impose an additional term of
19 imprisonment not to exceed ten years, or an additional fine not to exceed ten thousand
20 dollars, or both, if the offense committed is a class A felony;

21 (2) Class A felony, if the offense committed is a class B felony;

22 (3) Class B felony, if the offense committed is a class C felony;

23 (4) Class C felony, if the offense committed is a class D felony;

24 (5) Class D felony, if the offense committed is a class A misdemeanor;

25 (6) Class A misdemeanor, if the offense committed is a class B or C misdemeanor
26 or an infraction.

27 3. This section shall not be construed as creating, expanding, or otherwise
28 endorsing a right to an abortion.

565.315. 1. Any person who knowingly performs or induces or assists in performing
2 or inducing an abortion on a woman, with knowledge that the predominant reason the
3 woman is seeking or obtaining the abortion is that the woman is a victim of coerced
4 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 a victim of a coerced abortion and the
7 victim is:

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

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

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

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

20 **3. Under the provisions of chapter 188, RSMo, or any other provision of law**
21 **requiring that a woman give her consent freely and without coercion prior to an abortion,**
22 **whenever a physician knows that the predominant reason the woman is seeking or**
23 **obtaining an abortion is that the woman is a victim of coerced abortion, the physician shall**
24 **certify that the woman lacks the consent required by law.**

✓