

FIRST REGULAR SESSION

HOUSE BILL NO. 838

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (25).

1348H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 188.015, 188.017, 188.021, 188.026, 188.027, 188.028, 188.030, 188.039, 188.056, 188.057, 188.058, 188.075, and 188.375, RSMo, and to enact in lieu thereof thirteen 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 188.015, 188.017, 188.021, 188.026, 188.027, 188.028, 188.030, 2 188.039, 188.056, 188.057, 188.058, 188.075, and 188.375, RSMo, are repealed and thirteen 3 new sections enacted in lieu thereof, to be known as sections 188.015, 188.017, 188.021, 4 188.026, 188.027, 188.028, 188.030, 188.039, 188.056, 188.057, 188.058, 188.075, and 5 188.375, to read as follows:

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

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

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

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

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

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

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.

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

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

21 (8) "Physician", any person licensed to practice medicine in this state by the state
22 board of registration for the healing arts;

23 (9) "Reasonable medical judgment", a medical judgment that would be made by a
24 reasonably prudent physician, knowledgeable about the case and the treatment possibilities
25 with respect to the medical conditions involved;

26 (10) "Unborn child", the offspring of human beings from the moment of conception
27 until birth and at every stage of its biological development, including the human conceptus,
28 zygote, morula, blastocyst, embryo, and fetus;

29 (11) "Viability" or "viable", that stage of fetal development when the life of the
30 unborn child may be continued indefinitely outside the womb by natural or artificial life-
31 supportive systems;

32 (12) "Viable pregnancy" or "viable intrauterine pregnancy", in the first trimester of
33 pregnancy, an intrauterine pregnancy that can potentially result in a liveborn baby.

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

3 2. Notwithstanding any other provision of law to the contrary, no abortion shall be
4 performed or induced upon a woman, except in cases of medical [~~emergency~~] **necessity**. Any
5 person who knowingly performs or induces an abortion of an unborn child in violation of this
6 subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of
7 his or her professional license by his or her professional licensing board. A woman upon
8 whom an abortion is performed or induced in violation of this subsection shall not be
9 prosecuted for a conspiracy to violate the provisions of this subsection.

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

14 4. The enactment of this section shall only become effective upon notification to the
15 revisor of statutes by an opinion by the attorney general of Missouri, a proclamation by the
16 governor of Missouri, or the adoption of a concurrent resolution by the Missouri general
17 assembly that:

18 (1) The United States Supreme Court has overruled, in whole or in part, Roe v. Wade,
19 410 U.S. 113 (1973), restoring or granting to the state of Missouri the authority to regulate
20 abortion to the extent set forth in this section, and that as a result, it is reasonably probable
21 that this section would be upheld by the court as constitutional;

22 (2) An amendment to the Constitution of the United States has been adopted that has
23 the effect of restoring or granting to the state of Missouri the authority to regulate abortion to
24 the extent set forth in this section; or

25 (3) The United States Congress has enacted a law that has the effect of restoring or
26 granting to the state of Missouri the authority to regulate abortion to the extent set forth in this
27 section.

188.021. 1. When RU-486 (mifepristone) or any drug or chemical is used for the
2 purpose of inducing an abortion, the initial dose of the drug or chemical shall be administered
3 in the same room and in the physical presence of the physician who prescribed, dispensed, or
4 otherwise provided the drug or chemical to the patient. The physician inducing the abortion,
5 or a person acting on such physician's behalf, shall make all reasonable efforts to ensure that
6 the patient returns after the administration or use of RU-486 or any drug or chemical for a
7 follow-up visit unless such termination of the pregnancy has already been confirmed and the
8 patient's medical condition has been assessed by a licensed physician prior to discharge.

9 2. When the Food and Drug Administration label of any drug or chemical used for the
10 purpose of inducing an abortion includes any clinical study in which more than one percent of
11 those administered the drug or chemical required surgical intervention after its administration,
12 no physician may prescribe or administer such drug or chemical to any patient without first
13 obtaining approval from the department of health and senior services of a complication plan
14 from the physician for administration of the drug or chemical to any patient. The
15 complication plan shall include any information deemed necessary by the department to
16 ensure the safety of any patient suffering complications as a result of the administration of the
17 drug or chemical in question. No complication plan shall be required where the patient is
18 administered the drug ~~in~~ as a medical ~~emergency~~ **necessity** at a hospital and is then treated
19 as an inpatient at a hospital under medical monitoring by the hospital until the abortion is
20 completed.

21 3. The department may adopt rules, regulations, and standards governing
22 complication plans to ensure that patients undergoing abortions induced by drugs or
23 chemicals have access to safe and reliable care. Any rule or portion of a rule, as that term is
24 defined in section 536.010, that is created under the authority delegated in this section shall
25 become effective only if it complies with and is subject to all of the provisions of chapter 536
26 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any
27 of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the

28 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then
29 the grant of rulemaking authority and any rule proposed or adopted after October 24, 2017,
30 shall be invalid and void.

188.026. 1. This section and sections 188.056, 188.057, and 188.058 shall be known
2 and may be cited as the "Missouri Stands for the Unborn Act".

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

8 (1) At conception, a new genetically distinct human being is formed;

9 (2) The fact that the life of an individual human being begins at conception has long
10 been recognized in Missouri law: "[T]he child is, in truth, alive from the moment of
11 conception". *State v. Emerich*, 13 Mo. App. 492, 495 (1883), affirmed, 87 Mo. 110 (1885).
12 Under section 1.205, the general assembly has recognized that the life of each human being
13 begins at conception and that unborn children have protectable interests in life, health, and
14 well-being;

15 (3) The first prohibition of abortion in Missouri was enacted in 1825. Since then, the
16 repeal and reenactment of prohibitions of abortion have made distinctions with respect to
17 penalties for performing or inducing abortion on the basis of "quickening"; however, the
18 unborn child was still protected from conception onward;

19 (4) In ruling that Missouri's prohibition on abortion was constitutional in 1972, the
20 Missouri supreme court accepted as a stipulation of the parties that "[i]nfant Doe, Intervenor
21 Defendant in this case, and all other unborn children have all the qualities and attributes of
22 adult human persons differing only in age or maturity. Medically, human life is a continuum
23 from conception to death." *Rodgers v. Danforth*, 486 S.W.2d 258, 259 (1972);

