

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 126
100TH GENERAL ASSEMBLY

Reported from the Committee on Health and Pensions, April 18, 2019, with recommendation that the Senate Committee Substitute do pass.

0461S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 188.010, 188.015, 188.020, 188.027, 188.028, 188.043, and 188.052, RSMo, and to enact in lieu thereof thirteen new sections relating to abortion, with penalty provisions and a contingent effective date for a certain section.

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

Section A. Sections 188.010, 188.015, 188.020, 188.027, 188.028, 188.043, 2 and 188.052, RSMo, are repealed and thirteen new sections enacted in lieu 3 thereof, to be known as sections 188.010, 188.015, 188.017, 188.020, 188.026, 4 188.027, 188.028, 188.033, 188.038, 188.043, 188.044, 188.052, and 188.375 to 5 read as follows:

188.010. **In recognition that God is the author of life and that** 2 **article I, section 2 of the Constitution of Missouri provides that all** 3 **persons have a natural right to life,** it is the intention of the general 4 assembly of the state of Missouri to [grant]:

5 **(1) Defend** the right to life [to] of all humans, born and unborn[, and to];

6 **(2) Declare that the state and all of its political subdivisions are** 7 **a "sanctuary of life" that protects pregnant women and their unborn** 8 **children; and**

9 **(3) Regulate abortion to the full extent permitted by the Constitution of** 10 **the United States, decisions of the United States Supreme Court, and federal** 11 **statutes.**

188.015. As used in this chapter, the following terms mean:

2 (1) "Abortion":

3 (a) The act of using or prescribing any instrument, device, medicine, drug,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

4 or any other means or substance with the intent to destroy the life of an embryo
5 or fetus in his or her mother's womb; or

6 (b) The intentional termination of the pregnancy of a mother by using or
7 prescribing any instrument, device, medicine, drug, or other means or substance
8 with an intention other than to increase the probability of a live birth or to
9 remove a dead or dying unborn child;

10 (2) "Abortion facility", a clinic, physician's office, or any other place or
11 facility in which abortions are performed or induced other than a hospital;

12 (3) "Conception", the fertilization of the ovum of a female by a sperm of
13 a male;

14 (4) "Department", the department of health and senior services;

15 (5) **"Down Syndrome", the same meaning as defined in section**
16 **191.923;**

17 (6) "Gestational age", length of pregnancy as measured from the first day
18 of the woman's last menstrual period;

19 [(6)] (7) "Medical emergency", a condition which, based on reasonable
20 medical judgment, so complicates the medical condition of a pregnant woman as
21 to necessitate the immediate abortion of her pregnancy to avert the death of the
22 pregnant woman or for which a delay will create a serious risk of substantial and
23 irreversible physical impairment of a major bodily function of the pregnant
24 woman;

25 [(7)] (8) "Physician", any person licensed to practice medicine in this
26 state by the state board of registration for the healing arts;

27 [(8)] (9) "Reasonable medical judgment", a medical judgment that would
28 be made by a reasonably prudent physician, knowledgeable about the case and
29 the treatment possibilities with respect to the medical conditions involved;

30 [(9)] (10) "Unborn child", the offspring of human beings from the moment
31 of conception until birth and at every stage of its biological development,
32 including the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

33 [(10)] (11) "Viability" or "viable", that stage of fetal development when
34 the life of the unborn child may be continued indefinitely outside the womb by
35 natural or artificial life-supportive systems.

188.017. 1. This section shall be known and may be cited as the
2 **"Right to Life of the Unborn Child Act".**

3 **2. Notwithstanding any other provision of law to the contrary,**
4 **no abortion shall be performed or induced upon a woman, except in**

5 cases of medical emergency. Any person who knowingly performs or
6 induces an abortion of an unborn child in violation of this subsection
7 shall be guilty of a class B felony, as well as subject to suspension or
8 revocation of his or her professional license by his or her professional
9 licensing board. A woman upon whom an abortion is performed or
10 induced in violation of this subsection shall not be prosecuted for a
11 conspiracy to violate the provisions of this subsection.

12 **3. It shall be an affirmative defense for any person alleged to**
13 **have violated the provisions of subsection 2 of this section that the**
14 **person performed or induced an abortion because of a medical**
15 **emergency. The defendant shall have the burden of persuasion that the**
16 **defense is more probably true than not.**

188.020. No person shall perform or induce an abortion except a
2 physician. Except in cases of medical emergency, no physician shall
3 perform or induce an abortion upon a woman presumed to be pregnant
4 unless such physician first determines whether there is a detectable
5 heartbeat or brain function of the unborn child. The method of
6 determining the presence of a fetal heartbeat or brain function shall be
7 consistent with such physician's good faith understanding of standard
8 medical practice. Such physician shall record in the woman's medical
9 record the estimated gestational age of the unborn child if she is found
10 to be pregnant, the method used to test for the presence or absence of
11 a fetal heartbeat or brain function, the date and time of the test, and
12 the results of the test.

188.026. 1. This section shall be known and may be cited as the
2 "Missouri Stands for the Unborn Act".

