

SECOND REGULAR SESSION

# HOUSE BILL NO. 1266

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LICHTENEGGER.

4392H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 188.027, RSMo, and to enact in lieu thereof two new sections relating to the pain capable unborn child protection act.

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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Section A. Section 188.027, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 188.027 and 188.375, to read as follows: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 seventy-two hours prior to the abortion:

(1) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician 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.

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

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

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

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

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

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

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

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

50 (4) The physician who is to perform or induce the abortion or a qualified professional  
51 shall provide the woman with the opportunity to view at least seventy-two hours prior to the

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

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

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

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

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

81 ~~—— (d) Anesthesia is given to unborn children who are twenty-two weeks or more gestational~~  
82 ~~age who undergo prenatal surgery;~~

83 ~~—— (e) Anesthesia is given to premature children who are twenty-two weeks or more~~  
84 ~~gestational age who undergo surgery;~~

85 ~~—— (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to~~  
86 ~~the unborn child;~~

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

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

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

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

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

117 ~~[(7)]~~ (6) The physician who is to perform or induce the abortion or a qualified  
118 professional has presented the woman, in person, printed materials provided by the department  
119 explaining that the father of the unborn child is liable to assist in the support of the child, even  
120 in instances where he has offered to pay for the abortion. Such materials shall include  
121 information on the legal duties and support obligations of the father of a child, including, but not  
122 limited to, child support payments, and the fact that paternity may be established by the father's

123 name on a birth certificate or statement of paternity, or by court action. Such printed materials  
124 shall also state that more information concerning paternity establishment and child support  
125 services and enforcement may be obtained by calling the family support division within the  
126 Missouri department of social services; and

127 ~~[(8)]~~ (7) The physician who is to perform or induce the abortion or a qualified  
128 professional shall inform the woman that she is free to withhold or withdraw her consent to the  
129 abortion at any time without affecting her right to future care or treatment and without the loss  
130 of any state or federally funded benefits to which she might otherwise be entitled.

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

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

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

154 5. No physician shall perform or induce an abortion unless and until the physician has  
155 obtained from the woman her voluntary and informed consent given freely and without coercion.  
156 If the physician has reason to believe that the woman is being coerced into having an abortion,  
157 the physician or qualified professional shall inform the woman that services are available for her

158 and shall provide her with private access to a telephone and information about such services,  
159 including but not limited to the following:

160 (1) Rape crisis centers, as defined in section 455.003;

161 (2) Shelters for victims of domestic violence, as defined in section 455.200; and

162 (3) Orders of protection, pursuant to chapter 455.

163 6. The physician who is to perform or induce the abortion shall, at least seventy-two  
164 hours prior to such procedure, inform the woman orally and in person of:

165 (1) The immediate and long-term medical risks to the woman associated with the  
166 proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or  
167 uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to  
168 term, and possible adverse psychological effects associated with the abortion; and

169 (2) The immediate and long-term medical risks to the woman, in light of the anesthesia  
170 and medication that is to be administered, the unborn child's gestational age, and the woman's  
171 medical history and medical conditions.

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

175 8. In the event of a medical emergency as provided by section 188.039, the physician  
176 who performed or induced the abortion shall clearly certify in writing the nature and  
177 circumstances of the medical emergency. This certification shall be signed by the physician who  
178 performed or induced the abortion, and shall be maintained under section 188.060.

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

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

192 11. By November 30, 2010, the department shall produce the written materials and forms  
193 described in this section. Any written materials produced shall be printed in a typeface large

194 enough to be clearly legible. All information shall be presented in an objective, unbiased manner  
195 designed to convey only accurate scientific and medical information. The department shall  
196 furnish the written materials and forms at no cost and in sufficient quantity to any person who  
197 performs or induces abortions, or to any hospital or facility that provides abortions. The  
198 department shall make all information required by subsection 1 of this section available to the  
199 public through its department website. The department shall maintain a toll-free,  
200 twenty-four-hour hotline telephone number where a caller can obtain information on a regional  
201 basis concerning the agencies and services described in subsection 1 of this section. No  
202 identifying information regarding persons who use the website shall be collected or maintained.  
203 The department shall monitor the website on a regular basis to prevent tampering and correct any  
204 operational deficiencies.

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

210         13. If the provisions in subsections 1 and 9 of this section requiring a seventy-two-hour  
211 waiting period for an abortion are ever temporarily or permanently restrained or enjoined by  
212 judicial order, then the waiting period for an abortion shall be twenty-four hours; provided,  
213 however, that if such temporary or permanent restraining order or injunction is stayed or  
214 dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be  
215 seventy-two hours.