24 (5) In *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), the Supreme
25 Court, while considering the "preamble" that set forth "findings" in section 1.205, stated:
26 "We think the extent to which the preamble's language might be used to interpret other state
27 statutes or regulations is something that only the courts of Missouri can definitively decide.
28 State law has offered protections to unborn children in tort and probate law". *Id.* at 506. Since
29 *Webster*, Missouri courts have construed section 1.205 and have consistently found that an
30 unborn child is a person for purposes of Missouri's homicide and assault laws when the
31 unborn child's mother was killed or assaulted by another person. Section 1.205 has even been
32 found applicable to the manslaughter of an unborn child who was eight weeks gestational age
33 or earlier. *State v. Harrison*, 390 S.W.3d 927 (Mo. Ct. App. 2013);

34 (6) In medicine, a special emphasis is placed on the heartbeat. The heartbeat is a
35 discernible sign of life at every stage of human existence. During the fifth week of
36 gestational age, an unborn child's heart begins to beat and blood flow begins during the sixth
37 week;

38 (7) Depending on the ultrasound equipment being used, the unborn child's heartbeat
39 can be visually detected as early as six to eight weeks gestational age. By about twelve weeks
40 gestational age, the unborn child's heartbeat can consistently be made audible through the use
41 of a handheld Doppler fetal heart rate device;

42 (8) Confirmation of a pregnancy can be indicated through the detection of the unborn
43 child's heartbeat, while the absence of a heartbeat can be an indicator of the death of the
44 unborn child if the child has reached the point of development when a heartbeat should be
45 detectable;

46 (9) Heart rate monitoring during pregnancy and labor is utilized to measure the heart
47 rate and rhythm of the unborn child, at an average rate between one hundred ten and one
48 hundred sixty beats per minute, and helps determine the health of the unborn child;

49 (10) The Supreme Court in *Roe* discussed "the difficult question of when life begins"
50 and wrote: "[p]hysicians and their scientific colleagues have regarded [quickening] with less
51 interest and have tended to focus either upon conception, upon live birth, or upon the interim
52 point at which the fetus becomes 'viable', that is, potentially able to live outside the mother's
53 womb, albeit with artificial aid". *Roe*, 410 U.S. at 160. Today, however, physicians' and
54 scientists' interests on life in the womb also focus on other markers of development in the
55 unborn child, including, but not limited to, presence of a heartbeat, brain development, a
56 viable pregnancy or viable intrauterine pregnancy during the first trimester of pregnancy, and
57 the ability to experience pain;

58 (11) In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), the
59 Supreme Court noted that "we recognized in *Roe* that viability was a matter of medical
60 judgment, skill, and technical ability, and we preserved the flexibility of the term". *Id.* at 64.
61 Due to advances in medical technology and diagnoses, present-day physicians and scientists
62 now describe the viability of an unborn child in an additional manner, by determining whether
63 there is a viable pregnancy or viable intrauterine pregnancy during the first trimester of
64 pregnancy;

65 (12) While the overall risk of miscarriage after clinical recognition of pregnancy is
66 twelve to fifteen percent, the incidence decreases significantly if cardiac activity in the unborn
67 child has been confirmed. The detection of a heartbeat in an unborn child is a reliable
68 indicator of a viable pregnancy and that the unborn child will likely survive to birth,
69 especially if presenting for a prenatal visit at eight weeks gestational age or later. For
70 asymptomatic women attending a first prenatal visit between six and eleven weeks gestational

71 age where a heartbeat was confirmed through an ultrasound, the subsequent risk of
72 miscarriage is one and six-tenths percent. Although the risk is higher at six weeks gestational
73 age at nine and four-tenths percent, it declines rapidly to one and five-tenths percent at eight
74 weeks gestational age, and less than one percent at nine weeks gestational age or later;

75 (13) The presence of a heartbeat in an unborn child represents a more definable point
76 of ascertaining survivability than the ambiguous concept of viability that has been adopted by
77 the Supreme Court, especially since if a heartbeat is detected at eight weeks gestational age or
78 later in a normal pregnancy, there is likely to be a viable pregnancy and there is a high
79 probability that the unborn child will survive to birth;

80 (14) The placenta begins developing during the early first trimester of pregnancy and
81 performs a respiratory function by making oxygen supply to and carbon dioxide removal
82 from the unborn child possible later in the first trimester and throughout the second and third
83 trimesters of pregnancy;

84 (15) By the fifth week of gestation, the development of the brain of the unborn child
85 is underway. Brain waves have been measured and recorded as early as the eighth week of
86 gestational age in children who were removed during an ectopic pregnancy or hysterectomy.
87 Fetal magnetic resonance imaging (MRI) of an unborn child's brain is used during the second
88 and third trimesters of pregnancy and brain activity has been observed using MRI;

89 (16) Missouri law identifies the presence of circulation, respiration, and brain
90 function as indicia of life under section 194.005, as the presence of circulation, respiration,
91 and brain function indicates that such person is not legally dead, but is legally alive;

92 (17) Unborn children at eight weeks gestational age show spontaneous movements,
93 such as a twitching of the trunk and developing limbs. It has been reported that unborn
94 children at this stage show reflex responses to touch. The perioral area is the first part of the
95 unborn child's body to respond to touch at about eight weeks gestational age and by fourteen
96 weeks gestational age most of the unborn child's body is responsive to touch;

97 (18) Peripheral cutaneous sensory receptors, the receptors that feel pain, develop
98 early in the unborn child. They appear in the perioral cutaneous area at around seven to eight
99 weeks gestational age, in the palmar regions at ten to ten and a half weeks gestational age, the
100 abdominal wall at fifteen weeks gestational age, and over all of the unborn child's body at
101 sixteen weeks gestational age;

102 (19) Substance P, a peptide that functions as a neurotransmitter, especially in the
103 transmission of pain, is present in the dorsal horn of the spinal cord of the unborn child at
104 eight to ten weeks gestational age. Enkephalins, peptides that play a role in
105 neurotransmission and pain modulation, are present in the dorsal horn at twelve to
106 fourteen weeks gestational age;

