

FIRST REGULAR SESSION

# HOUSE BILL NO. 298

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ENGLISH (Sponsor), HICKS, RHOADS, MILLER, SCHIEFFER, LOVE, FITZWATER, REHDER, JONES (110), BLACK, HAAHR, SMITH (120), POGUE, BURLISON, KELLEY (127), FRANKLIN, FITZPATRICK, WOOD, SWAN AND HURST (Co-sponsors).

1077H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof one new section relating to informed consent for abortions.

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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Section A. Section 188.027, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.027, to read as follows:

188.027. 1. Except in the case of medical emergency, no abortion shall be performed 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 or a qualified professional 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.

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

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

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

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

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

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

31 (2) The physician who is to perform or induce the abortion or a qualified professional  
32 has presented the woman, in person, printed materials provided by the department, which  
33 describe the probable anatomical and physiological characteristics of the unborn child at  
34 two-week gestational increments from conception to full term, including color photographs or  
35 images of the developing unborn child at two-week gestational increments. Such descriptions  
36 shall include information about brain and heart functions, the presence of external members and  
37 internal organs during the applicable stages of development and information on when the unborn  
38 child is viable. The printed materials shall prominently display the following statement: "The  
39 life of each human being begins at conception. Abortion will terminate the life of a separate,  
40 unique, living human being.";

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

48 (4) The physician who is to perform or induce the abortion or a qualified professional  
49 shall [provide the woman with the opportunity to view] **conduct and review with the woman**,  
50 at least twenty-four hours prior to the abortion, an active ultrasound of the unborn child and

51 **allow the woman to hear the heartbeat of the unborn child if the heartbeat is audible. If the**  
52 **ultrasound cannot be conducted at the abortion facility,** the woman shall be provided with  
53 a geographically indexed list maintained by the department of health care providers, facilities,  
54 and clinics that perform ultrasounds, including those that offer ultrasound services free of charge.  
55 Such materials shall provide contact information for each provider, facility, or clinic including  
56 telephone numbers and, if available, website addresses. Should the woman [decide] **need** to  
57 obtain an ultrasound from a provider, facility, or clinic other than the abortion facility, the  
58 woman shall be offered a reasonable time to obtain the ultrasound examination before the date  
59 and time set for performing or inducing an abortion. **The woman shall be required to submit**  
60 **verification from the provider, facility, or clinic other than the abortion facility that**  
61 **conducted an ultrasound for the woman, stating the date and time that the ultrasound was**  
62 **conducted and that it was reviewed with the woman, allowing her to view the ultrasound**  
63 **images and hear the heartbeat of the unborn child if the heartbeat is audible.** The person  
64 conducting the ultrasound shall ensure that the active ultrasound image is of a quality consistent  
65 with standard medical practice in the community, contains the dimensions of the unborn child,  
66 and accurately portrays the presence of external members and internal organs, if present or  
67 viewable, of the unborn child. The auscultation of fetal heart tone must also be of a quality  
68 consistent with standard medical practice in the community. If the woman [chooses to view]  
69 **views** the ultrasound or [hear] **hears** the heartbeat or both at the abortion facility, the viewing  
70 or hearing or both shall be provided to her at the abortion facility at least twenty-four hours prior  
71 to the abortion being performed or induced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 3. No abortion shall be performed or induced unless and until the woman upon whom  
146 the abortion is to be performed or induced certifies in writing on a checklist form provided by  
147 the department that she has been presented all the information required in subsection 1 of this  
148 section, that [she has been provided the opportunity to view] an active ultrasound **has been**  
149 **conducted and reviewed with her, allowing her to view an** image of the unborn child and hear  
150 the heartbeat of the unborn child if it is audible, and that she further certifies that she gives her  
151 voluntary and informed consent, freely and without coercion, to the abortion procedure.

152 4. No abortion shall be performed or induced on an unborn child of twenty-two weeks  
153 gestational age or older unless and until the woman upon whom the abortion is to be performed  
154 or induced has been provided the opportunity to choose to have an anesthetic or analgesic  
155 administered to eliminate or alleviate pain to the unborn child caused by the particular method  
156 of abortion to be performed or induced. The administration of anesthesia or analgesics shall be  
157 performed in a manner consistent with standard medical practice in the community.

158           5. No physician shall perform or induce an abortion unless and until the physician has  
159 obtained from the woman her voluntary and informed consent given freely and without coercion.  
160 If the physician has reason to believe that the woman is being coerced into having an abortion,  
161 the physician or qualified professional shall inform the woman that services are available for her  
162 and shall provide her with private access to a telephone and information about such services,  
163 including but not limited to the following:

- 164           (1) Rape crisis centers, as defined in section 455.003;
- 165           (2) Shelters for victims of domestic violence, as defined in section 455.200; and
- 166           (3) Orders of protection, pursuant to chapter 455.

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

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

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

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

187           10. By November 30, 2010, the department shall produce the written materials and forms  
188 described in this section. Any written materials produced shall be printed in a typeface large  
189 enough to be clearly legible. All information shall be presented in an objective, unbiased manner  
190 designed to convey only accurate scientific and medical information. The department shall  
191 furnish the written materials and forms at no cost and in sufficient quantity to any person who  
192 performs or induces abortions, or to any hospital or facility that provides abortions. The  
193 department shall make all information required by subsection 1 of this section available to the

194 public through its department website. The department shall maintain a toll-free,  
195 twenty-four-hour hotline telephone number where a caller can obtain information on a regional  
196 basis concerning the agencies and services described in subsection 1 of this section. No  
197 identifying information regarding persons who use the website shall be collected or maintained.  
198 The department shall monitor the website on a regular basis to prevent tampering and correct any  
199 operational deficiencies.

200         11. In order to preserve the compelling interest of the state to ensure that the choice to  
201 consent to an abortion is voluntary and informed, and given freely and without coercion, the  
202 department shall use the procedures for adoption of emergency rules under section 536.025 in  
203 order to promulgate all necessary rules, forms, and other necessary material to implement this  
204 section by November 30, 2010.

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