

SENATE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NOS. 46 & 434

AN ACT

To repeal sections 188.027 and 188.039, RSMo, and to enact in lieu thereof three new sections relating to abortion, with an expiration date for a certain section.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 188.027 and 188.039, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as
3 sections 188.027, 188.032, and 188.039, to read as follows:

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

11 (1) The physician who is to perform or induce the abortion
12 or a qualified professional has informed the woman, orally,
13 reduced to writing, and in person, of the following:

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

1 (b) Medically accurate information that is consistent with
2 standard medical practice that a reasonable patient would
3 consider material to the decision of whether or not to undergo
4 the abortion, and which shall include:

5 a. A description of the proposed abortion method;

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

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

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

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

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

1 physician if complications arise;

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

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

7 (2) The physician who is to perform or induce the abortion
8 or a qualified professional has presented the woman, in person,
9 printed materials provided by the department or an informational
10 video provided by the department that are medically accurate,
11 consistent with standard medical practice, and which shall
12 describe the probable anatomical and physiological
13 characteristics of the unborn child at two-week gestational
14 increments from conception to full term, including color
15 photographs or images of the developing unborn child at two-week
16 gestational increments. Such descriptions shall include
17 information about brain and heart functions, the presence of
18 external members and internal organs during the applicable stages
19 of development and information on when the unborn child is
20 viable. The printed materials or informational video shall
21 prominently display the following statement: "It is the public
22 policy of the state of Missouri that the life of each human being
23 begins at conception, and that unborn children have protectable
24 interests in life, health, and well-being;

25 (3) The physician who is to perform or induce the abortion
26 or a qualified professional has presented the woman, in person,
27 printed materials provided by the department or an informational
28 video provided by the department that are medically accurate and

1 consistent with standard medical practice, and which shall
2 describe the various surgical and drug-induced methods of
3 abortion relevant to the stage of pregnancy, as well as the
4 immediate and long-term medical risks commonly associated with
5 each abortion method including, but not limited to, infection,
6 hemorrhage, cervical tear or uterine perforation, harm to
7 subsequent pregnancies or the ability to carry a subsequent child
8 to term, and the possible adverse psychological effects
9 associated with an abortion;

10 (4) The physician who is to perform or induce the abortion
11 or a qualified professional shall provide the woman with the
12 opportunity to view at least twenty-four hours prior to the
13 abortion an active ultrasound of the unborn child and hear the
14 heartbeat of the unborn child if the heartbeat is audible. The
15 woman shall be provided with a geographically indexed list
16 maintained by the department of health and senior services,
17 health care providers, facilities, and clinics that perform
18 ultrasounds, including those that offer ultrasound services free
19 of charge. Such materials shall provide contact information for
20 each provider, facility, or clinic including telephone numbers
21 and, if available, website addresses. Should the woman decide to
22 obtain an ultrasound from a provider, facility, or clinic other
23 than the abortion facility, the woman shall be offered a
24 reasonable time to obtain the ultrasound examination before the
25 date and time set for performing or inducing an abortion. The
26 person conducting the ultrasound shall ensure that the active
27 ultrasound image is of a quality consistent with standard medical
28 practice in the community, contains the dimensions of the unborn

1 child, and accurately portrays the presence of external members
2 and internal organs, if present or viewable, of the unborn child.
3 The auscultation of fetal heart tone must also be of a quality
4 consistent with standard medical practice in the community. If
5 the woman chooses to view the ultrasound or hear the heartbeat or
6 both at the abortion facility, the viewing or hearing or both
7 shall be provided to her at the abortion facility at least
8 twenty-four hours prior to the abortion being performed or
9 induced;

10 (5) Prior to an abortion being performed or induced on an
11 unborn child of twenty-two weeks gestational age or older, the
12 physician who is to perform or induce the abortion or a qualified
13 professional has presented the woman, in person, printed
14 materials provided by the department or an informational video
15 provided by the department that are medically accurate and
16 consistent with standard medical practice, and that shall offer
17 information on the possibility of the abortion causing pain to
18 the unborn child. This information shall include, but need not
19 be limited to, the following:

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

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

27 (c) There is evidence that by twenty-two weeks of
28 gestational age, unborn children seek to evade certain stimuli in

1 a manner that in an infant or an adult would be interpreted as a
2 response to pain;

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

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

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

9 (6) The physician who is to perform or induce the abortion
10 or a qualified professional has presented the woman, in person,
11 printed materials provided by the department that are medically
12 accurate and consistent with standard medical practice and which
13 shall explain to the woman alternatives to abortion she may wish
14 to consider. Such materials shall:

