

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1307 & 1313

97TH GENERAL ASSEMBLY

5074H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 188.027 and 188.039, RSMo, and to enact in lieu thereof two new sections relating to the required waiting period before having an abortion.

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

Section A. Sections 188.027 and 188.039, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.027 and 188.039, to read as follows:

188.027. 1. Except in the case of medical emergency, no abortion shall be performed 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] **seventy-two** hours prior to the abortion:

(1) The physician who is to perform or induce the abortion or a qualified professional has informed the woman[,] orally, reduced to writing, and **shown the woman the video created by the department of health and senior services in subsection 13 of this section** in person, of the following:

(a) The name of the physician who will perform or induce the abortion;

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

a. A description of the proposed abortion method;

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

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 c. The immediate and long-term medical risks to the woman, in light of the anesthesia
18 and medication that is to be administered, the unborn child's gestational age, and the woman's
19 medical history and medical condition;

20 (c) Alternatives to the abortion which shall include making the woman aware that
21 information and materials shall be provided to her detailing such alternatives to the abortion;

22 (d) A statement that the physician performing or inducing the abortion is available for
23 any questions concerning the abortion, together with the telephone number that the physician
24 may be later reached to answer any questions that the woman may have;

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

29 (f) The gestational age of the unborn child at the time the abortion is to be performed or
30 induced; and

31 (g) The anatomical and physiological characteristics of the unborn child at the time the
32 abortion is to be performed or induced;

33 (2) The physician who is to perform or induce the abortion or a qualified professional
34 has presented the woman, in person, printed materials provided by the department, which
35 describe the probable anatomical and physiological characteristics of the unborn child at
36 two-week gestational increments from conception to full term, including color photographs or
37 images of the developing unborn child at two-week gestational increments. Such descriptions
38 shall include information about brain and heart functions, the presence of external members and
39 internal organs during the applicable stages of development and information on when the unborn
40 child is viable. The printed materials shall prominently display the following statement: "The
41 life of each human being begins at conception. Abortion will terminate the life of a separate,
42 unique, living human being.";

43 (3) The physician who is to perform or induce the abortion or a qualified professional
44 has presented the woman, in person, printed materials provided by the department, which
45 describe the various surgical and drug-induced methods of abortion relevant to the stage of
46 pregnancy, as well as the immediate and long-term medical risks commonly associated with each
47 abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine
48 perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term,
49 and the possible adverse psychological effects associated with an abortion;

50 (4) The physician who is to perform or induce the abortion or a qualified professional
51 shall provide the woman with the opportunity to view at least [twenty-four] **seventy-two** hours
52 prior to the abortion an active ultrasound of the unborn child and hear the heartbeat of the unborn

53 child if the heartbeat is audible. The woman shall be provided with a geographically indexed list
54 maintained by the department of health care providers, facilities, and clinics that perform
55 ultrasounds, including those that offer ultrasound services free of charge. Such materials shall
56 provide contact information for each provider, facility, or clinic including telephone numbers
57 and, if available, website addresses. Should the woman decide to obtain an ultrasound from a
58 provider, facility, or clinic other than the abortion facility, the woman shall be offered a
59 reasonable time to obtain the ultrasound examination before the date and time set for performing
60 or inducing an abortion. The person conducting the ultrasound shall ensure that the active
61 ultrasound image is of a quality consistent with standard medical practice in the community,
62 contains the dimensions of the unborn child, and accurately portrays the presence of external
63 members and internal organs, if present or viewable, of the unborn child. The auscultation of
64 fetal heart tone must also be of a quality consistent with standard medical practice in the
65 community. If the woman chooses to view the ultrasound or hear the heartbeat or both at the
66 abortion facility, the viewing or hearing or both shall be provided to her at the abortion facility
67 at least [twenty-four] **seventy-two** hours prior to the abortion being performed or induced;

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

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

76 (b) A description of the actual steps in the abortion procedure to be performed or
77 induced, and at which steps the abortion procedure could be painful to the unborn child;

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

81 (d) Anesthesia is given to unborn children who are twenty-two weeks or more gestational
82 age who undergo prenatal surgery;

83 (e) Anesthesia is given to premature children who are twenty-two weeks or more
84 gestational age who undergo surgery;

85 (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to
86 the unborn child;

