

SECOND REGULAR SESSION

HOUSE BILL NO. 1236

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), GATSCHENBERGER, NIEVES, SANDER,
EMERY, DUGGER AND McGHEE (Co-sponsors).

3259L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 188, RSMo, by adding thereto one new section relating to the negligent screening act.

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

Section A. Chapter 188, RSMo, is amended by adding thereto one new section, to be
2 known as section 188.012, to read as follows:

**188.012. 1. This section shall be known and may be cited as the "Negligent
2 Screening Act".**

3 2. As used in this section, the following terms mean:

**4 (1) "Abortion", the use or prescription of any instrument, medicine, drug, or any
5 other substance or device to terminate the pregnancy of a woman with an intention other
6 than to increase the probability of a live birth, to preserve the life or health of the child
7 after live birth, or to remove a dead fetus;**

**8 (2) "Abortion provider", any physician or entity that performs or provides
9 abortions. For purposes of this section, abortion provider shall also include any entity that
10 refers for abortions as a normal part of their business at least ten times per year;**

**11 (3) "Complication associated with abortion", any adverse physical, emotional, or
12 psychological reaction that is statistically associated with abortion ($P < 0.05$, meaning there
13 is less than a five percent chance that the results are due to sampling error);**

**14 (4) "Medical emergency", that condition which, on the basis of the physician's
15 reasonable clinical judgment, so complicates the medical condition of the pregnant woman
16 as to necessitate an immediate abortion to avert the death of the mother or for which 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.

17 **twenty-four-hour delay will create grave peril of immediate and irreversible loss of a major**
18 **bodily function;**

19 **(5) "Negligible risks", risks that a reasonable patient would consider to be**
20 **immaterial to a decision to undergo an elective medical procedure;**

21 **(6) "Physician", any person licensed under chapter 334 to practice in this state,**
22 **including medical doctors and doctors of osteopathy;**

23 **(7) "Qualified person", a licensed physician or an agent of the abortion provider**
24 **who is a licensed psychologist, licensed social worker, licensed professional counselor, or**
25 **licensed registered nurse;**

26 **(8) "Risk factor", any factor, including any physical, psychological, emotional,**
27 **demographic, or situational factors, that is statistically associated ($P < 0.05$, meaning there**
28 **is less than a five percent chance that the results are due to sampling error) with one or**
29 **more complications associated with abortion wherein the statistically significant results**
30 **were published no less than twelve months prior to the abortion in any peer-reviewed**
31 **journals indexed by the National Library of Medicine's search services, PubMed or**
32 **MedLine, or in any journal included in the Thomson scientific master journal list;**

33 **(9) "Self-induced abortion", any abortion or menstrual extraction attempted or**
34 **completed by a woman on her own body.**

35 **3. In addition to any other requirements under state law, it is an act of medical**
36 **negligence to perform or refer for an abortion, except in the case of medical emergency,**
37 **unless all of the following are true:**

38 **(1) Before the physician recommends or performs an abortion, a qualified person**
39 **has evaluated the woman to identify:**

40 **(a) If the patient perceives that she is experiencing any pressure or coercion to**
41 **consent to the abortion; and**

42 **(b) The presence of any other risk factors;**

43 **(2) The qualified person has informed the woman and the physician of the results**
44 **of such evaluation in writing which includes at least a checklist identifying both the positive**
45 **and negative results of the evaluation for each risk factor;**

46 **(3) In the event that any risk factors were identified, the patient has been informed**
47 **by a qualified person about each complication associated with abortion that is associated**
48 **with each risk factor that was identified. In the event that risk factors are known to be**
49 **statistically interrelated and may compound the risk of adverse reactions, such interrelated**
50 **effects shall also be explained. All explanations and complications associated with abortion**
51 **shall include quantifiable risk rates, whenever such relevant data exists, in the detail that**

52 a reasonable patient would consider material to the decision of whether or not to undergo
53 the abortion;

54 (4) In the event that any risk factors were identified, the qualified person who has
55 provided the screening and counseling provides a written statement to the patient and the
56 physician certifying, to the best of the qualified person's knowledge, that the patient
57 understands and appreciates the significance of the risk factors discussed and her
58 increased exposure to the related adverse reactions. The risk factors and associated
59 complications associated with abortion shall be listed in such certificate;

60 (5) The physician recommending or performing the abortion has formed a
61 reasonable medical judgment, documented in the permanent record, that either:

62 (a) The preponderance of statistically validated medical studies demonstrates that
63 the physical, psychological, and familial risks associated with abortion for patients with
64 risk factors similar to the patient's risk factors are negligible risks; or

65 (b) Continuance of the pregnancy would involve risk of injury to the physical or
66 mental health of the pregnant woman greater than if the pregnancy were terminated by
67 induced abortion; or

68 (c) Continuance of the pregnancy would involve risk of injury to the physical or
69 mental health of the pregnant woman less than if the pregnancy were terminated by
70 induced abortion.