107 (20) When intrauterine needling is performed on an unborn child at sixteen weeks
108 gestational age or later, the reaction to this invasive stimulus is blood flow redistribution to
109 the brain. Increased blood flow to the brain is the same type of stress response seen in a born
110 child and an adult;

111 (21) By sixteen weeks gestational age, pain transmission from a peripheral receptor to
112 the cortex is possible in the unborn child;

113 (22) Physicians provide anesthesia during in utero treatment of unborn children as
114 early as sixteen weeks gestational age for certain procedures, including those to correct fetal
115 urinary tract obstruction. Anesthesia is administered by ultrasound-guided injection into the
116 arm or leg of the unborn child;

117 (23) A leading textbook on prenatal development of the human brain states, "It may
118 be concluded that, although nociperception (the actual perception of pain) awaits the
119 appearance of consciousness, nociception (the experience of pain) is present some time before
120 birth. In the absence of disproof, it is merely prudent to assume that pain can be experienced
121 even early in prenatal life (Dr. J. Wisser, Zürich): the fetus should be given the benefit of the
122 doubt". Ronan O'Rahilly & Fabiola Müller. The Embryonic Human Brain: An Atlas of
123 Developmental Stages (3d ed. 2005);

124 (24) By fourteen or fifteen weeks gestational age or later, the predominant abortion
125 method in Missouri is dilation and evacuation (D&E). The D&E abortion method includes
126 the dismemberment, disarticulation, and exsanguination of the unborn child, causing the
127 unborn child's death;

128 (25) The Supreme Court acknowledged in *Gonzales v. Carhart*, 550 U.S. 124, 160
129 (2007), that "the standard D&E is in some respects as brutal, if not more, than the intact
130 D&E" partial birth abortion method banned by Congress and upheld as facially constitutional
131 by the Supreme Court, even though the federal ban was applicable both before and after
132 viability and had no exception for the health of the mother;

133 (26) Missouri's ban on the partial birth abortion method, section 565.300, is in effect
134 because of *Gonzales v. Carhart* and the Supreme Court's subsequent decision in *Nixon v.*
135 *Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc.*, 550 U.S.
136 901 (2007), to vacate and remand to the appellate court the prior invalidation of section
137 565.300. Since section 565.300, like Congress' ban on partial birth abortion, is applicable
138 both before and after viability, there is ample precedent for the general assembly to
139 constitutionally prohibit the brutal D&E abortion method at fourteen weeks gestational age or
140 later, even before the unborn child is viable, with a medical ~~[emergency]~~ **necessity** exception;

141 (27) In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court determined that
142 "evolving standards of decency" dictated that a Missouri statute allowing the death penalty
143 for a conviction of murder in the first degree for a person under eighteen years of age when

144 the crime was committed was unconstitutional under the Eighth and Fourteenth Amendments
145 to the United States Constitution because it violated the prohibition against "cruel and unusual
146 punishments";

147 (28) In *Bucklew v. Precythe*, 139 S. Ct. 1112, 1123 (2019), the Supreme Court noted
148 that "'[d]isgusting' practices" like disemboweling and quartering "readily qualified as 'cruel
149 and unusual', as a reader at the time of the Eighth Amendment's adoption would have
150 understood those words";

151 (29) Evolving standards of decency dictate that Missouri should prohibit the brutal
152 and painful D&E abortion method at fourteen weeks gestational age or later, with a medical
153 ~~[emergency]~~ **necessity** exception, because if a comparable method of killing was used on:

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

156 (b) An animal, it would be unlawful under state law because it would not be a humane
157 method, humane euthanasia, or humane killing of certain animals under chapters 273 and
158 578;

159 (30) In *Roper*, the Supreme Court also found that "[i]t is proper that we acknowledge
160 the overwhelming weight of international opinion against the juvenile death penalty.... The
161 opinion of the world community, while not controlling our outcome, does provide respected
162 and significant confirmation for our own conclusions". *Roper*, 543 U.S. at 578. In its
163 opinion, the Supreme Court was instructed by "international covenants prohibiting the
164 juvenile death penalty", such as the International Covenant on Civil and Political Rights, 999
165 U.N.T.S. 171. *Id.* at 577;

166 (31) The opinion of the world community, reflected in the laws of the United Nation's
167 193-member states and six other entities, is that in most countries, most abortions are
168 prohibited after twelve weeks gestational age or later;

169 (32) The opinion of the world community is also shared by most Americans, who
170 believe that most abortions in the second and third trimesters of pregnancy should be illegal,
171 based on polling that has remained consistent since 1996;

172 (33) Abortion procedures performed later in pregnancy have a higher medical risk for
173 women. Compared to an abortion at eight weeks gestational age or earlier, the relative risk
174 increases exponentially at later gestational ages. The relative risk of death for a pregnant
175 woman who had an abortion performed or induced upon her at:

176 (a) Eleven to twelve weeks gestational age is between three and four times higher
177 than an abortion at eight weeks gestational age or earlier;

178 (b) Thirteen to fifteen weeks gestational age is almost fifteen times higher than an
179 abortion at eight weeks gestational age or earlier;

180 (c) Sixteen to twenty weeks gestational age is almost thirty times higher than an
181 abortion at eight weeks gestational age or earlier; and

182 (d) Twenty-one weeks gestational age or later is more than seventy-five times higher
183 than an abortion at eight weeks gestational age or earlier;

184 (34) In addition to the short-term risks of an abortion, studies have found that the
185 long-term physical and psychological consequences of abortion for women include, but are
186 not limited to, an increased risk of preterm birth, low birthweight babies, and placenta previa
187 in subsequent pregnancies, as well as serious behavioral health issues. These risks increase as
188 abortions are performed or induced at later gestational ages. These consequences of an
189 abortion have a detrimental effect not only on women, their children, and their families, but
190 also on an already burdened health care system, taxpayers, and the workforce;