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

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

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

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

111 (d) Prominently display the statement: "There are public and private agencies willing
112 and able to help you carry your child to term, and to assist you and your child after your child is
113 born, whether you choose to keep your child or place him or her for adoption. The state of
114 Missouri encourages you to contact those agencies before making a final decision about abortion.
115 State law requires that your physician or a qualified professional give you the opportunity to call
116 agencies like these before you undergo an abortion.";

117 (7) The physician who is to perform or induce the abortion or a qualified professional
118 has presented the woman, in person, printed materials provided by the department explaining that
119 the father of the unborn child is liable to assist in the support of the child, even in instances
120 where he has offered to pay for the abortion. Such materials shall include information on the
121 legal duties and support obligations of the father of a child, including, but not limited to, child
122 support payments, and the fact that paternity may be established by the father's name on a birth

123 certificate or statement of paternity, or by court action. Such printed materials shall also state
124 that more information concerning paternity establishment and child support services and
125 enforcement may be obtained by calling the family support division within the Missouri
126 department of social services; and

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

131 2. All information required to be provided to a woman considering abortion by
132 subsection 1 of this section shall be presented to the woman individually, **by showing the video**
133 **created by the department of health and senior services under subsection 13 of this section,**
134 in the physical presence of the woman and in a private room, to protect her privacy, to maintain
135 the confidentiality of her decision, to ensure that the information focuses on her individual
136 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that she
137 is not a victim of coerced abortion. Should a woman be unable to read materials provided to her,
138 they shall be read to her. Should a woman need an interpreter to understand the information
139 presented in the written materials, an interpreter shall be provided to her. Should a woman ask
140 questions concerning any of the information or materials, answers shall be provided in a
141 language she can understand.

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

149 4. No abortion shall be performed or induced on an unborn child of twenty-two weeks
150 gestational age or older unless and until the woman upon whom the abortion is to be performed
151 or induced has been provided the opportunity to choose to have an anesthetic or analgesic
152 administered to eliminate or alleviate pain to the unborn child caused by the particular method
153 of abortion to be performed or induced. The administration of anesthesia or analgesics shall be
154 performed in a manner consistent with standard medical practice in the community.

155 5. No physician shall perform or induce an abortion unless and until the physician has
156 obtained from the woman her voluntary and informed consent given freely and without coercion.
157 If the physician has reason to believe that the woman is being coerced into having an abortion,
158 the physician or qualified professional shall inform the woman that services are available for her

159 and shall provide her with private access to a telephone and information about such services,
160 including but not limited to the following:

- 161 (1) Rape crisis centers, as defined in section 455.003;
- 162 (2) Shelters for victims of domestic violence, as defined in section 455.200; and
- 163 (3) Orders of protection, pursuant to chapter 455.

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

167 7. In the event of a medical emergency as provided by section [188.075] **188.039**, the
168 physician who performed or induced the abortion shall clearly certify in writing the nature and
169 circumstances of the medical emergency. This certification shall be signed by the physician who
170 performed or induced the abortion, and shall be maintained under section 188.060.

171 8. No person or entity shall require, obtain, or accept payment for an abortion from or
172 on behalf of a patient until at least [twenty-four] **seventy-two** hours have passed since the time
173 that the information required by subsection 1 **of this section** has been provided to the patient.
174 Nothing in this subsection shall prohibit a person or entity from notifying the patient that
175 payment for the abortion will be required after the [twenty-four-hour] **seventy-two-hour** period
176 has expired if she voluntarily chooses to have the abortion.

177 9. The term "qualified professional" as used in this section shall refer to a physician,
178 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed professional
179 counselor, or licensed social worker, licensed or registered under chapter 334, 335, or 337, acting
180 under the supervision of the physician performing or inducing the abortion, and acting within the
181 course and scope of his or her authority provided by law. The provisions of this section shall not
182 be construed to in any way expand the authority otherwise provided by law relating to the
183 licensure, registration, or scope of practice of any such qualified professional.

184 10. By November 30, 2010, the department shall produce the written materials and forms
185 described in this section. Any written materials produced shall be printed in a typeface large
186 enough to be clearly legible. All information shall be presented in an objective, unbiased manner
187 designed to convey only accurate scientific and medical information. The department shall
188 furnish the written materials and forms at no cost and in sufficient quantity to any person who
189 performs or induces abortions, or to any hospital or facility that provides abortions. The
190 department shall make all information required by subsection 1 of this section available to the
191 public through its department website. The department shall maintain a toll-free,
192 twenty-four-hour hotline telephone number where a caller can obtain information on a regional
193 basis concerning the agencies and services described in subsection 1 of this section. No
194 identifying information regarding persons who use the website shall be collected or maintained.