**188.375. 1. The provisions of this section shall be known and may be cited as the**  
2 **“Pain Capable Unborn Child Protection Act”.**

3 **2. For purposes of this section, the following terms shall mean:**

4 **(1) “Fetus”, the unborn offspring of a human being in the postembryonic period**  
5 **from nine weeks after fertilization until birth;**

6 **(2) “Pain capable gestational age”, twenty-two weeks since the first day of the**  
7 **woman’s last menstrual period, generally consistent with the time that is twenty weeks**  
8 **after fertilization.**

9 **3. Except in the case of a medical emergency, no abortion shall be performed or**  
10 **induced, or be attempted to be performed or induced, unless the physician performing or**  
11 **inducing the abortion has first made a determination of the probable gestational age of the**  
12 **fetus or relied upon such a determination made by another physician. In making this**  
13 **determination, the physician shall make inquiries of the patient and perform or cause to**  
14 **be performed medical examinations and tests as a reasonably prudent physician**

15 knowledgeable about the case and the medical conditions involved would consider  
16 necessary to perform in making an accurate diagnosis with respect to gestational age.

17 4. (1) No person shall perform or induce, or attempt to perform or induce, an  
18 abortion if it has been determined by the physician performing or inducing, or attempting  
19 to perform or induce, the abortion, or by another physician upon whose determination that  
20 physician relies, that the probable gestational age of the fetus has reached the pain capable  
21 gestational age, unless in the reasonable medical judgment of a reasonably prudent  
22 physician the patient has a condition that, on the basis of a reasonably prudent physician's  
23 reasonable medical judgment, so complicates her medical condition as to necessitate the  
24 abortion of her pregnancy to avert her death or to avert serious risk of substantial and  
25 irreversible physical impairment of a major bodily function, not including psychological  
26 or emotional conditions. No condition shall be deemed a medical emergency if based on  
27 a claim or diagnosis that the woman will engage in conduct that she intends to result in her  
28 death or in substantial and irreversible physical impairment of a major bodily function.

29 (2) If an abortion upon a patient whose fetus has been determined to have a  
30 probable gestational age that has reached the pain capable gestational age is not prohibited  
31 by subdivision (1) of this subsection, the physician shall terminate the pregnancy in the  
32 manner that, in reasonable medical judgment, provides the best opportunity for the fetus  
33 to survive unless, in reasonable medical judgment, termination of the pregnancy in that  
34 manner would pose a greater risk either of the death of the patient or of the substantial  
35 and irreversible physical impairment of a major bodily function of the patient than would  
36 other available methods.

37 5. (1) Any physician who performs or induces an abortion shall report to the  
38 department of health and senior services. The reporting shall be on a schedule and on  
39 forms set forth by the director of the department annually before December thirty-first.  
40 The reports shall include the following information:

41 (a) Probable gestational age:

42 a. If a determination of probable gestational age was made, whether ultrasound  
43 was employed in making the determination, and the week of probable gestational age  
44 determined;

45 b. If a determination of probable gestational age was not made, the basis of the  
46 determination that a medical emergency existed;

47 (b) Method of abortion;

48 (c) If the probable gestational age was determined to have reached the pain capable  
49 gestational age, the basis of the determination that the patient had a condition that so  
50 complicated the medical condition of the patient that it necessitated the abortion of her



51 pregnancy in order to avert her death or avert a serious risk of substantial and irreversible  
52 physical impairment of a major bodily function; and

53 (d) If the probable gestational age was determined to have reached the pain capable  
54 gestational age, whether the method of abortion used was one that, in reasonable medical  
55 judgment, provided the best opportunity for the fetus to survive and, if such a method was  
56 not used, the basis of the determination that termination of the pregnancy in that manner  
57 would pose a greater risk either of the death of the patient or of the substantial and  
58 irreversible physical impairment of a major bodily function of the patient than would other  
59 available methods.

60 (2) Reports required under subdivision (1) of this subsection shall not contain the  
61 name or the address of the patient whose pregnancy was terminated, nor shall the report  
62 contain any information identifying the patient. Such reports shall be kept confidential by  
63 the department, shall not be available for public inspection, and shall not be made  
64 available except pursuant to court order.

65 (3) Beginning June 30, 2019, and annually thereafter, the department of health and  
66 senior services shall issue a public report providing statistics for the previous calendar year  
67 compiled from all of the reports covering that year submitted in accordance with this  
68 section for each of the items listed in subdivision (1) of this subsection. Each report shall  
69 provide the statistics for all previous calendar years from the effective date of this section,  
70 adjusted to reflect any additional information from late or corrected reports. The  
71 department shall ensure that none of the information included in the public reports could  
72 reasonably lead to the identification of any patient upon whom an abortion was performed  
73 or induced.

74 6. (1) Any physician or other licensed medical practitioner who intentionally or  
75 recklessly performs or induces an abortion in violation of this section is considered to have  
76 acted outside the scope of practice permitted by law or otherwise in breach of the standard  
77 of care owed to patients and is subject to discipline from the applicable licensure board for  
78 such conduct including, but not limited to, loss of professional license to practice.

79 (2) Any person not subject to subdivision (1) of this subsection who intentionally  
80 or recklessly performs or induces an abortion in violation of this section is considered to  
81 have engaged in the unauthorized practice of medicine.

82 (3) In addition to the provisions set forth in subdivisions (1) and (2) of this  
83 subsection, a patient may seek any remedy otherwise available to such patient by  
84 applicable law.

85 (4) No penalty shall be assessed against any patient upon whom an abortion is  
86 performed or induced or attempted to be performed or induced.

✓