

FIRST REGULAR SESSION

# HOUSE BILL NO. 46

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), COX, SMITH (150), NIEVES, JONES (89),  
NOLTE, EMERY AND SANDER (Co-sponsors).

0385L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof six new sections relating to  
abortion, with penalty provisions.

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

Section A. Section 188.027, RSMo, is repealed and six new sections enacted in lieu  
2 thereof, to be known as sections 188.027, 188.108, 334.245, 565.305, 565.310, and 565.315, to  
3 read as follows:

188.027. **1.** No abortion shall be performed [except with the prior, informed and written  
2 consent freely given of the pregnant woman.] **or induced on a woman without her voluntary**  
3 **and informed consent, given freely and without coercion. Consent to an abortion is**  
4 **voluntary and informed and given freely and without coercion, if and only if, at least**  
5 **twenty-four hours prior to the abortion:**

6 **(1) The physician who is to perform or induce the abortion has informed the**  
7 **woman, orally, reduced to writing, and in person, of the following:**

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

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**

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.

15 subsequent child to term, and possible adverse psychological risks associated with the abortion;

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

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

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

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

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

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

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

48 (4) The physician who is to perform or induce the abortion or a qualified  
49 professional shall provide the woman with the opportunity to view an active ultrasound  
50 of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible.

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

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

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

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

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

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

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

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

85 (6) The physician who is to perform or induce the abortion or a qualified  
86 professional has presented the woman, in person, printed materials provided by the

87 department explaining to the woman alternatives to abortion she may wish to consider.

88 Such materials shall:

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

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

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

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

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

121 (7) The physician who is to perform or induce the abortion or a qualified  
122 professional has presented the woman, in person, printed materials provided by the

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

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

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

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

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

157 4. No abortion shall be performed or induced on an unborn child of twenty-two  
158 weeks gestational age or more unless and until the woman upon whom the abortion is to

159 be performed or induced has been provided the opportunity to choose to have an anesthetic  
160 or analgesic administered to eliminate or alleviate pain to the unborn child caused by the  
161 particular method of abortion to be performed or induced. The administration of  
162 anesthesia or analgesics shall be performed in a manner consistent with standard medical  
163 practice in the community.

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

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

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

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

183 **9. The term "qualified professional" as used in this section shall refer to a**  
184 **physician, physician assistant, registered nurse, licensed practical nurse, licensed**  
185 **professional counselor, or licensed social worker, under the supervision of the physician**  
186 **performing or inducing the abortion, and acting within the course and scope of his or her**  
187 **authority provided by law. The provisions of this section shall not be construed to in any**  
188 **way expand the authority otherwise provided by law relating to the licensure, registration,**  
189 **or scope of practice of any such qualified professional.**

190 **10. Every abortion facility shall display signs that contain exclusively the following**  
191 **words: "NOTICE: No one can force you to have an abortion. It is against the law for a**  
192 **spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in**  
193 **any way force you to have an abortion." The signs shall be designed and located so that**  
194 **such signs can be easily read and ensure maximum visibility to women who enter the**

195 abortion facility considering whether to have an abortion; to women at the abortion facility  
196 receiving the information required by this section; and to women at the time that they give  
197 their consent to an abortion. The location of such signs in abortion facilities shall be  
198 specified by rules promulgated by the department and shall be a condition of licensure of  
199 any abortion facility under chapter 197, RSMo. The display of signs under this subsection  
200 does not discharge the duty to conduct an individual private consultation with a woman  
201 considering abortion under subsection 2 of this section.

202 **11. By November 26, 2009, the department shall produce the written materials,**  
203 **signs, informational videos and forms described in this section. Any written materials**  
204 **produced shall be printed in a typeface large enough to be clearly legible. All information**  
205 **shall be presented in an objective, unbiased manner designed to convey only accurate**  
206 **scientific and medical information. The department shall furnish the written materials,**  
207 **signs, informational videos, and forms at no cost and in sufficient quantity to any person**  
208 **who performs or induces abortions, or to any hospital or facility that provides abortions.**  
209 **The department shall make all information required by subsection 1 of this section**  
210 **available to the public through its department web site. The department shall maintain**  
211 **a toll-free, twenty-four-hour hotline telephone number where a caller can obtain**  
212 **information on a regional basis concerning the agencies and services described in**  
213 **subsection 1 of this section. No identifying information regarding persons who use the web**  
214 **site shall be collected or maintained. The department shall monitor the web site on a**  
215 **regular basis to prevent tampering and correct any operational deficiencies.**