191 (35) A large percentage of women who have an abortion performed or induced upon
192 them in Missouri each year are at less than eight weeks gestational age, a large majority are at
193 less than fourteen weeks gestational age, a larger majority are at less than eighteen weeks
194 gestational age, and an even larger majority are at less than twenty weeks gestational age. A
195 prohibition on performing or inducing an abortion at eight weeks gestational age or later, with
196 a medical [~~emergency~~] **necessity** exception, does not amount to a substantial obstacle to a
197 large fraction of women for whom the prohibition is relevant, which is pregnant women in
198 Missouri who are seeking an abortion while not experiencing a medical [~~emergency~~]
199 **necessity**. The burden that a prohibition on performing or inducing an abortion at eight,
200 fourteen, eighteen, or twenty weeks gestational age or later, with a medical [~~emergency~~]
201 **necessity** exception, might impose on abortion access, is outweighed by the benefits
202 conferred upon the following:

203 (a) Women more advanced in pregnancy who are at greater risk of harm from
204 abortion;

205 (b) Unborn children at later stages of development;

206 (c) The medical profession, by preserving its integrity and fulfilling its commitment
207 to do no harm; and

208 (d) Society, by fostering respect for human life, born and unborn, at all stages of
209 development, and by lessening societal tolerance of violence against innocent human life;

210 (36) In *Webster*, the Supreme Court noted, in upholding a Missouri statute, "that there
211 may be a 4-week error in estimating gestational age". *Webster*, 492 U.S. at 516. Thus, an
212 unborn child thought to be eight weeks gestational age might in fact be twelve weeks
213 gestational age, when an abortion poses a greater risk to the woman and the unborn child is
214 considerably more developed. An unborn child at fourteen weeks gestational age might be
215 eighteen weeks gestational age and an unborn child at eighteen weeks gestational age might
216 be twenty-two weeks gestational age, when an abortion poses a greater risk to the woman, the

217 unborn child is considerably more developed, the abortion method likely to be employed is
218 more brutal, and the risk of pain experienced by the unborn child is greater. An unborn child
219 at twenty weeks gestational age might be twenty-four weeks gestational age, when an
220 abortion poses a greater risk to the woman, the unborn child is considerably more developed,
221 the abortion method likely to be employed is more brutal, the risk of pain experienced by the
222 unborn child is greater, and the unborn child may be viable.

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

231 4. Article 6, Paragraph 1, U.N.T.S. at 174, of the International Covenant on Civil and
232 Political Rights states, "Every human being has the inherent right to life. This right shall be
233 protected by law. No one shall be arbitrarily deprived of his life". The state of Missouri takes
234 seriously its obligation to comply with the Covenant and to implement this paragraph as it
235 relates to the inherent right to life of unborn human beings, protecting the rights of unborn
236 human beings by law, and ensuring that such unborn human beings are not arbitrarily
237 deprived of life. The state of Missouri hereby implements Article 6, Paragraph 1 of the
238 Covenant by the regulation of abortion in this state.

239 5. The state of Missouri has interests that include, but are not limited to:

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

242 (2) Encouraging childbirth over abortion;

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

244 (4) Safeguarding an unborn child from the serious harm of pain by an abortion
245 method that would cause the unborn child to experience pain while she or he is being killed;

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

252 (6) Ending the incongruities in state law by permitting some unborn children to be
253 killed by abortion, while requiring that unborn children be protected in nonabortion

254 circumstances through, including, but not limited to, homicide, assault, self-defense, and
255 defense of another statutes; laws guaranteeing prenatal health care, emergency care, and
256 testing; state-sponsored health insurance for unborn children; the prohibition of restraints in
257 correctional institutions to protect pregnant offenders and their unborn children; and
258 protecting the interests of unborn children by the appointment of conservators, guardians, and
259 representatives;

260 (7) Reducing the risks of harm to pregnant women who obtain abortions later in
261 pregnancy; and

262 (8) Avoiding burdens on the health care system, taxpayers, and the workforce because
263 of increased preterm births, low birthweight babies, compromised pregnancies, extended
264 postpartum recoveries, and behavioral health problems caused by the long-term effects of
265 abortions performed or induced later in the pregnancy.

188.027. 1. Except in cases of medical ~~[emergency]~~ **necessity**, no abortion shall be
2 performed or induced on a woman without her voluntary and informed consent, given freely
3 and without coercion. Consent to an abortion is voluntary and informed and given freely and
4 without 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,
6 or the referring physician has informed the woman orally, reduced to writing, and in person,
7 of the 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
10 to 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
14 or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent
15 child to 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

26 the physician performing or inducing the abortion has clinical privileges and where the
27 woman may 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
29 or induced; and

30 (g) The anatomical and physiological characteristics of the unborn child at the time
31 the 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 two-
35 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
38 and internal organs during the applicable stages of development and information on when the
39 unborn child is viable. The printed materials shall prominently display the following
40 statement: "The life of each human being begins at conception. Abortion will terminate the
41 life of a separate, unique, living human being.";

42 (3) The physician who is to perform or induce the abortion, a qualified professional,
43 or the referring physician has presented the woman, in person, printed materials provided by
44 the department, which describe the various surgical and drug-induced methods of abortion
45 relevant to the stage of pregnancy, as well as the immediate and long-term medical risks
46 commonly associated with each abortion method including, but not limited to, infection,
47 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability
48 to carry a subsequent child to term, and the possible adverse psychological effects associated
49 with an 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
56 shall provide contact information for each provider, facility, or clinic including telephone
57 numbers and, if available, website addresses. Should the woman decide to obtain an
58 ultrasound from a provider, facility, or clinic other than the abortion facility, the woman shall
59 be offered a reasonable time to obtain the ultrasound examination before the date and time set
60 for performing or inducing an abortion. The person conducting the ultrasound shall ensure
61 that the active ultrasound image is of a quality consistent with standard medical practice in the
62 community, contains the dimensions of the unborn child, and accurately portrays the presence

63 of external members and internal organs, if present or viewable, of the unborn child. The
64 auscultation of fetal heart tone must also be of a quality consistent with standard medical
65 practice in the community. If the woman chooses to view the ultrasound or hear the heartbeat
66 or both at the abortion facility, the viewing or hearing or both shall be provided to her at the
67 abortion facility 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
77 around seven to eight weeks gestational age, around the palms of his or her hands at ten to ten
78 and a half weeks, on the abdominal wall at fifteen weeks, and over all of his or her body at
79 sixteen weeks 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
85 child's pain; and