71 4. (1) In addition to other remedies available under state law, the intentional,
72 knowing, or negligent failure to comply with the requirements of this section shall provide
73 a basis for the following:

74 (a) Each violation of this section shall entitle the woman or her survivors to ten
75 thousand dollars for each failure to screen for a risk factor and for each failure to inform
76 her of associated complications plus actual damages and reasonable attorney's fees and
77 costs;

78 (b) Recovery for the woman for the death of her unborn child in a wrongful death
79 action under section 537.080, whether or not the unborn child was viable at the time of the
80 abortion, upon proving by a preponderance of evidence that the abortion provider knew
81 or should have known that the patient's consent to the abortion was not informed or not
82 fully voluntary.

83 (2) Any action for civil remedies based on a failure to comply with the requirements
84 of this section shall be brought no later than two years after the screening and assessment
85 required in subsection 3 of this section, or two years after the date the woman becomes or
86 should have been aware that the abortion was the probable or contributory cause of a
87 physical or emotional complication and has recovered from any psychological

88 complications which may have impeded the patient's ability to seek or cooperate with
89 counsel to pursue a civil remedy.

90 (3) Notwithstanding the provisions of subdivision (2) of this subsection, in the case
91 of a woman who has died within one year of the abortion, any action under this section
92 shall be brought within two years of her death.

93 (4) In a civil action involving this section:

94 (a) In determining liability and validity of consent, the failure to comply with the
95 requirements of subsection 3 of this section shall create the presumption that the plaintiff
96 would not have undertaken the recommended abortion had subsection 3 of this section
97 been complied with;

98 (b) The absence of physical injury shall not preclude an award of damages for
99 emotional harm associated with the abortion;

100 (c) The fact that a physician does not perform elective abortions, or has not in the
101 past, shall not automatically disqualify that physician from being an expert witness. A
102 licensed obstetrician or family practitioner who regularly helps women in resolving
103 pregnancy-related medical matters shall presumptively be qualified to testify as an expert
104 on the screening, counseling, management, and treatment of unwanted or problem
105 pregnancies;

106 (d) The failure to comply with the requirements of subsection 3 of this section shall
107 create the presumption that the negligence was willful and wanton unless the defendant
108 proved by a preponderance of evidence that a lesser mental state in fact applied;

109 (e) Any verbal or written waiver of liability for negligence as defined in subsection
110 3 of this section shall be void and unenforceable;

111 (f) Any abortion provider advertising services in this state shall be deemed to be
112 doing business in this state and shall be subject to the provisions of this section.

113 (5) It shall be an affirmative defense to allegations of inadequate disclosure under
114 the standards and requirements of subsection 3 of this section that the defendants omitted
115 the contested information because:

116 (a) Statistically validated surveys of the general population of women of
117 reproductive age, conducted within three years before or after the contested abortion,
118 demonstrates that less than five percent of women would consider the contested
119 information to be relevant to an abortion decision; or

120 (b) In the reasonable medical judgment of two licensed psychiatrists who examined
121 the patient prior to the abortion, disclosure of the contested information would most likely
122 have been the immediate and direct cause of a severe adverse effect on the physical health
123 of the patient.

124 **(6) In addition to the other remedies available under common or statutory law of**
125 **this state, a woman or her survivors shall have a cause of action for reckless endangerment**
126 **against any person, other than a physician or pharmacist licensed under the Uniform**
127 **Credentialing Act, who attempts or completes an abortion on the pregnant woman or aids**
128 **or abets the commission of a self-induced abortion. Proof of injury shall not be required**
129 **to recover an award for reckless endangerment or wrongful death under this subdivision**
130 **and the minimum award for damages under this subdivision shall be eight hundred**
131 **thousand dollars, plus reasonable costs and attorney's fees.**

132 **5. (1) Nothing in this section shall be construed as creating or recognizing a right**
133 **to abortion.**

134 **(2) It is not the intention of this section to make lawful an abortion that is otherwise**
135 **unlawful or to make unlawful an abortion that is otherwise lawful.**

136 **(3) No violation of subsection 3 of this section shall be construed to provide grounds**
137 **for prosecution of criminal negligence or to place a medical license at risk.**

138 **(4) Nothing in this section shall be construed as defining the standard of care for**
139 **any medical procedures other than induced abortion.**

140 **6. The general assembly, by resolution, may appoint one of its members who**
141 **sponsored or cosponsored the legislation enacting this section in his or her official capacity**
142 **to intervene as a matter of right in any case in which the constitutionality of this section is**
143 **challenged.**

144 **7. If any portion of this act is enjoined and subsequently upheld, the statute of**
145 **limitations for filing civil suit under this section shall be tolled during the pendency of the**
146 **injunction and for four years thereafter.**

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