3 **2. In *Roe v. Wade*, 410 U.S. 113 (1973), certain information about**
4 **the development of the unborn child, human pregnancy, and the effects**
5 **of abortion was either not part of the record or was not available at the**
6 **time. Since 1973, advances in medical and scientific technology have**
7 **greatly expanded our knowledge of prenatal life and the effects of**
8 **abortion on women. The general assembly of this state finds that:**

9 **(1) During the fifth week of gestational age an unborn child's**
10 **heart starts beating;**

11 **(2) Depending on the ultrasound equipment being used, the**
12 **unborn child's heartbeat can be visually detected as early as six to**
13 **eight weeks gestational age;**

14 **(3) Confirmation of pregnancy can be indicated through the**
15 **detection of the unborn child's heartbeat, while the absence of the**
16 **unborn child's heartbeat can be an indicator of the death of the unborn**
17 **child if the child has reached that point of development;**

18 **(4) The unborn child's heartbeat can be consistently made**
19 **audible by about eight weeks gestational age through the use of a**
20 **handheld Doppler fetal heart rate device;**

21 **(5) The detection of a heartbeat in an unborn child is a key**
22 **indicator that he or she will likely reach viability and live birth;**

23 **(6) Heart rate monitoring during pregnancy and labor is used to**
24 **measure the heart rate and rhythm of the unborn child, at an average**
25 **rate between one hundred ten and one hundred sixty beats per minute,**
26 **and helps determine the health of the unborn child;**

27 **(7) The placenta begins developing during the early first**
28 **trimester of pregnancy and performs a respiratory function by making**
29 **oxygen supply to and carbon dioxide removal from the unborn child**
30 **possible later in the first trimester and throughout the second and**
31 **third trimesters of pregnancy;**

32 **(8) By the fifth week of gestation, the development of the brain**
33 **of the unborn child is underway. Brain waves have been measured and**
34 **recorded during the eighth week of gestation;**

35 **(9) It has been established under section 1.205 that the life of**
36 **each human being begins at conception. Missouri law also identifies**
37 **the presence of circulation, respiration, and brain function as indicia**
38 **of life under section 194.005, as the presence of circulation, respiration,**
39 **and brain function indicates that such person is not legally dead, but**
40 **is legally alive;**

41 **(10) The 2017 Missouri Vital Statistics Annual Report includes**
42 **the following annual abortion statistics: sixty-five abortions took place**
43 **after twenty-one weeks gestational age, as defined by the last menstrual**
44 **date; fifty-four abortions took place during twenty weeks gestational**
45 **age; one hundred ninety-three abortions took place between seventeen**
46 **and nineteen weeks gestational age; one hundred eighty-two abortions**
47 **took place between thirteen and fourteen weeks gestational age; four**
48 **hundred ninety-two abortions took place between eleven and twelve**
49 **weeks gestational age; nine hundred and fifty-seven abortions took**
50 **place between nine and ten weeks gestational age; and one thousand**

51 six hundred and seventy-three abortions took place prior to nine weeks
52 gestational age;

53 (11) In *Webster v. Reproductive Health Services*, 492 U.S. 490
54 (1989), the Supreme Court noted, in upholding a Missouri statute, "that
55 there may be a 4-week error in estimating gestational age". Thus, an
56 unborn child thought to be fourteen weeks gestational age might in fact
57 be eighteen weeks gestational age, when the unborn child is
58 considerably more developed;

59 (12) A motor response in the unborn child can first be seen as a
60 whole-body movement away from a stimulus and observed on
61 ultrasound from as early as seven and a half weeks gestational
62 age. The perioral area is the first part of the unborn child's body to
63 respond to touch at about eight weeks gestational age, but by fourteen
64 weeks gestational age, most of the unborn child's body is responsive to
65 touch;

66 (13) Peripheral cutaneous sensory receptors, the receptors that
67 feel pain, develop early in the unborn child. They appear in the
68 perioral cutaneous area at around seven to eight weeks gestational age,
69 and later in the palmar regions at ten to ten and a half weeks
70 gestational age, the abdominal wall at fifteen weeks gestational age,
71 and then over all of the unborn child's body at sixteen weeks
72 gestational age;

73 (14) Substance P, a peptide that functions as a neurotransmitter,
74 especially in the transmission of pain, is present in the dorsal horn of
75 the spinal cord of the unborn child at eight to ten weeks gestational
76 age. Enkephalins, peptides that play a role in neurotransmission and
77 pain modulation, are present in the dorsal horn at twelve to fourteen
78 weeks gestational age;

79 (15) For most women, by fourteen weeks gestational age their
80 chance of miscarriage is less than one percent when a strong heartbeat
81 is detected in the unborn child;

82 (16) When intrauterine needling is performed on an unborn child
83 at sixteen weeks gestational age and older, the reaction to this invasive
84 stimulus is blood flow redistribution to the brain. Increased blood flow
85 to the brain is the same type of stress response seen in a born child and
86 an adult;

87 (17) From sixteen weeks gestational age, pain transmission from

88 a peripheral receptor to the cortex is possible in the unborn child;

89 (18) Physicians provide anesthesia during in utero treatment of
90 unborn children as young as sixteen weeks gestational age for some
91 procedures, including those to correct fetal urinary tract
92 obstruction. Anesthesia is administered by ultrasound-guided injection
93 into the arm or leg of the unborn child;

94 (19) A leading textbook on prenatal development of the human
95 brain states, "It may be concluded that, although nociperception (the
96 actual perception of pain) awaits the appearance of consciousness,
97 nociception (the experience of pain) is present some time before birth.
98 In the absence of disproof, it is merely prudent to assume that pain can
99 be experienced even early in prenatal life (Dr. J. Wisser, Zürich): the
100 fetus should be given the benefit of the doubt." O'Rahilly, Ronan &
101 Müller, Fabiola (2005). *The Embryonic Human Brain: An Atlas of*
102 *Developmental Stages, Third Edition;*

103 (20) At around fourteen or fifteen weeks gestational age and
104 later, the predominant abortion method in Missouri is dilation and
105 evacuation (D & E). The D & E abortion method includes the
106 dismemberment, disarticulation, and exsanguination of the unborn
107 child, causing the unborn child's death;

108 (21) The D & E abortion method was found in *Gonzales v.*
109 *Carhart*, 550 U.S. 124 (2007), to be "in some respects as brutal, if not
110 more, than the intact D & E" partial birth abortion method banned by
111 Congress and was upheld as facially constitutional by the Supreme
112 Court, even though the federal ban was applicable both before and
113 after viability and had no exception for the health of the mother;