15 (a) Identify on a geographical basis public and private
16 agencies available to assist a woman in carrying her unborn child
17 to term, and to assist her in caring for her dependent child or
18 placing her child for adoption, including agencies commonly known
19 and generally referred to as pregnancy resource centers, crisis
20 pregnancy centers, maternity homes, and adoption agencies. Such
21 materials shall provide a comprehensive list by geographical area
22 of the agencies, a description of the services they offer, and
23 the telephone numbers and addresses of the agencies; provided
24 that such materials shall not include any programs, services,
25 organizations or affiliates of organizations that perform or
26 induce, or assist in the performing or inducing, of abortions or
27 that refer for abortions;

28 (b) Explain the Missouri alternatives to abortion services

1 program under section 188.325, and any other programs and
2 services available to pregnant women and mothers of newborn
3 children offered by public or private agencies which assist a
4 woman in carrying her unborn child to term and assist her in
5 caring for her dependent child or placing her child for adoption,
6 including, but not limited to prenatal care; maternal health
7 care; newborn or infant care; mental health services;
8 professional counseling services; housing programs; utility
9 assistance; transportation services; food, clothing, and supplies
10 related to pregnancy; parenting skills; educational programs; job
11 training and placement services; drug and alcohol testing and
12 treatment; and adoption assistance;

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

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

26 (7) The physician who is to perform or induce the abortion
27 or a qualified professional has presented the woman, in person,
28 printed materials provided by the department or an informational

1 video provided by the department explaining that the father of
2 the unborn child is liable to assist in the support of the child,
3 even in instances where he has offered to pay for the abortion.
4 Such materials shall include information on the legal duties and
5 support obligations of the father of a child, including, but not
6 limited to, child support payments, and the fact that paternity
7 may be established by the father's name on a birth certificate or
8 statement of paternity, or by court action. Such printed
9 materials or video shall also state that more information
10 concerning paternity establishment and child support services and
11 enforcement may be obtained by calling the family support
12 division within the Missouri department of social services;

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

19 2. All information required to be provided to a woman
20 considering abortion by subsection 1 of this section shall be
21 presented to the woman individually, in the physical presence of
22 the woman and in a private room, to protect her privacy, to
23 maintain the confidentiality of her decision, to ensure that the
24 information focuses on her individual circumstances, to ensure
25 she has an adequate opportunity to ask questions. Should a woman
26 be unable to read materials provided to her, they shall be read
27 to her. Should a woman need an interpreter to understand the
28 information presented in written materials or informational

1 videos, an interpreter shall be provided to her. Should a woman
2 ask questions concerning any of the information or materials,
3 answers shall be provided in a language she can understand.

4 3. No abortion shall be performed or induced unless and
5 until the woman upon whom the abortion is to be performed or
6 induced certifies in writing on a checklist form provided by the
7 department that she has been presented all the information
8 required in subsection 1 of this section, that she has been
9 provided the opportunity to view an active ultrasound image of
10 the unborn child and hear the heartbeat of the unborn child if it
11 is audible, and that she further certifies that she gives her
12 voluntary and informed consent, freely and without coercion, to
13 the abortion procedure.

14 4. No abortion shall be performed or induced on an unborn
15 child of twenty-two weeks gestational age or older unless and
16 until the woman upon whom the abortion is to be performed or
17 induced has been provided the opportunity to choose to have an
18 anesthetic or analgesic administered to eliminate or alleviate
19 pain to the unborn child caused by the particular method of
20 abortion to be performed or induced. The administration of
21 anesthesia or analgesics shall be performed in a manner
22 consistent with standard medical practice in the community.

23 5. No physician shall perform or induce an abortion unless
24 and until the physician has obtained from the woman her voluntary
25 and informed consent given freely and without coercion. No
26 physician shall perform or induce an abortion unless and until
27 the physician has received and signed a copy of the form
28 prescribed in subsection 3 of this section. The physician shall

1 retain a copy of the form in the patient's medical record.

2 6. In the event of a medical emergency as provided by
3 section 188.075, the physician who performed or induced the
4 abortion shall clearly certify in writing the nature and
5 circumstances of the medical emergency. This certification shall
6 be signed by the physician who performed or induced the abortion,
7 and shall be maintained under section 188.060.

8 7. No person or entity shall require, obtain, or accept
9 payment for an abortion from or on behalf of a patient until at
10 least twenty-four hours has passed since the time that the
11 information required by subsection 1 has been provided to the
12 patient. Nothing in this subsection shall prohibit a person or
13 entity from notifying the patient that payment for the abortion
14 will be required after the twenty-four-hour period has expired if
15 she voluntarily chooses to have the abortion.