86 (f) A description of the actual steps in the abortion procedure to be performed or
87 induced 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
90 to 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
96 agencies, a description of the services they offer, and the telephone numbers and addresses of
97 the agencies; provided that such materials shall not include any programs, services,
98 organizations, or affiliates of organizations that perform or induce, or assist in the performing
99 or inducing of, abortions or that refer for abortions;

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

109 (c) Identify the state website for the Missouri alternatives to abortion services
110 program under section 188.325, and any toll-free number established by the state operated in
111 conjunction 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
114 is 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
116 abortion. State law requires that your physician or a qualified professional give you the
117 opportunity to call 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
120 that the father of the unborn child is liable to assist in the support of the child, even in
121 instances where he has offered to pay for the abortion. Such materials shall include
122 information on the legal duties and support obligations of the father of a child, including, but
123 not limited to, child support payments, and the fact that paternity may be established by the
124 father's name on a birth certificate or statement of paternity, or by court action. Such printed
125 materials shall also state that more information concerning paternity establishment and child
126 support services and enforcement may be obtained by calling the family support division
127 within the Missouri 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
131 state or federally funded benefits to which she might otherwise be entitled.

132 2. All information required to be provided to a woman considering abortion by
133 subsection 1 of this section shall be presented to the woman individually, in the physical
134 presence of the woman and in a private room, to protect her privacy, to maintain the
135 confidentiality of her decision, to ensure that the information focuses on her individual
136 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that

137 she is not a victim of coerced abortion. Should a woman be unable to read materials provided
138 to her, they shall be read to her. Should a woman need an interpreter to understand the
139 information presented in the written materials, an interpreter shall be provided to her. Should
140 a woman ask questions concerning any of the information or materials, answers shall be
141 provided in a language she can understand.

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

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

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

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

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

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

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

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

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

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

188 10. By November 30, 2010, the department shall produce the written materials and
189 forms described in this section. Any written materials produced shall be printed in a typeface
190 large enough to be clearly legible. All information shall be presented in an objective,
191 unbiased manner designed to convey only accurate scientific and medical information. The
192 department shall furnish the written materials and forms at no cost and in sufficient quantity
193 to any person who performs or induces abortions, or to any hospital or facility that provides
194 abortions. The department shall make all information required by subsection 1 of this section
195 available to the public through its department website. The department shall maintain a toll-
196 free, twenty-four-hour hotline telephone number where a caller can obtain information on a
197 regional basis concerning the agencies and services described in subsection 1 of this section.
198 No identifying information regarding persons who use the website shall be collected or
199 maintained. The department shall monitor the website on a regular basis to prevent tampering
200 and correct any operational deficiencies.

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

206 12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-
207 hour waiting period for an abortion are ever temporarily or permanently restrained or
208 enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours;
209 provided, however, that if such temporary or permanent restraining order or injunction is

210 stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall
211 be seventy-two hours.

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

4 (1) The attending physician has secured the informed written consent of the minor
5 and one parent or guardian, and the consenting parent or guardian of the minor has notified
6 any other custodial parent in writing prior to the securing of the informed written consent of
7 the minor and one parent or guardian. For purposes of this subdivision, "custodial parent"
8 shall only mean a parent of a minor who has been awarded joint legal custody or joint
9 physical custody of such minor by a court of competent jurisdiction. Notice shall not be
10 required for any parent:

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

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

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

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

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

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

26 (2) The minor is emancipated and the attending physician has received the informed
27 written consent of the minor;

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

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

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

37 (1) The minor or next friend shall make an application to the juvenile court which
38 shall assist the minor or next friend in preparing the petition and notices required pursuant to
39 this section. The minor or the next friend of the minor shall thereafter file a petition setting
40 forth the initials of the minor; the age of the minor; the names and addresses of each parent,
41 guardian, or, if the minor's parents are deceased and no guardian has been appointed, any
42 other person standing in loco parentis of the minor; that the minor has been fully informed of
43 the risks and consequences of the abortion; that the minor is of sound mind and has sufficient
44 intellectual capacity to consent to the abortion; that, if the court does not grant the minor
45 majority rights for the purpose of consent to the abortion, the court should find that the
46 abortion is in the best interest of the minor and give judicial consent to the abortion; that the
47 court should appoint a guardian ad litem of the child; and if the minor does not have private
48 counsel, that the court should appoint counsel. The petition shall be signed by the minor or
49 the next friend;

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

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

59 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;

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

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

63 (4) If the petition is allowed, the informed consent of the minor, pursuant to a court
64 grant of majority rights, or the judicial consent, shall bar an action by the parents or guardian
65 of the minor on the grounds of battery of the minor by those performing or inducing the
66 abortion. The immunity granted shall only extend to the performance or induction of the
67 abortion in accordance herewith and any necessary accompanying services which are
68 performed in a competent manner. The costs of the action shall be borne by the parties;

69 (5) An appeal from an order issued under the provisions of this section may be taken
70 to the court of appeals of this state by the minor or by a parent or guardian of the minor. The

71 notice of intent to appeal shall be given within twenty-four hours from the date of issuance of
72 the order. The record on appeal shall be completed and the appeal shall be perfected within
73 five days from the filing of notice to appeal. Because time may be of the essence regarding
74 the performance or induction of the abortion, the supreme court of this state shall, by court
75 rule, provide for expedited appellate review of cases appealed under this section.

76 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
77 sign the written consent required under this chapter in the same manner as an adult person.
78 No abortion shall be performed or induced on any minor against her will, except that an
79 abortion may be performed or induced against the will of a minor pursuant to a court order
80 described in subdivision (4) of subsection 1 of this section that the abortion is necessary to
81 preserve the life of the minor.