114 (22) Missouri's ban on the partial birth abortion method, section
115 565.300, is in effect because of *Gonzales v. Carhart* and the Supreme
116 Court's subsequent decision in *Nixon v. Reproductive Health Services*
117 *of Planned Parenthood of the St. Louis Region, Inc.*, 550 U.S. 901 (2007),
118 to vacate and remand to the appellate court the prior invalidation of
119 section 565.300. Since section 565.300, like Congress' ban on partial
120 birth abortion, is applicable both before and after viability, there is
121 ample precedent for the general assembly to constitutionally prohibit
122 the brutal D & E abortion method at fourteen weeks gestational age
123 and later, even before the unborn child is viable, with a medical
124 emergency exception;

125 **(23) In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court**
126 **determined that "evolving standards of decency" dictated that a**
127 **Missouri statute allowing the death penalty for a conviction of murder**
128 **in the first degree of a person under eighteen years of age when the**
129 **crime was committed was unconstitutional under the Eighth and**
130 **Fourteenth Amendments to the United States Constitution because it**
131 **violated the prohibition against "cruel and unusual punishments";**

132 **(24) Evolving standards of decency dictate that Missouri should**
133 **prohibit the brutal and painful D & E, Laminaria, and curettage**
134 **abortion methods at fourteen weeks gestational age and later, with a**
135 **medical emergency exception, because if a comparable method of**
136 **killing was used on:**

137 **(a) A person convicted of murder in the first degree, it would be**
138 **cruel and unusual punishment; or**

139 **(b) An animal, it would be unlawful under state law because it**
140 **would not be a humane method, humane euthanasia, or humane killing**
141 **of certain animals under chapters 273 and 578;**

142 **(25) In *Roper v. Simmons*, the Court also found that "[i]t is proper**
143 **that we acknowledge the overwhelming weight of international opinion**
144 **against the juvenile death penalty ... The opinion of the world**
145 **community, while not controlling our outcome, does provide respected**
146 **and significant confirmation for our own conclusions." In its opinion,**
147 **the Court was instructed by "international covenants prohibiting the**
148 **juvenile death penalty", such as the International Covenant on Civil**
149 **and Political Rights, 999 U.N.T.S. 171;**

150 **(26) The opinion of the world community, reflected in the laws**
151 **of the United Nation's 193-member states and six other entities, is that**
152 **in most countries, most abortions are prohibited at fourteen weeks**
153 **gestational age and later;**

154 **(27) The opinion of the world community is also shared by most**
155 **Americans, based on polling since 1996, that most abortions in the**
156 **second and third trimesters of pregnancy should not be legal;**

157 **(28) Abortion procedures performed later in pregnancy have a**
158 **higher medical risk for women. Compared to an abortion at eight**
159 **weeks gestational age or earlier, the relative risk increases**
160 **exponentially at later gestational ages. The relative risk of death for**
161 **a pregnant woman who had an abortion performed or induced upon her**

162 at:

163 (a) Thirteen to fifteen weeks gestational age is almost fifteen
164 times higher than an abortion at eight weeks gestational age or earlier;

165 (b) Sixteen to twenty weeks gestational age is almost thirty times
166 higher than an abortion at eight weeks gestational age or earlier; and

167 (c) Twenty-one weeks gestational age or later is more than
168 seventy-five times higher than an abortion at eight weeks gestational
169 age or earlier; and

170 (29) In addition to the short-term risks from abortion, some
171 studies find that the long-term physical and psychological
172 consequences of abortion for women include, but are not limited to, an
173 increased risk of preterm birth, low birthweight babies, and placenta
174 previa in subsequent pregnancies, as well as serious behavioral health
175 issues. These risks increase as abortion is performed or induced at
176 later gestational ages. These consequences of abortion have a
177 detrimental effect not only on women, their children, and their
178 families, but also on an already burdened health care system,
179 taxpayers, and the workforce.

180 3. The state of Missouri is bound by Article VI, Clause 2 of the
181 Constitution of the United States that "all treaties made, or which shall
182 be made, under the authority of the United States, shall be the supreme
183 law of the land". One such treaty is the International Covenant on Civil
184 and Political Rights, entered into force on March 23, 1976, and adopted
185 by the United States on September 8, 1992. In ratifying the Covenant,
186 the United States declared that while the provisions of Articles 1
187 through 27 of the Covenant are not self-executing, the United States'
188 understanding is that state governments share responsibility with the
189 federal government in implementing the Covenant.

190 4. Article 6, Paragraph 1, U.N.T.S. at 174, of the International
191 Covenant on Civil and Political Rights states, "Every human being has
192 the inherent right to life. This right shall be protected by law. No one
193 shall be arbitrarily deprived of his life." The state of Missouri takes
194 seriously its obligation to comply with the Covenant and to implement
195 this paragraph as it relates to the inherent right to life of unborn
196 human beings, protecting the rights of unborn human beings by law,
197 and ensuring that such unborn human beings are not arbitrarily
198 deprived of life. The state of Missouri hereby implements Article 6,

199 Paragraph 1 of the Covenant by the regulation of abortion in this state.

200 5. A large percentage of women who have an abortion performed
201 or induced upon them in Missouri each year are at less than eight
202 weeks gestational age. A prohibition on performing or inducing an
203 abortion at eight weeks gestational age and later, with a medical
204 emergency exception, does not amount to a substantial obstacle to a
205 large fraction of women for whom the prohibition is relevant, which is
206 pregnant women in Missouri who are seeking an abortion while not
207 experiencing a medical emergency. The burden that a prohibition on
208 performing or inducing an abortion at eight weeks gestational age and
209 later, with a medical emergency exception, might impose on abortion
210 access, is outweighed by the benefits conferred on, including, but not
211 limited to:

212 (1) Women more advanced in pregnancy who are at greater risk
213 of harm from abortion;

214 (2) Unborn children at later stages of development;

215 (3) The medical profession, by preserving its integrity and
216 fulfilling its commitment to do no harm; and

217 (4) Society, by fostering respect for human life, born and unborn,
218 at all stages of development, and by lessening societal tolerance of
219 violence against innocent human life.

