

FIRST REGULAR SESSION

HOUSE BILL NO. 126

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

0461H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 188.027 and 188.052, RSMo, and to enact in lieu thereof three new sections relating to abortion, with penalty provisions.

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

Section A. Sections 188.027 and 188.052, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 188.026, 188.027, and 188.052, to read as follows:

188.026. 1. Except in cases of medical emergency, no abortion shall knowingly be performed or induced upon a pregnant woman if the fetal heartbeat of the unborn child has been detected in accordance with the provisions of this section.

2. A physician who intends to perform or induce an abortion upon a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn child. The method of determining the presence of a fetal heartbeat shall be consistent with the physician's good faith understanding of standard medical practice. The physician shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the method used to test for the presence or absence of a fetal heartbeat, the date and time of the test, and the results of the test. The physician shall give the pregnant woman the option to view or hear the fetal heartbeat.

3. If a fetal heartbeat is detected, the physician shall, in writing, inform the pregnant woman that a fetal heartbeat has been detected and that an abortion may not be performed under Missouri law except in cases of medical emergency. If a fetal heartbeat is not detected, an abortion may be performed or induced within ninety-six hours of the conclusion of the fetal heartbeat test in accordance with the provisions of this chapter 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.

17 other applicable law. If an abortion is not performed within ninety-six hours of the
18 conclusion of the fetal heartbeat detection test, a new fetal heartbeat detection test shall be
19 conducted by a physician who intends to perform or induce an abortion on the pregnant
20 woman.

21 4. Notwithstanding the provisions of section 188.075, a physician who fails to
22 conduct a fetal heartbeat detection test prior to the performance or inducement of an
23 abortion upon a pregnant woman shall, for each instance of failure, be subject to having
24 his or her license or license application rejected, revoked, or suspended by the state board
25 of registration for the healing arts in accordance with the provisions of section 334.100 for
26 a period of six months and shall be subject to a fine of one thousand dollars.

27 5. Notwithstanding the provisions of section 188.075, a physician who performs or
28 induces an abortion upon a pregnant woman after a fetal heartbeat detection test reveals
29 the presence of a fetal heartbeat in the unborn child shall have his or her license revoked,
30 and any future license application rejected, by the state board of registration for the
31 healing arts in accordance with the provisions of section 334.100.

32 6. A pregnant woman upon whom an abortion is performed or induced in violation
33 of this section shall not be prosecuted for a conspiracy to violate the provisions of this
34 section.

188.027. 1. Except in the case of medical emergency, no abortion shall be performed
2 or induced on a woman without her voluntary and informed consent, given freely and without
3 coercion. Consent to an abortion is voluntary and informed and given freely and without
4 coercion if, and only if, at least seventy-two hours prior to the abortion:

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

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

9 (b) Medically accurate information that a reasonable patient would consider material to
10 the decision of whether or not to undergo the abortion, including:

11 a. A description of the proposed abortion method;

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

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

125 enforcement may be obtained by calling the family support division within the Missouri
126 department of social services; and

127 (8) The physician who is to perform or induce the abortion or a qualified professional
128 shall inform the woman that she is free to withhold or withdraw her consent to the abortion at
129 any time without affecting her right to future care or treatment and without the loss of any state
130 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;

(2) Shelters for victims of domestic violence, as defined in section 455.200; and
(3) Orders of protection, pursuant to chapter 455.

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

(1) 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

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

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

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

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

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

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

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

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

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

188.052. 1. An individual abortion report for each abortion performed or induced upon a woman shall be completed by her attending physician.

2. An individual complication report for any post-abortion care performed upon a woman shall be completed by the physician providing such post-abortion care. This report shall include:

(1) The date of the abortion;

(2) The name and address of the abortion facility or hospital where the abortion was performed;

(3) The nature of the abortion complication diagnosed or treated; and

(4) The time, date, method, and results of the fetal heartbeat detection test performed prior to the abortion.

3. All abortion reports shall be signed by the attending physician, and submitted to the state department of health and senior services within forty-five days from the date of the abortion. All complication reports shall be signed by the physician providing the post-abortion care and submitted to the department of health and senior services within forty-five days from the date of the post-abortion care.

4. A copy of the abortion report shall be made a part of the medical record of the patient of the facility or hospital in which the abortion was performed.

18 5. The state department of health and senior services shall be responsible for collecting
19 all abortion reports and complication reports and collating and evaluating all data gathered
20 therefrom and shall annually publish a statistical report based on such data from abortions
21 performed in the previous calendar year.

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