188.030. 1. Except in the case of a medical ~~[emergency]~~ **necessity**, no abortion of a
2 viable unborn child shall be performed or induced unless the abortion is necessary to preserve
3 the life of the pregnant woman whose life is endangered by a physical disorder, physical
4 illness, or physical injury, including a life-endangering physical condition caused by or
5 arising from the pregnancy itself, or when continuation of the pregnancy will create a serious
6 risk of substantial and irreversible physical impairment of a major bodily function of the
7 pregnant woman. For purposes of this section, "major bodily function" includes, but is not
8 limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder,
9 neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

10 2. Except in the case of a medical ~~[emergency]~~ **necessity**:

11 (1) Prior to performing or inducing an abortion upon a woman, the physician shall
12 determine the gestational age of the unborn child in a manner consistent with accepted
13 obstetrical and neonatal practices and standards. In making such determination, the physician
14 shall make such inquiries of the pregnant woman and perform or cause to be performed such
15 medical examinations, imaging studies, and tests as a reasonably prudent physician,
16 knowledgeable about the medical facts and conditions of both the woman and the unborn
17 child involved, would consider necessary to perform and consider in making an accurate
18 diagnosis with respect to gestational age;

19 (2) If the physician determines that the gestational age of the unborn child is twenty
20 weeks or more, prior to performing or inducing an abortion upon the woman, the physician
21 shall determine if the unborn child is viable by using and exercising that degree of care, skill,
22 and proficiency commonly exercised by a skillful, careful, and prudent physician. In making
23 this determination of viability, the physician shall perform or cause to be performed such
24 medical examinations and tests as are necessary to make a finding of the gestational age,
25 weight, and lung maturity of the unborn child and shall enter such findings and determination
26 of viability in the medical record of the woman;

27 (3) If the physician determines that the gestational age of the unborn child is twenty
28 weeks or more, and further determines that the unborn child is not viable and performs or
29 induces an abortion upon the woman, the physician shall report such findings and
30 determinations and the reasons for such determinations to the health care facility in which the
31 abortion is performed and to the state board of registration for the healing arts, and shall enter
32 such findings and determinations in the medical records of the woman and in the individual
33 abortion report submitted to the department under section 188.052;

34 (4) (a) If the physician determines that the unborn child is viable, the physician shall
35 not perform or induce an abortion upon the woman unless the abortion is necessary to
36 preserve the life of the pregnant woman or that a continuation of the pregnancy will create a
37 serious risk of substantial and irreversible physical impairment of a major bodily function of
38 the woman.

39 (b) Before a physician may proceed with performing or inducing an abortion upon a
40 woman when it has been determined that the unborn child is viable, the physician shall first
41 certify in writing the medical threat posed to the life of the pregnant woman, or the medical
42 reasons that continuation of the pregnancy would cause a serious risk of substantial and
43 irreversible physical impairment of a major bodily function of the pregnant woman. Upon
44 completion of the abortion, the physician shall report the reasons and determinations for the
45 abortion of a viable unborn child to the health care facility in which the abortion is performed
46 and to the state board of registration for the healing arts, and shall enter such findings and
47 determinations in the medical record of the woman and in the individual abortion report
48 submitted to the department under section 188.052.

49 (c) Before a physician may proceed with performing or inducing an abortion upon a
50 woman when it has been determined that the unborn child is viable, the physician who is to
51 perform the abortion shall obtain the agreement of a second physician with knowledge of
52 accepted obstetrical and neonatal practices and standards who shall concur that the abortion is
53 necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy
54 would cause a serious risk of substantial and irreversible physical impairment of a major
55 bodily function of the pregnant woman. This second physician shall also report such reasons
56 and determinations to the health care facility in which the abortion is to be performed and to
57 the state board of registration for the healing arts, and shall enter such findings and
58 determinations in the medical record of the woman and the individual abortion report
59 submitted to the department under section 188.052. The second physician shall not have any
60 legal or financial affiliation or relationship with the physician performing or inducing the
61 abortion, except that such prohibition shall not apply to physicians whose legal or financial
62 affiliation or relationship is a result of being employed by or having staff privileges at the
63 same hospital as the term "hospital" is defined in section 197.020.

64 (d) Any physician who performs or induces an abortion upon a woman when it has
65 been determined that the unborn child is viable shall utilize the available method or technique
66 of abortion most likely to preserve the life or health of the unborn child. In cases where the
67 method or technique of abortion most likely to preserve the life or health of the unborn child
68 would present a greater risk to the life or health of the woman than another legally permitted
69 and available method or technique, the physician may utilize such other method or technique.
70 In all cases where the physician performs an abortion upon a viable unborn child, the
71 physician shall certify in writing the available method or techniques considered and the
72 reasons for choosing the method or technique employed.

73 (e) No physician shall perform or induce an abortion upon a woman when it has been
74 determined that the unborn child is viable unless there is in attendance a physician other than
75 the physician performing or inducing the abortion who shall take control of and provide
76 immediate medical care for a child born as a result of the abortion. During the performance
77 of the abortion, the physician performing it, and subsequent to the abortion, the physician
78 required to be in attendance, shall take all reasonable steps in keeping with good medical
79 practice, consistent with the procedure used, to preserve the life or health of the viable unborn
80 child; provided that it does not pose an increased risk to the life of the woman or does not
81 pose an increased risk of substantial and irreversible physical impairment of a major bodily
82 function of the woman.

83 3. Any person who knowingly performs or induces an abortion of an unborn child in
84 violation of the provisions of this section is guilty of a class D felony, and, upon a finding of
85 guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and,
86 notwithstanding the provisions of section 558.002, shall be fined not less than ten thousand
87 nor more than fifty thousand dollars.

88 4. Any physician who pleads guilty to or is found guilty of performing or inducing an
89 abortion of an unborn child in violation of this section shall be subject to suspension or
90 revocation of his or her license to practice medicine in the state of Missouri by the state board
91 of registration for the healing arts under the provisions of sections 334.100 and 334.103.

92 5. Any hospital licensed in the state of Missouri that knowingly allows an abortion of
93 an unborn child to be performed or induced in violation of this section may be subject to
94 suspension or revocation of its license under the provisions of section 197.070.

95 6. Any abortion facility licensed in the state of Missouri that knowingly allows an
96 abortion of an unborn child to be performed or induced in violation of this section may be
97 subject to suspension or revocation of its license under the provisions of section 197.220.

98 7. A woman upon whom an abortion is performed or induced in violation of this
99 section shall not be prosecuted for a conspiracy to violate the provisions of this section.