220 6. The state of Missouri has interests that include, but are not
221 limited to:

222 (1) Protecting unborn children throughout pregnancy and
223 preserving and promoting their lives from conception to birth;

224 (2) Encouraging childbirth over abortion;

225 (3) Ensuring respect for all human life from conception to
226 natural death;

227 (4) Safeguarding an unborn child who is eight weeks gestational
228 age or older from serious harm of pain by an abortion method that
229 would cause the unborn child to experience pain while she or he was
230 being killed;

231 (5) Preserving the integrity of the medical profession and
232 regulating and restricting practices that might cause the medical
233 profession or society as a whole to become insensitive, even disdainful,
234 to life. This includes regulating and restricting abortion methods that
235 are not only brutal and painful, but if allowed to continue, will further

236 coarsen society to the humanity of not only unborn children, but all
237 vulnerable and innocent human life, making it increasingly difficult to
238 protect such life;

239 (6) Reducing the risks of harm to pregnant women who obtain
240 abortions later in pregnancy; and

241 (7) Avoiding burdens on the health care system, taxpayers, and
242 the workforce because of increased preterm births, low birthweight
243 babies, compromised pregnancies, extended postpartum recoveries, and
244 behavioral health problems caused by the long-term effects of abortions
245 performed or induced later in pregnancy.

246 7. Notwithstanding any other provision of law to the contrary,
247 no abortion shall be performed or induced upon a woman at eight
248 weeks gestational age or later, such gestational age as the unborn child
249 has a detectable heartbeat or measurable brain function except in cases
250 of medical emergency. Any person who knowingly performs or induces
251 an abortion of an unborn child in violation of this subsection shall be
252 guilty of a class B felony, as well as subject to suspension or revocation
253 of his or her professional license by his or her professional licensing
254 board. A woman upon whom an abortion is performed or induced in
255 violation of this subsection shall not be prosecuted for a conspiracy to
256 violate the provisions of this subsection.

257 8. It shall be an affirmative defense for any person alleged to
258 have violated the provisions of subsection 7 of this section that the
259 person performed or induced an abortion because of a medical
260 emergency. The defendant shall have the burden of persuasion that the
261 defense is more probably true than not.

262 9. A large majority, more than eighty-seven percent, of women
263 who have an abortion performed or induced upon them in Missouri
264 each year are at less than fourteen weeks gestational age. A
265 prohibition on performing or inducing an abortion at fourteen weeks
266 gestational age and later, with a medical emergency exception, does not
267 amount to a substantial obstacle to a large fraction of women for whom
268 the prohibition is relevant, which is pregnant women in Missouri who
269 are seeking an abortion while not experiencing a medical
270 emergency. The burden that a prohibition on performing or inducing
271 an abortion at fourteen weeks gestational age and later, with a medical
272 emergency exception, might impose on abortion access, is outweighed

273 by the benefits conferred on, including but not limited to:

274 (1) Women more advanced in pregnancy who are at greater risk
275 of harm from abortion;

276 (2) Unborn children at later stages of development;

277 (3) The medical profession, by preserving its integrity and
278 fulfilling its commitment to do no harm; and

279 (4) Society, by fostering respect for human life, born and unborn,
280 at all stages of development, and by lessening societal tolerance of
281 violence against innocent human life.

282 10. The state of Missouri has interests that include, but are not
283 limited to:

284 (1) Protecting unborn children throughout pregnancy and
285 preserving and promoting their lives from conception to birth;

286 (2) Encouraging childbirth over abortion;

287 (3) Ensuring respect for all human life from conception to
288 natural death;

289 (4) Safeguarding an unborn child who is fourteen weeks
290 gestational age or older from serious harm of pain by an abortion
291 method that would cause the unborn child to experience pain while she
292 or he was being killed;

293 (5) Preserving the integrity of the medical profession and
294 regulating and restricting practices that might cause the medical
295 profession or society as a whole to become insensitive, even disdainful,
296 to life. This includes regulating and restricting abortion methods that
297 are not only brutal and painful, but if allowed to continue, will further
298 coarsen society to the humanity of not only unborn children, but all
299 vulnerable and innocent human life, making it increasingly difficult to
300 protect such life;

301 (6) Reducing the risks of harm to pregnant women who obtain
302 abortions later in pregnancy; and

303 (7) Avoiding burdens on the health care system, taxpayers, and
304 the workforce because of increased preterm births, low birthweight
305 babies, compromised pregnancies, extended postpartum recoveries, and
306 behavioral health problems caused by the long-term effects of abortions
307 performed or induced later in pregnancy.

308 11. A physician who intends to perform or induce an abortion
309 upon a pregnant woman shall determine whether there is a detectable

310 fetal heartbeat or brain function of the unborn child. The method of
311 determining the presence of a fetal heartbeat or brain function shall be
312 consistent with the physician's good faith understanding of standard
313 medical practice. The physician shall record in the pregnant woman's
314 medical record the estimated gestational age of the unborn child, the
315 method used to test for the presence or absence of a fetal heartbeat or
316 brain function, the date and time of the test, and the results of the
317 test. The physician shall give the pregnant woman the option to view
318 or hear the fetal heartbeat.

319 12. If a fetal heartbeat or brain function is detected, the
320 physician shall, in writing, inform the pregnant woman that a fetal
321 heartbeat or brain function has been detected and that an abortion may
322 not be performed under Missouri law except in cases of medical
323 emergency. If an abortion is not performed within ninety-six hours of
324 the conclusion of the fetal heartbeat or brain function detection test,
325 a new fetal heartbeat or brain function detection test shall be
326 conducted by a physician who intends to perform or induce an abortion
327 on the pregnant woman.