16 8. The term "qualified professional" as used in this
17 section shall refer to a physician, physician assistant,
18 registered nurse, licensed practical nurse, psychologist,
19 licensed professional counselor, or licensed clinical social
20 worker, licensed or registered under chapter 334, 335, or 337,
21 RSMo, acting under the supervision of the physician performing or
22 inducing the abortion, and acting within the course and scope of
23 his or her authority provided by law. The provisions of this
24 section shall not be construed to in any way expand the authority
25 otherwise provided by law relating to the licensure,
26 registration, or scope of practice of any such qualified
27 professional.

28 9. By November 30, 2009, the department shall produce the

1 written materials, signs, informational videos, and forms
2 described in this section. Any written materials produced shall
3 be printed in a typeface large enough to be clearly legible. All
4 information shall be presented in an objective, unbiased manner
5 designed to convey only accurate scientific and medical
6 information consistent with standard medical practice in the
7 scientific and medical community. The department shall furnish
8 the written materials, signs, informational videos, and forms at
9 no cost and in sufficient quantity to any person who performs or
10 induces abortions, or to any hospital or facility that provides
11 abortions. The department shall make all information required by
12 subsection 1 of this section available to the public through its
13 department web site. The department shall maintain a toll-free,
14 twenty-four-hour hotline telephone number where a caller can
15 obtain information on a regional basis concerning the agencies
16 and services described in subsection 1 of this section. No
17 identifying information regarding persons who use the web site
18 shall be collected or maintained. The department shall monitor
19 the web site on a regular basis to prevent tampering and correct
20 any operational deficiencies.

21 10. In order to preserve the compelling interest of the
22 state to ensure that the choice to consent to an abortion is
23 voluntary and informed, and given freely and without coercion,
24 the department shall use the procedures for adoption of emergency
25 rules under section 536.025, RSMo, in order to promulgate all
26 necessary rules, forms, and other necessary material to implement
27 this section by November 30, 2009.

28 188.032. 1. Notwithstanding the provisions of section

1 188.027 to the contrary, any facility where abortions are
2 performed no more than one day a week shall not be required to
3 comply with the provisions of section 188.027 until August 28,
4 2012.

5 2. To the extent the provisions of subsection 1 of this
6 section are finally declared void or unconstitutional by a court
7 of competent jurisdiction, the provisions of section 188.027
8 shall be declared as not essentially and inseparably connected
9 with, and so dependent upon, subsection 1 of this section, and
10 further that it can be presumed such sections would have been
11 enacted without subsection 1 of this section.

12 188.039. 1. Beginning August 28, 2009, the provisions of
13 this section shall only apply to facilities where abortions are
14 performed no more than one day a week. For purposes of this
15 section, "medical emergency" means a condition which, on the
16 basis of the physician's good faith clinical judgment, so
17 complicates the medical condition of a pregnant woman as to
18 necessitate the immediate abortion of her pregnancy to avert her
19 death or for which a delay will create a serious risk of
20 substantial and irreversible impairment of a major bodily
21 function.

22 2. Except in the case of medical emergency, no person shall
23 perform or induce an abortion unless at least twenty-four hours
24 prior thereto a treating physician has conferred with the patient
25 and discussed with her the indicators and contraindicators, and
26 risk factors including any physical, psychological, or
27 situational factors for the proposed procedure and the use of
28 medications, including but not limited to mifepristone, in light

1 of her medical history and medical condition. For an abortion
2 performed or an abortion induced by a drug or drugs, such
3 conference shall take place at least twenty-four hours prior to
4 the writing or communication of the first prescription for such
5 drug or drugs in connection with inducing an abortion. Only one
6 such conference shall be required for each abortion.

7 3. The patient shall be evaluated by a treating physician
8 during the conference for indicators and contraindicators, risk
9 factors including any physical, psychological, or situational
10 factors which would predispose the patient to or increase the
11 risk of experiencing one or more adverse physical, emotional, or
12 other health reactions to the proposed procedure or drug or drugs
13 in either the short or long term as compared with women who do
14 not possess such risk factors.

15 4. At the end of the conference, and if the woman chooses
16 to proceed with the abortion, a treating physician shall sign and
17 shall cause the patient to sign a written statement that the
18 woman gave her informed consent freely and without coercion after
19 the physician had discussed with her the indicators and
20 contraindicators, and risk factors, including any physical,
21 psychological, or situational factors. All such executed
22 statements shall be maintained as part of the patient's medical
23 file, subject to the confidentiality laws and rules of this
24 state.

25 5. The director of the department of health and senior
26 services shall disseminate a model form that physicians may use
27 as the written statement required by this section, but any lack
28 or unavailability of such a model form shall not affect the

1 duties of the physician set forth in subsections 2 to 4 of this
2 section.

3 6. The provisions of this section shall expire on August
4 28, 2012.

5 Section B. Upon the expiration of section 188.039, RSMo, on
6 August 28, 2012, the revisor of statutes shall remove section
7 188.039 from the revised statutes of Missouri.