100 8. Nothing in this section shall be construed as creating or recognizing a right to
101 abortion, nor is it the intention of this section to make lawful any abortion that is currently
102 unlawful.

103 9. It is the intent of the legislature that this section be severable as noted in section
104 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of
105 this section be declared invalid under the Constitution of the United States or the Constitution
106 of the State of Missouri, it is the intent of the legislature that the remaining provisions of this
107 section remain in force and effect as far as capable of being carried into execution as intended
108 by the legislature.

109 10. The general assembly may, by concurrent resolution, appoint one or more of its
110 members who sponsored or co-sponsored this act in his or her official capacity to intervene as
111 a matter of right in any case in which the constitutionality of this law is challenged.

188.039. 1. For purposes of this section, "medical ~~[emergency]~~ **necessity**" means a
2 condition which, on the basis of the physician's good faith clinical judgment, so complicates
3 the medical condition of a pregnant woman as to necessitate ~~[the immediate]~~ **an** abortion of
4 her pregnancy to avert her death or ~~[for which a delay will create]~~ a serious risk of substantial
5 and irreversible impairment of a major bodily function.

6 2. Except in the case of medical ~~[emergency]~~ **necessity**, no person shall perform or
7 induce an abortion unless at least seventy-two hours prior thereto the physician who is to
8 perform or induce the abortion, a qualified professional, or the referring physician has
9 conferred with the patient and discussed with her the indicators and contraindicators, and risk
10 factors including any physical, psychological, or situational factors for the proposed
11 procedure and the use of medications, including but not limited to mifepristone, in light of her
12 medical history and medical condition. For an abortion performed or an abortion induced by
13 a drug or drugs, such conference shall take place at least seventy-two hours prior to the
14 writing or communication of the first prescription for such drug or drugs in connection with
15 inducing an abortion. Only one such conference shall be required for each abortion.

16 3. The patient shall be evaluated by the physician who is to perform or induce the
17 abortion, a qualified professional, or the referring physician during the conference for
18 indicators and contraindicators, risk factors including any physical, psychological, or
19 situational factors which would predispose the patient to or increase the risk of experiencing
20 one or more adverse physical, emotional, or other health reactions to the proposed procedure
21 or drug or drugs in either the short or long term as compared with women who do not possess
22 such risk factors.

23 4. At the end of the conference, and if the woman chooses to proceed with the
24 abortion, the physician who is to perform or induce the abortion, a qualified professional, or
25 the referring physician shall sign and shall cause the patient to sign a written statement that

26 the woman gave her informed consent freely and without coercion after the physician or
27 qualified professional had discussed with her the indicators and contraindicators, and risk
28 factors, including any physical, psychological, or situational factors. All such executed
29 statements shall be maintained as part of the patient's medical file, subject to the
30 confidentiality laws and rules of this state.

31 5. The director of the department of health and senior services shall disseminate a
32 model form that physicians or qualified professionals may use as the written statement
33 required by this section, but any lack or unavailability of such a model form shall not affect
34 the duties of the physician or qualified professional set forth in subsections 2 to 4 of this
35 section.

36 6. As used in this section, the term "qualified professional" shall refer to a physician,
37 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed
38 professional counselor, or licensed social worker, licensed or registered under chapter 334,
39 335, or 337, acting under the supervision of the physician performing or inducing the
40 abortion, and acting within the course and scope of his or her authority provided by law. The
41 provisions of this section shall not be construed to in any way expand the authority otherwise
42 provided by law relating to the licensure, registration, or scope of practice of any such
43 qualified professional.

44 7. If the provisions in subsection 2 of this section requiring a seventy-two-hour
45 waiting period for an abortion are ever temporarily or permanently restrained or enjoined by
46 judicial order, then the waiting period for an abortion shall be twenty-four hours; provided,
47 however, that if such temporary or permanent restraining order or injunction is stayed or
48 dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be
49 seventy-two hours.

188.056. 1. Notwithstanding any other provision of law to the contrary, no abortion
2 shall be performed or induced upon a woman at eight weeks gestational age or later, except in
3 cases of medical ~~[emergency]~~ **necessity**. Any person who knowingly performs or induces an
4 abortion of an unborn child in violation of this subsection shall be guilty of a class B felony,
5 as well as subject to suspension or revocation of his or her professional license by his or her
6 professional licensing board. A woman upon whom an abortion is performed or induced in
7 violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions
8 of this section.

9 2. It shall be an affirmative defense for any person alleged to have violated the
10 provisions of subsection 1 of this section that the person performed or induced an abortion
11 because of a medical ~~[emergency]~~ **necessity**. The defendant shall have the burden of
12 persuasion that the defense is more probably true than not.

13 3. Prosecution under this section shall bar prosecution under section 188.057,
14 188.058, or 188.375 if prosecution under such sections would violate the provisions of
15 Amendment V to the Constitution of the United States or Article I, Section 19 of the
16 Constitution of Missouri.

17 4. If any one or more provisions, subsections, sentences, clauses, phrases, or words of
18 this section or the application thereof to any person, circumstance, or period of gestational age
19 is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction,
20 the same is hereby declared to be severable and the balance of the section shall remain
21 effective notwithstanding such unenforceability, unconstitutionality, or invalidity. The
22 general assembly hereby declares that it would have passed this section, and each provision,
23 subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or
24 more provisions, subsections, sentences, clauses, phrases, or words of the section, or the
25 application of the section to any person, circumstance, or period of gestational age, would be
26 declared unenforceable, unconstitutional, or invalid.

 188.057. 1. Notwithstanding any other provision of law to the contrary, no abortion
2 shall be performed or induced upon a woman at fourteen weeks gestational age or later,
3 except in cases of medical ~~[emergency]~~ **necessity**. Any person who knowingly performs or
4 induces an abortion of an unborn child in violation of this subsection shall be guilty of a class
5 B felony, as well as subject to suspension or revocation of his or her professional license by
6 his or her professional licensing board. A woman upon whom an abortion is performed or
7 induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the
8 provisions of this section.

9 2. It shall be an affirmative defense for any person alleged to have violated the
10 provisions of subsection 1 of this section that the person performed or induced an abortion
11 because of a medical ~~[emergency]~~ **necessity**. The defendant shall have the burden of
12 persuasion that the defense is more probably true than not.