328 13. Notwithstanding the provisions of section 188.075, a
329 physician who fails to conduct a fetal heartbeat or brain function
330 detection test prior to the performance or induction of an abortion
331 upon a pregnant woman shall, for each instance of failure, be subject
332 to having his or her license or license application rejected, revoked, or
333 suspended by the state board of registration for the healing arts in
334 accordance with the provisions of section 334.100 for a period of six
335 months and shall be subject to a fine of one thousand dollars.

336 14. Notwithstanding the provisions of section 188.075, a
337 physician who performs or induces an abortion upon a pregnant woman
338 after a fetal heartbeat or brain function detection test reveals the
339 presence of a fetal heartbeat or brain function in the unborn child shall
340 have his or her license revoked, and any future license application
341 rejected, by the state board of registration for the healing arts in
342 accordance with the provisions of section 334.100.

343 15. If any one or more provisions, subsections, sentences, clauses,
344 phrases, or words of this section or the application thereof to any
345 person, circumstance, or period of gestational age is found to be
346 unconstitutional or invalid by a court of competent jurisdiction, the

347 same is hereby declared to be severable and the balance of the section
348 shall remain effective notwithstanding such unconstitutionality or
349 invalidity. The general assembly hereby declares that it would have
350 passed this section, and each provision, subsection, sentence, clause,
351 phrase, or word thereof, irrespective of the fact that any one or more
352 provisions, subsections, sentences, clauses, phrases, or words of the
353 section, or the application of the section to any person, circumstance,
354 or period of gestational age, would be declared unconstitutional or
355 invalid. If the prohibition on performing or inducing an abortion at:

356 (1) Eight weeks gestational age or later is declared
357 unconstitutional or invalid, then the prohibition on performing or
358 inducing an abortion shall be at fourteen weeks gestational age or
359 later;

360 (2) Fourteen weeks gestational age or later is declared
361 unconstitutional or invalid, then the prohibition on performing or
362 inducing an abortion shall be at eighteen weeks gestational age or
363 later; or

364 (3) Eighteen weeks gestational age or later is declared
365 unconstitutional or invalid, then section 188.375 shall be in effect.

366 16. A pregnant woman upon whom an abortion is performed or
367 induced in violation of this section shall not be prosecuted for a
368 conspiracy to violate the provisions of this section.

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

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

9 (a) The name of the physician who will perform or induce the abortion;
10 (b) Medically accurate information that a reasonable patient would
11 consider material to the decision of whether or not to undergo the abortion,
12 including:

13 a. A description of the proposed abortion method;

14 b. The immediate and long-term medical risks to the woman associated

15 with the proposed abortion method including, but not limited to, infection,
16 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies
17 or the ability to carry a subsequent child to term, and possible adverse
18 psychological effects associated with the abortion; and

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

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

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

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

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

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

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

50 (3) The physician who is to perform or induce the abortion, a qualified

51 professional, or the referring physician has presented the woman, in person,
52 printed materials provided by the department, which describe the various
53 surgical and drug-induced methods of abortion relevant to the stage of pregnancy,
54 as well as the immediate and long-term medical risks commonly associated with
55 each abortion method including, but not limited to, infection, hemorrhage,
56 cervical tear or uterine perforation, harm to subsequent pregnancies or the ability
57 to carry a subsequent child to term, and the possible adverse psychological effects
58 associated with an abortion;

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

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

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

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

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

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

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

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

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

106 (a) Identify on a geographical basis public and private agencies available
107 to assist a woman in carrying her unborn child to term, and to assist her in
108 caring for her dependent child or placing her child for adoption, including
109 agencies commonly known and generally referred to as pregnancy resource
110 centers, crisis pregnancy centers, maternity homes, and adoption agencies. Such
111 materials shall provide a comprehensive list by geographical area of the agencies,
112 a description of the services they offer, and the telephone numbers and addresses
113 of the agencies; provided that such materials shall not include any programs,
114 services, organizations, or affiliates of organizations that perform or induce, or
115 assist in the performing or inducing of, abortions or that refer for abortions;

116 (b) Explain the Missouri alternatives to abortion services program under
117 section 188.325, and any other programs and services available to pregnant
118 women and mothers of newborn children offered by public or private agencies
119 which assist a woman in carrying her unborn child to term and assist her in
120 caring for her dependent child or placing her child for adoption, including but not
121 limited to prenatal care; maternal health care; newborn or infant care; mental
122 health services; professional counseling services; housing programs; utility

123 assistance; transportation services; food, clothing, and supplies related to
124 pregnancy; parenting skills; educational programs; job training and placement
125 services; drug and alcohol testing and treatment; and adoption assistance;

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

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

136 (7) The physician who is to perform or induce the abortion or a qualified
137 professional has presented the woman, in person, printed materials provided by
138 the department explaining that the father of the unborn child is liable to assist
139 in the support of the child, even in instances where he has offered to pay for the
140 abortion. Such materials shall include information on the legal duties and
141 support obligations of the father of a child, including, but not limited to, child
142 support payments, and the fact that paternity may be established by the father's
143 name on a birth certificate or statement of paternity, or by court action. Such
144 printed materials shall also state that more information concerning paternity
145 establishment and child support services and enforcement may be obtained by
146 calling the family support division within the Missouri department of social
147 services; and

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

153 2. All information required to be provided to a woman considering
154 abortion by subsection 1 of this section shall be presented to the woman
155 individually, in the physical presence of the woman and in a private room, to
156 protect her privacy, to maintain the confidentiality of her decision, to ensure that
157 the information focuses on her individual circumstances, to ensure she has an
158 adequate opportunity to ask questions, and to ensure that she is not a victim of

159 coerced abortion. Should a woman be unable to read materials provided to her,
160 they shall be read to her. Should a woman need an interpreter to understand the
161 information presented in the written materials, an interpreter shall be provided
162 to her. Should a woman ask questions concerning any of the information or
163 materials, answers shall be provided in a language she can understand.