195 The department shall monitor the website on a regular basis to prevent tampering and correct any
196 operational deficiencies.

197 11. In order to preserve the compelling interest of the state to ensure that the choice to
198 consent to an abortion is voluntary and informed, and given freely and without coercion, the
199 department shall use the procedures for adoption of emergency rules under section 536.025 in
200 order to promulgate all necessary rules, forms, and other necessary material to implement this
201 section by November 30, 2010.

202 **12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-**
203 **hour waiting period for an abortion are ever temporarily or permanently restrained or**
204 **enjoined by judicial order, then the waiting period for an abortion shall be twenty-four**
205 **hours; provided, however, that if such temporary or permanent restraining order or**
206 **injunction is stayed or dissolved, or otherwise ceases to have effect, the waiting period for**
207 **an abortion shall be seventy-two hours.**

208 **13. The department of health and senior services shall create a video that contains**
209 **all the information required to be provided a woman considering an abortion by subsection**
210 **1 of this section, except subdivision (1) (a) of subsection 1 of this section.**

188.039. 1. For purposes of this section, "medical emergency" means a condition which,
2 on the basis of the physician's good faith clinical judgment, so complicates the medical condition
3 of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death
4 or for which a delay will create a serious risk of substantial and irreversible impairment of a
5 major bodily function.

6 2. Except in the case of medical emergency, no person shall perform or induce an
7 abortion unless at least [twenty-four] **seventy-two** hours prior thereto the physician who is to
8 perform or induce the abortion or a qualified professional has conferred with the patient and
9 discussed with her the indicators and contraindicators, and risk factors including any physical,
10 psychological, or situational factors for the proposed procedure and the use of medications,
11 including but not limited to mifepristone, in light of her medical history and medical condition.
12 For an abortion performed or an abortion induced by a drug or drugs, such conference shall take
13 place at least [twenty-four] **seventy-two** hours prior to the writing or communication of the first
14 prescription for such drug or drugs in connection with inducing an abortion. Only one such
15 conference shall be required for each abortion.

16 3. The patient shall be evaluated by the physician who is to perform or induce the
17 abortion or a qualified professional during the conference for indicators and contraindicators, risk
18 factors including any physical, psychological, or situational factors which would predispose the
19 patient to or increase the risk of experiencing one or more adverse physical, emotional, or other

20 health reactions to the proposed procedure or drug or drugs in either the short or long term as
21 compared with women who do not possess such risk factors.

22 4. At the end of the conference, and if the woman chooses to proceed with the abortion,
23 the physician who is to perform or induce the abortion or a qualified professional shall sign and
24 shall cause the patient to sign a written statement that the woman gave her informed consent
25 freely and without coercion after the physician or qualified professional had discussed with her
26 the indicators and contraindicators, and risk factors, including any physical, psychological, or
27 situational factors. All such executed statements shall be maintained as part of the patient's
28 medical file, subject to the confidentiality laws and rules of this state.

29 5. The director of the department of health and senior services shall disseminate a model
30 form that physicians or qualified professionals may use as the written statement required by this
31 section, but any lack or unavailability of such a model form shall not affect the duties of the
32 physician or qualified professional set forth in subsections 2 to 4 of this section.

33 6. As used in this section, the term "qualified professional" shall refer to a physician,
34 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed professional
35 counselor, or licensed social worker, licensed or registered under chapter 334, 335, or 337, acting
36 under the supervision of the physician performing or inducing the abortion, and acting within the
37 course and scope of his or her authority provided by law. The provisions of this section shall not
38 be construed to in any way expand the authority otherwise provided by law relating to the
39 licensure, registration, or scope of practice of any such qualified professional.

40 **7. If the provisions in subsection 2 of this section requiring a seventy-two-hour**
41 **waiting period for an abortion are ever temporarily or permanently restrained or enjoined**
42 **by judicial order, then the waiting period for an abortion shall be twenty-four hours;**
43 **provided, however, that if such temporary or permanent restraining order or injunction**
44 **is stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion**
45 **shall be seventy-two hours.**

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