216 **12. In order to preserve the compelling interest of the state to ensure that the choice**  
217 **to consent to an abortion is voluntary and informed, and given freely and without coercion,**  
218 **the department shall use the procedures for adoption of emergency rules under section**  
219 **536.025, RSMo, in order to promulgate all necessary rules, forms and other necessary**  
220 **material to implement this section by November 26, 2009.**

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

**334.245. 1. Notwithstanding any other provision of law to the contrary that may**  
2 **allow a physician to provide services relating to pregnancy, including prenatal, delivery,**  
3 **and postpartum services, no person other than a licensed physician is authorized to**  
4 **perform or induce an abortion.**

5 **2. Any person who violates the provisions of this section is guilty of a class B felony.**

**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) "Course of conduct", a pattern of conduct composed of two or more acts over  
40 a period of time, however short, evidencing a continuity of purpose;

41 (6) "Domestic violence", causing or attempting to cause bodily injury to a family  
42 or household member, or placing a family or household member by threat of force in fear  
43 of imminent physical harm;

44 (7) "Family or household member", spouses, former spouses, adults related by  
45 blood or marriage, adults who are presently residing together or have resided together in  
46 the past, an adult who is or has been in a continuing social relationship of a romantic or  
47 intimate nature with the victim, and adults who have a child in common regardless of  
48 whether they have been married or have resided together at any time;

49 (8) "Stalking", intentionally and repeatedly engaging in a course of conduct that  
50 reasonably causes fear of danger of physical harm to another person, whether or not the  
51 other person seeks relief under chapter 455, RSMo, in connection with such stalking;

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

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

61 (11) "Victim of coerced abortion", the victim of the crime of coercing an abortion,  
62 whether or not the victim has reported the crime prior to seeking or obtaining an abortion;

63 (12) "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) Filing, attempting to file, or threatening to file for dissolution of marriage or  
8 legal separation from the woman;

9 (5) Refusing, attempting to refuse, or threatening to refuse to pay child support to  
10 the woman in connection with her unborn child or any other child or children of the

11 woman for which the person is obligated to pay child support, whether or not that  
12 obligation has been established by law at the time of the refusal;

13 (6) Threatening before the child is born to take legal action after the child is born  
14 to deprive the woman of custody of her child;

15 (7) Withdrawing, attempting to withdraw, or threatening to withdraw financial  
16 support from or on behalf of the woman that had previously been supplied or offered to  
17 or on behalf of the woman;

18 (8) Changing, attempting to change, or threatening to change the woman's existing  
19 housing or residence;

20 (9) Discharging, attempting to discharge, or threatening to discharge a female  
21 employee; or changing, attempting to change, or threatening to change her compensation,  
22 terms, conditions, or privileges of employment; or

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

25 2. Coercing an abortion is a class A misdemeanor if it is done by the commission  
26 of any of the acts specified in subdivisions (2) to (10) of subsection 1 of this section and the  
27 act is not otherwise an offense defined by any other statute of this state. Coercing an  
28 abortion is classified as follows if it is done by the commission of any of the acts specified  
29 in subdivisions (1) to (10) of subsection 1 of this section and the act is otherwise an offense  
30 defined by any other statute of this state:

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

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

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

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

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

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

40 3. The assent of the woman who is a victim of coerced abortion to seek or obtain  
41 an abortion does not constitute consent, and is not a defense to a prosecution under  
42 subsection 1 of this section. The mistaken belief that the woman is pregnant when she is  
43 not is not a defense to a prosecution under subsection 1 of this section.

44 4. This section shall not be construed as creating, expanding, or otherwise  
45 endorsing a right to an abortion.

2           **565.315. 1. Any person who knowingly performs or induces or assists in**  
3 **performing or inducing an abortion on a woman, with knowledge that the predominant**  
4 **reason the woman is seeking or obtaining the abortion is that the woman is a victim of**  
5 **coerced abortion, is guilty of a class C felony.**

6           **2. Whenever a physician, abortion facility, hospital, or other health care provider**  
7 **has reasonable cause to suspect that a woman is a victim of a coerced abortion and the**  
8 **victim is:**

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

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

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

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

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

✓