164 3. No abortion shall be performed or induced unless and until the woman
165 upon whom the abortion is to be performed or induced certifies in writing on a
166 checklist form provided by the department that she has been presented all the
167 information required in subsection 1 of this section, that she has been provided
168 the opportunity to view an active ultrasound image of the unborn child [and hear
169 the heartbeat of the unborn child if it is audible], and that she further certifies
170 that she gives her voluntary and informed consent, freely and without coercion,
171 to the abortion procedure.

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

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

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

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

- 194 (1) The immediate and long-term medical risks to the woman associated

195 with the proposed abortion method including, but not limited to, infection,
196 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies
197 or the ability to carry a subsequent child to term, and possible adverse
198 psychological effects associated with the abortion; and

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

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

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

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

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

227 11. By November 30, 2010, the department shall produce the written
228 materials and forms described in this section. Any written materials produced
229 shall be printed in a typeface large enough to be clearly legible. All information
230 shall be presented in an objective, unbiased manner designed to convey only

231 accurate scientific and medical information. The department shall furnish the
232 written materials and forms at no cost and in sufficient quantity to any person
233 who performs or induces abortions, or to any hospital or facility that provides
234 abortions. The department shall make all information required by subsection 1
235 of this section available to the public through its department website. The
236 department shall maintain a toll-free, twenty-four-hour hotline telephone number
237 where a caller can obtain information on a regional basis concerning the agencies
238 and services described in subsection 1 of this section. No identifying information
239 regarding persons who use the website shall be collected or maintained. The
240 department shall monitor the website on a regular basis to prevent tampering
241 and correct any operational deficiencies.

242 12. In order to preserve the compelling interest of the state to ensure that
243 the choice to consent to an abortion is voluntary and informed, and given freely
244 and without coercion, the department shall use the procedures for adoption of
245 emergency rules under section 536.025 in order to promulgate all necessary rules,
246 forms, and other necessary material to implement this section by November 30,
247 2010.

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

 188.028. 1. **Except in the case of a medical emergency**, no person
2 shall knowingly perform **or induce** an abortion upon a pregnant woman under
3 the age of eighteen years unless:

4 (1) The attending physician has secured the informed written consent of
5 the minor and one parent or guardian, **and the consenting parent or**
6 **guardian of the minor has notified any other custodial parent or**
7 **guardian in writing prior to the securing of the informed written**
8 **consent of the minor and one parent or guardian. For purposes of this**
9 **subdivision, "custodial parent" means any parent of a minor in a family**
10 **in which the parents have not separated or dissolved their marriage,**
11 **or any parent of a minor who has been awarded joint legal custody or**
12 **joint physical custody of such minor by a court of competent**

13 jurisdiction. Notice shall not be required for any parent or guardian:

14 (a) Who has been found guilty of any offense in violation of
15 chapter 565, relating to offenses against the person; chapter 566,
16 relating to sexual offenses; chapter 567, relating to prostitution;
17 chapter 568, relating to offenses against the family; or chapter 573,
18 related to pornography and related offenses, if a child was a victim;

19 (b) Who has been found guilty of any offense in any other state
20 or foreign country, or under federal, tribal, or military jurisdiction if
21 a child was a victim, which would be a violation of chapter 565, 566,
22 567, 568, or 573 if committed in this state;

23 (c) Who is listed on the sexual offender registry under sections
24 589.400 to 589.425;

25 (d) Against whom an order of protection has been issued,
26 including a foreign order of protection given full faith and credit in
27 this state under section 455.067;

28 (e) Whose custodial, parental, or guardianship rights have been
29 terminated by a court of competent jurisdiction; or

30 (f) Whose whereabouts are unknown after reasonable inquiry,
31 who is a fugitive from justice, who is habitually in an intoxicated or
32 drugged condition, or who has been declared mentally incompetent or
33 incapacitated by a court of competent jurisdiction; [or]

34 (2) The minor is emancipated and the attending physician has received
35 the informed written consent of the minor; [or]

36 (3) The minor has been granted the right to self-consent to the abortion
37 by court order pursuant to subsection 2 of this section, and the attending
38 physician has received the informed written consent of the minor; or

39 (4) The minor has been granted consent to the abortion by court order,
40 and the court has given its informed written consent in accordance with
41 subsection 2 of this section, and the minor is having the abortion willingly, in
42 compliance with subsection 3 of this section.

43 2. The right of a minor to self-consent to an abortion under subdivision
44 (3) of subsection 1 of this section or court consent under subdivision (4) of
45 subsection 1 of this section may be granted by a court pursuant to the following
46 procedures:

47 (1) The minor or next friend shall make an application to the juvenile
48 court which shall assist the minor or next friend in preparing the petition and

49 notices required pursuant to this section. The minor or the next friend of the
50 minor shall thereafter file a petition setting forth the initials of the minor; the
51 age of the minor; the names and addresses of each parent, guardian, or, if the
52 minor's parents are deceased and no guardian has been appointed, any other
53 person standing in loco parentis of the minor; that the minor has been fully
54 informed of the risks and consequences of the abortion; that the minor is of sound
55 mind and has sufficient intellectual capacity to consent to the abortion; that, if
56 the court does not grant the minor majority rights for the purpose of consent to
57 the abortion, the court should find that the abortion is in the best interest of the
58 minor and give judicial consent to the abortion; that the court should appoint a
59 guardian ad litem of the child; and if the minor does not have private counsel,
60 that the court should appoint counsel. The petition shall be signed by the minor
61 or the next friend;