13 3. Prosecution under this section shall bar prosecution under section 188.056,
14 188.058, or 188.375 if prosecution under such sections would violate the provisions of
15 Amendment V to the Constitution of the United States or Article I, Section 19 of the
16 Constitution of Missouri.

17 4. If any one or more provisions, subsections, sentences, clauses, phrases, or words of
18 this section or the application thereof to any person, circumstance, or period of gestational age
19 is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction,
20 the same is hereby declared to be severable and the balance of the section shall remain
21 effective notwithstanding such unenforceability, unconstitutionality, or invalidity. The
22 general assembly hereby declares that it would have passed this section, and each provision,
23 subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or

24 more provisions, subsections, sentences, clauses, phrases, or words of the section, or the
25 application of the section to any person, circumstance, or period of gestational age, would be
26 declared unenforceable, unconstitutional, or invalid.

188.058. 1. Notwithstanding any other provision of law to the contrary, no abortion
2 shall be performed or induced upon a woman at eighteen weeks gestational age or later,
3 except in cases of medical [~~emergency~~] **necessity**. Any person who knowingly performs or
4 induces an abortion of an unborn child in violation of this subsection shall be guilty of a class
5 B felony, as well as subject to suspension or revocation of his or her professional license by
6 his or her professional licensing board. A woman upon whom an abortion is performed or
7 induced in violation of this section shall not be prosecuted for a conspiracy to violate the
8 provisions of this section.

9 2. It shall be an affirmative defense for any person alleged to have violated the
10 provisions of subsection 1 of this section that the person performed or induced an abortion
11 because of a medical [~~emergency~~] **necessity**. The defendant shall have the burden of
12 persuasion that the defense is more probably true than not.

13 3. Prosecution under this section shall bar prosecution under section 188.056,
14 188.057, or 188.375 if prosecution under such sections would violate the provisions of
15 Amendment V to the Constitution of the United States or Article I, Section 19 of the
16 Constitution of Missouri.

17 4. If any one or more provisions, subsections, sentences, clauses, phrases, or words of
18 this section or the application thereof to any person, circumstance, or period of gestational age
19 is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction,
20 the same is hereby declared to be severable and the balance of the section shall remain
21 effective notwithstanding such unenforceability, unconstitutionality, or invalidity. The
22 general assembly hereby declares that it would have passed this section, and each provision,
23 subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or
24 more provisions, subsections, sentences, clauses, phrases, or words of the section, or the
25 application of the section to any person, circumstance, or period of gestational age, would be
26 declared unenforceable, unconstitutional, or invalid.

188.075. 1. Any person who contrary to the provisions of sections 188.010 to
2 188.085 knowingly performs, induces, or aids in the performance or inducing of any abortion
3 or knowingly fails to perform any action required by sections 188.010 to 188.085 shall be
4 guilty of a class A misdemeanor, unless a different penalty is provided for in state law, and,
5 upon conviction, shall be punished as provided by law.

6 2. It shall be an affirmative defense for any person alleged to have violated any
7 provision of this chapter that the person performed an action or did not perform an action
8 because of a medical [~~emergency~~] **necessity**. This affirmative defense shall be available in

9 criminal, civil, and administrative actions or proceedings. The defendant shall have the
10 burden of persuasion that the defense is more probably true than not.

11 3. The attorney general shall have concurrent original jurisdiction throughout the
12 state, along with each prosecuting attorney and circuit attorney within their respective
13 jurisdictions, to commence actions for a violation of any provision of this chapter, for a
14 violation of any state law on the use of public funds for an abortion, or for a violation of any
15 state law which regulates an abortion facility or a person who performs or induces an
16 abortion. The attorney general, or prosecuting attorney or circuit attorney within their
17 respective jurisdictions, may seek injunctive or other relief against any person who, or entity
18 which, is in violation of any provision of this chapter, misuses public funds for an abortion, or
19 violates any state law which regulates an abortion facility or a person who performs or
20 induces an abortion.

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

3 2. As used in this section, the phrase "late-term pain-capable unborn child" shall
4 mean an unborn child at twenty weeks gestational age or later.

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

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

17 5. Prosecution under subsection 3 of this section shall bar prosecution under
18 section 188.056, 188.057, or 188.058 if prosecution under such sections would violate the
19 provisions of Amendment V to the Constitution of the United States or Article I, Section 19
20 of the Constitution of Missouri.

21 6. When in cases of medical ~~[emergency]~~ **necessity** a physician performs or induces
22 an abortion upon a woman in her third trimester carrying a late-term pain-capable unborn
23 child, the physician shall utilize the available method or technique of abortion most likely to
24 preserve the life or health of the unborn child. In cases where the method or technique of
25 abortion most likely to preserve the life or health of the unborn child would present a greater

26 risk to the life or health of the woman than another legally permitted and available method or
27 technique, the physician may utilize such other method or technique. In all cases where the
28 physician performs or induces an abortion upon a woman during her third trimester carrying a
29 late-term pain-capable unborn child, the physician shall certify in writing the available
30 method or techniques considered and the reasons for choosing the method or technique
31 employed.

32 7. When in cases of medical ~~[emergency]~~ **necessity** a physician performs or induces
33 an abortion upon a woman during her third trimester carrying a late-term pain-capable unborn
34 child, there shall be in attendance a physician other than the physician performing or inducing
35 the abortion who shall take control of and provide immediate medical care for a child born as
36 a result of the abortion.

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

43 9. If any one or more provisions, subsections, sentences, clauses, phrases, or words of
44 this section or the application thereof to any person, circumstance, or period of gestational age
45 is found to be unenforceable, unconstitutional, or invalid by a court of competent jurisdiction,
46 the same is hereby declared to be severable and the balance of the section shall remain
47 effective notwithstanding such unenforceability, unconstitutionality, or invalidity. The
48 general assembly hereby declares that it would have passed this section, and each provision,
49 subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or
50 more provisions, subsections, sentences, clauses, phrases, or words of the section, or the
51 application of the section to any person, circumstance, or period of gestational age, would be
52 declared unenforceable, unconstitutional, or invalid.

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