

FIRST REGULAR SESSION

HOUSE BILL NO. 99

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

0114H.011

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Section A. Section 188.028, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.028 and 188.125, to read as follows: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. **Except in the case of a medical emergency**, no person shall knowingly perform **or induce** 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 prior to the securing of the informed written consent of the minor and one parent or guardian.** For purposes of this subdivision, "custodial parent" means any parent of a minor in a family in which the parents have not separated or dissolved their marriage, or any parent of a minor who has been awarded joint legal custody or joint physical custody of such minor by a court of competent jurisdiction. Notice shall not be required for any parent or guardian:

(a) **Who has been found guilty of any offense in violation of chapter 565, relating to offenses against the person, chapter 566, relating to sexual offenses, chapter 567, relating to prostitution, chapter 568, relating to offenses against the family, or chapter 573, related to pornography and related offenses, when a child was a victim;**

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

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.

18 (c) Who is listed on the child abuse or neglect central registry under sections
19 210.109 to 210.183 or on the sexual offender registry under sections 589.400 to 589.425;

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

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

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

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

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

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

35 2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection
36 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be
37 granted by a court pursuant to the following procedures:

38 (1) The minor or next friend shall make an application to the juvenile court which shall
39 assist the minor or next friend in preparing the petition and notices required pursuant to this
40 section. The minor or the next friend of the minor shall thereafter file a petition setting forth the
41 initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or,
42 if the minor's parents are deceased and no guardian has been appointed, any other person
43 standing in loco parentis of the minor; that the minor has been fully informed of the risks and
44 consequences of the abortion; that the minor is of sound mind and has sufficient intellectual
45 capacity to consent to the abortion; that, if the court does not grant the minor majority rights for
46 the purpose of consent to the abortion, the court should find that the abortion is in the best
47 interest of the minor and give judicial consent to the abortion; that the court should appoint a
48 guardian ad litem of the child; and if the minor does not have private counsel, that the court
49 should appoint counsel. The petition shall be signed by the minor or the next friend;

50 (2) A hearing on the merits of the petition, to be held on the record, shall be held as soon
51 as possible within five days of the filing of the petition. If any party is unable to afford counsel,
52 the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the
53 hearing, the court shall hear evidence relating to the emotional development, maturity, intellect

54 and understanding of the minor; the nature, possible consequences, and alternatives to the
55 abortion; and any other evidence that the court may find useful in determining whether the minor
56 should be granted majority rights for the purpose of consenting to the abortion or whether the
57 abortion is in the best interests of the minor;

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

59 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;

60 or

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

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

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

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

77 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
78 sign the written consent required [by section 188.039] **under this chapter** in the same manner
79 as an adult person. No abortion shall be performed **or induced** on any minor against her will,
80 except that an abortion may be performed **or induced** against the will of a minor pursuant to a
81 court order described in subdivision (4) of subsection 1 of this section that the abortion is
82 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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