62 (2) A hearing on the merits of the petition, to be held on the record, shall
63 be held as soon as possible within five days of the filing of the petition. If any
64 party is unable to afford counsel, the court shall appoint counsel at least twenty-
65 four hours before the time of the hearing. At the hearing, the court shall hear
66 evidence relating to the emotional development, maturity, intellect and
67 understanding of the minor; the nature, possible consequences, and alternatives
68 to the abortion; and any other evidence that the court may find useful in
69 determining whether the minor should be granted majority rights for the purpose
70 of consenting to the abortion or whether the abortion is in the best interests of
71 the minor;

72 (3) In the decree, the court shall for good cause:

73 (a) Grant the petition for majority rights for the purpose of consenting to
74 the abortion; [or]

75 (b) Find the abortion to be in the best interests of the minor and give
76 judicial consent to the abortion, setting forth the grounds for so finding; or

77 (c) Deny the petition, setting forth the grounds on which the petition is
78 denied;

79 (4) If the petition is allowed, the informed consent of the minor, pursuant
80 to a court grant of majority rights, or the judicial consent, shall bar an action by
81 the parents or guardian of the minor on the grounds of battery of the minor by
82 those performing **or inducing** the abortion. The immunity granted shall only
83 extend to the performance **or induction** of the abortion in accordance herewith
84 and any necessary accompanying services which are performed in a competent

85 manner. The costs of the action shall be borne by the parties;

86 (5) An appeal from an order issued under the provisions of this section
87 may be taken to the court of appeals of this state by the minor or by a parent or
88 guardian of the minor. The notice of intent to appeal shall be given within
89 twenty-four hours from the date of issuance of the order. The record on appeal
90 shall be completed and the appeal shall be perfected within five days from the
91 filing of notice to appeal. Because time may be of the essence regarding the
92 performance **or induction** of the abortion, the supreme court of this state shall,
93 by court rule, provide for expedited appellate review of cases appealed under this
94 section.

95 3. If a minor desires an abortion, then she shall be orally informed of and,
96 if possible, sign the written consent required [by section 188.039] **under this**
97 **chapter** in the same manner as an adult person. No abortion shall be performed
98 **or induced** on any minor against her will, except that an abortion may be
99 performed **or induced** against the will of a minor pursuant to a court order
100 described in subdivision (4) of subsection 1 of this section that the abortion is
101 necessary to preserve the life of the minor.

188.033. Whenever an abortion facility or a family planning
2 **agency located in this state, or any of its agents or employees acting**
3 **within the scope of his or her authority or employment, provides to a**
4 **woman considering an abortion the name, address, telephone number,**
5 **or website of an abortion provider that is located outside of the state,**
6 **such abortion facility or family planning agency or its agents or**
7 **employees shall also provide to such woman the printed materials**
8 **produced by the department under section 188.027. If the name,**
9 **address, telephone number, or website of such abortion provider is not**
10 **provided to such woman in person, such printed materials shall be**
11 **offered to her, and if she chooses, sent to such woman at no cost to her**
12 **the same day or as soon as possible by United States mail overnight**
13 **delivery service or by other overnight or same-day delivery service to**
14 **an address of such woman's choosing. The department shall furnish**
15 **such printed materials at no cost and in sufficient quantities to**
16 **abortion facilities and family planning agencies located within the**
17 **state.**

188.038. 1. No person shall perform or induce an abortion on a
2 **woman if the person knows that the woman is seeking the abortion**

3 solely because of a prenatal diagnosis, test, or screening indicating
4 Down Syndrome or the potential of Down Syndrome in an unborn child.

5 2. No person shall perform or induce an abortion on a woman if
6 the person knows that the woman is seeking the abortion solely
7 because of the sex or race of the unborn child.

8 3. Any physician or other person who performs or induces or
9 attempts to perform or induce an abortion prohibited by this section
10 shall be subject to all applicable civil penalties under this chapter
11 including, but not limited to, sections 188.065 and 188.085.

188.043. 1. No person shall perform or induce [a surgical or medical] an
2 abortion **on another** unless such person has [proof of] medical malpractice
3 insurance with coverage amounts of at least [five hundred thousand dollars] **one**
4 **million dollars per occurrence and three million dollars in the annual**
5 **aggregate.**

6 2. For the purpose of this section, "medical malpractice insurance" means
7 insurance coverage against the legal liability of the insured and against loss,
8 damage, or expense incident to a claim arising out of the death or injury of any
9 person as a result of the negligence or malpractice in rendering professional
10 service by any health care provider.

11 3. No abortion facility or hospital shall employ or engage the services of
12 a person to perform [one or more abortions] **or induce an abortion on**
13 **another** if the person does not have [proof of] medical malpractice insurance
14 pursuant to this section, except **that** the abortion facility or hospital may provide
15 medical malpractice insurance for the services of persons employed or engaged
16 by such facility or hospital **which is no less than the coverage amounts set**
17 **forth in this section.**

18 4. Notwithstanding the provisions of section 334.100, failure of a person
19 to maintain the medical malpractice insurance required by this section shall be
20 an additional ground for sanctioning of a person's license, certificate, or permit.

188.044. 1. When a drug or chemical, or combination thereof,
2 used by a physician to induce an abortion carries a warning from its
3 manufacturer or distributor, a peer-reviewed medical journal article,
4 or a Food and Drug Administration label, that its use may cause birth
5 defects in a child who survives the abortion, then in addition to the
6 requirements of section 188.043, that physician shall also carry tail
7 insurance with coverage amounts of at least one million dollars per

8 occurrence and three million dollars in the annual aggregate for
9 personal injury to or death of a child who survives such abortion. Such
10 policy shall be maintained in force or be in effect as required under
11 section 516.105.

12 2. For the purpose of this section, "tail insurance" means
13 insurance which covers the legal liability of the insured once a medical
14 malpractice insurance policy is cancelled, not renewed, or terminated,
15 and covers claims made after such cancellation or termination for acts
16 occurring during the period the prior medical malpractice insurance
17 was in effect.

