

SECOND REGULAR SESSION

HOUSE BILL NO. 1524

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHAWAN.

3634H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 188.027, 194.200, 194.375, 194.378, 194.381, and 194.387, RSMo, and to enact in lieu thereof six new sections relating to the final disposition of fetal remains, with penalty provisions.

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

Section A. Sections 188.027, 194.200, 194.375, 194.378, 194.381, and 194.387, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 188.027, 194.200, 194.375, 194.378, 194.381, and 194.387, to read as follows:

188.027. 1. Except in cases 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) The printed materials provided by the department shall include information on the
69 possibility of an abortion causing pain in the unborn child. This information shall include, but
70 need not be limited to, the following:

71 (a) Unborn children as early as eight weeks gestational age start to show spontaneous
72 movements and unborn children at this stage in pregnancy show reflex responses to touch;

73 (b) In the unborn child, the area around his or her mouth and lips is the first part of the
74 unborn child's body to respond to touch and by fourteen weeks gestational age most of the
75 unborn child's body is responsive to touch;

76 (c) Pain receptors on the unborn child's skin develop around his or her mouth at around
77 seven to eight weeks gestational age, around the palms of his or her hands at ten to ten and a half
78 weeks, on the abdominal wall at fifteen weeks, and over all of his or her body at sixteen weeks
79 gestational age;

80 (d) Beginning at sixteen weeks gestational age and later, it is possible for pain to be
81 transmitted from receptors to the cortex of the unborn child's brain, where thinking and
82 perceiving occur;

83 (e) When a physician performs a life-saving surgery, he or she provides anesthesia to
84 unborn children as young as sixteen weeks gestational age in order to alleviate the unborn child's
85 pain; and

86 (f) A description of the actual steps in the abortion procedure to be performed or induced
87 and at which steps the abortion procedure could be painful to the unborn child;

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

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

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

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

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

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

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

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

132 (9) **The physician who is to perform or induce the abortion or a qualified**
133 **professional has presented the woman, in person, with printed materials developed and**
134 **provided by the department explaining that she has the right to determine the final**
135 **disposition of the fetus as provided in section 194.378.**

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

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

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

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

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

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

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

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

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

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

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

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

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

191 10. By November 30, 2010, the department shall produce the written materials and forms
192 described in this section. Any written materials produced shall be printed in a typeface large
193 enough to be clearly legible. All information shall be presented in an objective, unbiased manner
194 designed to convey only accurate scientific and medical information. The department shall
195 furnish the written materials and forms at no cost and in sufficient quantity to any person who

196 performs or induces abortions, or to any hospital or facility that provides abortions. The
197 department shall make all information required by subsection 1 of this section available to the
198 public through its department website. The department shall maintain a toll-free,
199 twenty-four-hour hotline telephone number where a caller can obtain information on a regional
200 basis concerning the agencies and services described in subsection 1 of this section. No
201 identifying information regarding persons who use the website shall be collected or maintained.
202 The department shall monitor the website on a regular basis to prevent tampering and correct any
203 operational deficiencies.

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

209 12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-hour
210 waiting period for an abortion are ever temporarily or permanently restrained or enjoined by
211 judicial order, then the waiting period for an abortion shall be twenty-four hours; provided,
212 however, that if such temporary or permanent restraining order or injunction is stayed or
213 dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be
214 seventy-two hours.

194.200. 1. As used in this section, the following terms mean:

2 (1) "Final disposition", the burial, entombment, ~~or cremation~~, ~~delivery to an educational~~
3 ~~or medical institution for donation, delivery to the state anatomical board or removal from the~~
4 ~~state~~] of the remains of a deceased person;

5 (2) "Parents", either or both the biological mother or father of a stillborn child, but such
6 term shall not include an unknown or unidentified biological father;

7 (3) "Stillborn child", a child who is dead at birth.

8 2. If a hospital or other health care facility transfers a stillborn child to a funeral
9 establishment for final disposition, the hospital or health care facility shall contact one or both
10 of the parents of such child within twenty-four hours of such transfer for instructions on the
11 method of final disposition of the child. If the hospital contacts and receives instructions from
12 at least one of the parents, the hospital shall convey such instructions to the funeral establishment
13 which shall proceed as directed by such instructions. If the funeral establishment receives
14 instructions from at least one of the parents, the funeral establishment may arrange for the final
15 disposition of the child in accordance with such instructions without contacting the other parent.
16 If the parents of the child do not provide instructions for the final disposition within five days,
17 the funeral establishment shall conduct the most cost-effective method of final disposition of

18 such child and the hospital shall be responsible for the cost of such final disposition. The
19 hospital shall be entitled to collect the cost of such disposition from the parents. If the parents
20 select the manner of final disposition, the parents shall be responsible to the funeral
21 establishment for the costs of such disposition.

22 3. Any person who violates the provisions of this section is guilty of a class A
23 misdemeanor.

194.375. 1. Sections 194.375 to 194.390 shall be known and may be cited as the
2 "Disposition of Fetal Remains Act".

3 2. As used in sections 194.375 to 194.390, the following terms mean:

4 (1) "Final disposition", the burial, **entombment, or** cremation~~[- or other disposition]~~ of
5 the remains of a human fetus following a ~~[spontaneous]~~ fetal demise occurring ~~[after a]~~ **at any**
6 **period of** gestation ~~[period of less than twenty completed weeks]~~ ;

7 (2) "Remains of a human fetus", the fetal remains or fetal products of conception of a
8 mother after a miscarriage, **abortion, or stillbirth**, regardless of the gestational age or whether
9 the remains have been obtained by spontaneous or accidental means.

194.378. In every instance of fetal death, the mother has the right to determine the final
2 disposition of the remains of the fetus **as provided under this section**, regardless of the duration
3 of the pregnancy. **Notwithstanding any other provision of law**, the ~~[mother may choose any~~
4 ~~means of final disposition authorized by law or by the director of the department of health and~~
5 ~~senior services]~~ **mother's choice for final disposition shall be limited to one of the following**
6 **options:**

7 (1) **Burial;**

8 (2) **Entombment; or**

9 (3) **Cremation.**

194.381. 1. The final disposition of the remains of a human fetus may be by cremation~~[-]~~
2 **or** interment by burial~~[, incineration in an approved medical waste incinerator, or other means~~
3 ~~authorized by the director of the department of health and senior services]~~ **or entombment**. The
4 disposition shall be in accordance with state law or administrative rules providing for the
5 disposition. ~~[If the remains are disposed of by incineration, the remains shall be incinerated~~
6 ~~separately from other medical waste.]~~

7 2. No religious service or ceremony is required as part of the final disposition of the
8 remains of a human fetus.

194.387. 1. Within twenty-four hours after a miscarriage occurs spontaneously or
2 accidentally at a hospital, outpatient birthing clinic, or any other health care facility, the facility
3 shall disclose to the mother of the miscarried fetus, both orally and in writing, the mother's right
4 to determine the final disposition of the remains of the fetus **under section 194.378**. The

5 facility's disclosure shall include giving the mother a copy of the facility's written standards
6 adopted pursuant to section 194.384.

7 2. The facility shall make counseling concerning the death of the fetus available to the
8 mother. The facility may provide the counseling or refer the mother to another provider of
9 appropriate counseling services.

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