

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 46 & 434
95TH GENERAL ASSEMBLY

0385L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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Section A. Section 188.027, RSMo, is repealed and six new sections enacted in lieu thereof, to be known as sections 188.027, 188.108, 334.245, 565.305, 565.310, and 565.315, to read as follows: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

(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
18 anesthesia and medication that is to be administered, the unborn child's gestational age,
19 and the woman's 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
22 abortion;

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

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

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

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

34 (2) The physician who is to perform or induce the abortion or a qualified
35 professional has presented the woman, in person, printed materials provided by the
36 department or an informational video provided by the department, which describes the
37 probable anatomical and physiological characteristics of the unborn child at two-week
38 gestational increments from conception to full term, including color photographs or images
39 of the developing unborn child at two-week gestational increments. Such descriptions shall
40 include information about brain and heart functions, the presence of external members
41 and internal organs during the applicable stages of development and information on when
42 the unborn child is viable. The printed materials or informational video shall prominently
43 display the following statement: "The State of Missouri wants you to know that the life of
44 your unborn child began at conception, and that your unborn child has protectable
45 interests in his or her life, health, and well-being.";

46 (3) The physician who is to perform or induce the abortion or a qualified
47 professional has presented the woman, in person, printed materials provided by the
48 department or an informational video provided by the department, which describes the
49 various surgical and drug-induced methods of abortion relevant to the stage of pregnancy,
50 as well as the immediate and long-term medical risks commonly associated with each
51 abortion method including, but not limited to, infection, hemorrhage, cervical tear or

52 uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent
53 child to term, and the possible adverse psychological effects associated with an abortion;

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

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

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

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

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

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

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

88 **(f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain**
89 **to the unborn child;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

186 **9. The term "qualified professional" as used in this section shall refer to a**
187 **physician, physician assistant, registered nurse, licensed practical nurse, psychologist,**
188 **licensed professional counselor, or licensed social worker, licensed or registered under**
189 **chapter 334, 335, or 337, RSMo, acting under the supervision of the physician performing**
190 **or inducing the abortion, and acting within the course and scope of his or her authority**
191 **provided by law. The provisions of this section shall not be construed to in any way**
192 **expand the authority otherwise provided by law relating to the licensure, registration, or**
193 **scope of practice of any such qualified professional.**

194 **10. Every abortion facility shall display signs that contain exclusively the following**
195 **words: "NOTICE: No one can coerce you to have an abortion. It is against the law for**

196 a husband, a boyfriend, a parent, a friend, a medical care provider, or any other person
197 to coerce you in any way to have an abortion.". The signs shall be designed and located
198 so that such signs can be easily read and ensure maximum visibility to women who enter
199 the abortion facility considering whether to have an abortion; to women at the abortion
200 facility receiving the information required by this section; and to women at the time that
201 they give their consent to an abortion. The location of such signs in abortion facilities shall
202 be specified by rules promulgated by the department and shall be a condition of licensure
203 of any abortion facility under chapter 197, RSMo. The display of signs under this
204 subsection does not discharge the duty to conduct an individual private consultation with
205 a woman considering abortion under subsection 2 of this section.

206 **11. By November 30, 2009, the department shall produce the written materials,**
207 **signs, informational videos and forms described in this section. Any written materials**
208 **produced shall be printed in a typeface large enough to be clearly legible. All information**
209 **shall be presented in an objective, unbiased manner designed to convey only accurate**
210 **scientific and medical information. The department shall furnish the written materials,**
211 **signs, informational videos, and forms at no cost and in sufficient quantity to any person**
212 **who performs or induces abortions, or to any hospital or facility that provides abortions.**
213 **The department shall make all information required by subsection 1 of this section**
214 **available to the public through its department web site. The department shall maintain**
215 **a toll-free, twenty-four-hour hotline telephone number where a caller can obtain**
216 **information on a regional basis concerning the agencies and services described in**
217 **subsection 1 of this section. No identifying information regarding persons who use the web**
218 **site shall be collected or maintained. The department shall monitor the web site on a**
219 **regular basis to prevent tampering and correct any operational deficiencies.**

220 **12. In order to preserve the compelling interest of the state to ensure that the choice**
221 **to consent to an abortion is voluntary and informed, and given freely and without coercion,**
222 **the department shall use the procedures for adoption of emergency rules under section**
223 **536.025, RSMo, in order to promulgate all necessary rules, forms and other necessary**
224 **material to implement this section by November 30, 2009.**

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

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

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

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

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

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

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

(6) "Victim of coerced abortion", the victim of the crime of coercing an abortion, whether or not the victim has reported the crime prior to seeking or obtaining an abortion.

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

(1) Committing, attempting to commit, or conspiring to commit:

(a) An offense defined by any other statute of this state against the woman or her family or household member;

(b) Assault as defined in section 565.050, 565.060, or 565.070;

(c) Domestic assault as defined in section 565.072, 565.073, or 565.074; or

(d) Stalking or aggravated stalking as defined in section 565.225;

(2) Forcibly or without her knowledge administering to or causing the woman to ingest any poison, drug, or other substance intended to cause an abortion, or attempting or threatening to do so;

(3) Discharging, attempting to discharge, or threatening to discharge the female employee; or changing, attempting to change, or threatening to change her compensation, terms, conditions, or privileges of employment; or

15 **(4) Revoking, attempting to revoke, or threatening to revoke a scholarship awarded**
16 **to the woman by a public or private institution of higher education.**

17 **2. Coercing an abortion is classified as follows if it is done by the commission of any**
18 **of the acts specified in subsection 1 of this section and the act is otherwise an offense**
19 **defined by any other statute of this state:**

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

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

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

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

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

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

29 **3. Coercing an abortion is a class A misdemeanor if it is done by the commission**
30 **of any of the acts specified in subsection 1 of this section and the act is not otherwise an**
31 **offense defined by any other statute of this state.**

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

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

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