18 3. No abortion facility or hospital shall employ or engage the
19 services of a person to induce an abortion on another using any drug
20 or chemical, or combination thereof, which may cause birth defects if
21 the person does not have tail insurance pursuant to this section, except
22 that the abortion facility or hospital may provide tail insurance for the
23 services of persons employed or engaged by such facility or hospital
24 which is no less than the coverage amounts and duration set forth in
25 this section.

26 4. Notwithstanding the provisions of section 334.100 to the
27 contrary, failure of a person to maintain the tail insurance required by
28 this section shall be an additional ground for sanctioning of a person's
29 license, certificate, or permit.

188.052. 1. An individual abortion report for each abortion performed or
2 induced upon a woman shall be completed by [her attending] **the physician who**
3 **performed or induced the abortion. Abortion reports shall include, but**
4 **not be limited to, the estimated gestational age of the unborn child, the**
5 **method used to test for the presence of a heartbeat or brain function,**
6 **the date and time of the test, and the results of the test performed prior**
7 **to the abortion under section 188.020.**

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

11 (1) The date of the abortion;

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

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

15 (4) **Certification that the attending physician does not have any**

16 **knowledge that the woman sought the abortion solely because of a**
17 **prenatal diagnosis, test, or screening indicating Down Syndrome or the**
18 **potential of Down Syndrome in an unborn child; and**

19 **(5) Certification that the attending physician does not have any**
20 **knowledge that the woman sought the abortion solely because of the**
21 **sex or race of the unborn child.**

22 3. All abortion reports shall be signed by the attending physician[,] **who**
23 **performed or induced the abortion** and submitted to the [state] department
24 [of health and senior services] within forty-five days from the date of the
25 abortion. All complication reports shall be signed by the physician providing the
26 post-abortion care and submitted to the department [of health and senior
27 services] within forty-five days from the date of the post-abortion care.

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

31 5. The [state] department [of health and senior services] shall be
32 responsible for collecting all abortion reports and complication reports and
33 collating and evaluating all data gathered therefrom and shall annually publish
34 a statistical report based on such data from abortions performed **or induced** in
35 the previous calendar year.

188.375. 1. This section shall be known and may be cited as the
2 **"Late-Term Pain-Capable Unborn Child Protection Act".**

3 **2. As used in this section, the phrase "late-term pain-capable**
4 **unborn child" shall mean an unborn child at twenty weeks since the**
5 **first day of the woman's last menstrual period, at which point an**
6 **unborn child is capable of feeling pain.**

7 **3. Notwithstanding any other provision of law to the contrary,**
8 **no abortion shall be performed or induced upon a woman carrying a**
9 **late-term pain-capable unborn child, except in cases of medical**
10 **emergency. Any person who knowingly performs or induces an**
11 **abortion of a late-term pain-capable unborn child in violation of this**
12 **subsection shall be guilty of a class B felony, as well as subject to**
13 **suspension or revocation of his or her professional license by his or her**
14 **professional licensing board. A woman upon whom an abortion is**
15 **performed or induced in violation of this subsection shall not be**
16 **prosecuted for a conspiracy to violate the provisions of this subsection.**

17 4. It shall be an affirmative defense for any person alleged to
18 have violated the provisions of subsection 3 of this section that the
19 person performed or induced an abortion because of a medical
20 emergency. The defendant shall have the burden of persuasion that the
21 defense is more probably true than not.

22 5. When in cases of medical emergency a physician performs or
23 induces an abortion upon a woman carrying a late-term pain-capable
24 unborn child, the physician shall utilize the available method or
25 technique of abortion most likely to preserve the life or health of the
26 unborn child. In cases where the method or technique of abortion most
27 likely to preserve the life or health of the unborn child would present
28 a greater risk to the life or health of the woman than another legally
29 permitted and available method or technique, the physician may utilize
30 such other method or technique. In all cases where the physician
31 performs or induces an abortion upon a woman carrying a late-term
32 pain-capable unborn child, the physician shall certify in writing the
33 available method or techniques considered and the reasons for
34 choosing the method or technique employed.

35 6. When in cases of medical emergency a physician performs or
36 induces an abortion upon a woman carrying a late-term pain-capable
37 unborn child, there shall be in attendance a physician other than the
38 physician performing or inducing the abortion who shall take control
39 of and provide immediate medical care for a child born as a result of
40 the abortion.

41 7. Any physician who knowingly violates any of the provisions
42 of subsections 5 or 6 of this section shall be guilty of a class D felony,
43 as well as subject to suspension or revocation of his or her professional
44 license by his or her professional licensing board. A woman upon
45 whom an abortion is performed or induced in violation of subsections
46 5 or 6 of this section shall not be prosecuted for a conspiracy to violate
47 the provisions of those subsections.

 Section B. The enactment of section 188.017 of this act shall only become
2 effective upon notification to the revisor of statutes by an opinion by the attorney
3 general of Missouri, a proclamation by the governor of Missouri, or the adoption
4 of a concurrent resolution by the Missouri general assembly that:

5 (1) The United States Supreme Court has overruled, in whole or in part,
6 *Roe v. Wade*, 410 U.S. 113 (1973), restoring or granting to the state of Missouri

7 the authority to regulate abortion to the extent set forth in section 188.017, and
8 that as a result, it is reasonably probable that section 188.017 of this act would
9 be upheld by the court as constitutional;

10 (2) An amendment to the Constitution of the United States has been
11 adopted that has the effect of restoring or granting to the state of Missouri the
12 authority to regulate abortion to the extent set forth in section 188.017; or

13 (3) The United States Congress has enacted a law that has the effect of
14 restoring or granting to the state of Missouri the authority to regulate abortion
15 to the extent set forth in section 188.017.

✓