

FIRST REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 31

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY.

1642H.011

DANA RADEMAN MILLER, Chief Clerk

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing Section 36 of Article I of the Constitution of Missouri, and adopting five new sections in lieu thereof relating to abortion.

Be it resolved by the House of Representatives, the Senate concurring therein:

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2026, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to Article I of the Constitution of the state of Missouri:

Section A. Section 36, Article I, Constitution of Missouri, is repealed and five new sections adopted in lieu thereof, to be known as Sections 36(a), 36(b), 36(c), 36(d), and 36(e), to read as follows:

Section 36(a). 1. An individual abortion report for each abortion performed or induced upon a woman shall be completed by the physician who performed or induced the abortion. Abortion reports shall include, but not be limited to, a certification that the physician does not have any knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in the unborn child and a certification that the physician does not have any knowledge that the woman sought the abortion solely because of the sex or race of the unborn child. Abortion reports shall also include the time, date,

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.

9 method, and results of the test performed to detect a fetal heartbeat under Section 36(b)
10 of this article and information concerning any medical emergency as required under
11 subsection 7 of Section 36(b) of this article.

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

15 (1) The date of the abortion;

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

18 (3) The nature of the abortion complication diagnosed or treated.

19 3. All abortion reports shall be signed by the attending physician who performed
20 or induced the abortion and submitted to the department of health and senior services
21 within forty-five days from the date of the abortion. All complication reports shall be
22 signed by the physician providing the post-abortion care and submitted to the
23 department of health and senior services within forty-five days from the date of the
24 post-abortion care.

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

28 5. The department of health and senior services shall be responsible for
29 collecting all abortion reports and complication reports and collating and evaluating all
30 data gathered therefrom and shall annually publish a statistical report based on such
31 data from abortions performed or induced in the previous calendar year.

Section 36(b). 1. For the purposes of determining the presence of a fetal
2 heartbeat under this section, "standard medical practice" includes employing the
3 appropriate means of detecting the heartbeat based on the estimated gestational age of
4 the unborn child and the condition of the woman and her pregnancy.

5 2. Notwithstanding any other provision of law to the contrary and except in
6 cases of medical emergency, a physician shall not knowingly perform or induce an
7 abortion on a pregnant woman unless the physician has determined, in accordance with
8 this section, whether the woman's unborn child has a detectable fetal heartbeat.

9 3. In making a determination under subsection 2 of this section, the physician
10 shall use a test that is:

11 (1) Consistent with the physician's good faith and reasonable understanding of
12 standard medical practice; and

13 (2) Appropriate for the estimated gestational age of the unborn child and the
14 condition of the pregnant woman and her pregnancy.

15 **4. A physician making a determination under subsection 2 of this section shall**
16 **record in the pregnant woman's medical record:**

17 **(1) The estimated gestational age of the unborn child;**

18 **(2) The method used to estimate the gestational age; and**

19 **(3) The test used for detecting a fetal heartbeat, including the date, time, and**
20 **results of the test.**

21 **5. Except in cases of medical emergency, a physician shall not knowingly**
22 **perform or induce an abortion on a pregnant woman if the physician detected a fetal**
23 **heartbeat for the unborn child or if the physician failed to perform a test to detect a fetal**
24 **heartbeat.**

25 **6. A physician shall not be considered in violation of the provisions of this section**
26 **if the physician performed a test for a fetal heartbeat and did not detect a fetal**
27 **heartbeat.**

28 **7. A physician who performs or induces an abortion in the case of medical**
29 **emergency without first performing a test for a fetal heartbeat shall make written**
30 **notations in the woman's medical record of:**

31 **(1) The physician's belief that a medical emergency necessitated the abortion;**
32 **and**

33 **(2) The medical condition of the pregnant woman that prevented compliance**
34 **with the provisions of this section.**

35 **8. This section shall not affect:**

36 **(1) The provisions of this chapter that restrict or regulate an abortion by a**
37 **particular method or during a particular stage of pregnancy; or**

38 **(2) Any other provision of state law that regulates or prohibits abortion.**

39 **9. Notwithstanding any other provision of law to the contrary, the provisions of**
40 **this section shall be enforced exclusively through the private civil actions described in**
41 **Section 36(c) of this article. No enforcement of this section in response to violations of**
42 **this section shall be taken or threatened by the state, a political subdivision of the state, a**
43 **prosecuting or circuit attorney, or an executive or administrative officer or employee of**
44 **this state or a political subdivision of this state against any person, except as provided in**
45 **Section 36(c) of this article.**

Section 36(c). 1. Any person, other than an officer or employee of the state or a
2 **political subdivision of the state, may bring a civil action against any person who:**

3 **(1) Performs or induces an abortion in violation of Section 36(b) of this article;**

4 **(2) Knowingly engages in conduct that aids or abets the performance or**
5 **induction of an abortion, including paying for or reimbursing the costs of an abortion**
6 **through insurance or otherwise, if the abortion is performed or induced in violation of**

7 Section 36(b) of this article, regardless of whether the person knew or should have
8 known that the abortion would be performed or induced in violation of Section 36(b) of
9 this article; or

10 (3) Intends to engage in the conduct described by subdivision (1) or (2) of this
11 subsection.

12 2. If a claimant prevails in an action brought under this section, the court shall
13 award:

14 (1) Injunctive relief sufficient to prevent the defendant from violating this
15 section or engaging in acts that aid or abet violations of Section 36(b) of this article;

16 (2) Statutory damages in an amount of not less than ten thousand dollars for
17 each abortion that the defendant performed or induced in violation of Section 36(b) of
18 this article, and for each abortion performed or induced in violation of Section 36(b) of
19 this article that the defendant aided or abetted; and

20 (3) Costs and attorney's fees.

21 3. Notwithstanding the provisions of subsection 2 of this section, a court shall not
22 award relief under this section in response to a violation of subdivision (1) or (2) of
23 subsection 1 of this section if the defendant demonstrates that he or she previously paid
24 the full amount of statutory damages under subdivision (2) of subsection 2 of this section
25 in a previous action for that particular abortion performed or induced in violation of
26 Section 36(b) of this article, or for the particular conduct that aided or abetted an
27 abortion performed or induced in violation of Section 36(b) of this article.

28 4. Notwithstanding any other provision of law to the contrary, a person may
29 bring an action under this section not later than four years from the date the cause of
30 action accrues.

31 5. Notwithstanding any other provision of law to the contrary, the following shall
32 not be a defense to an action brought under this section:

33 (1) Ignorance or mistake of law;

34 (2) A defendant's belief that the requirements of Section 36(b) of this article are
35 unconstitutional or were unconstitutional;

36 (3) A defendant's reliance on any court decision that has been overruled on
37 appeal or by a subsequent court, even if that court decision had not been overruled
38 when the defendant engaged in conduct that violates Section 36(b) of this article;

39 (4) A defendant's reliance on any state or federal court decision that is not
40 binding on the court in which the action has been brought;

41 (5) Nonmutual issue preclusion or nonmutual claim preclusion;

42 (6) The consent of the unborn child's mother to the abortion; or

43 **(7) Any claim that the enforcement of Section 36(b) of this article or the**
44 **imposition of civil liability against the defendant will violate the constitutional rights of**
45 **third parties, except as provided by Section 36(d) of this article.**

46 **6. It shall be an affirmative defense if:**

47 **(1) A defendant under subdivision (2) of subsection 1 of this section reasonably**
48 **believed, after conducting a reasonable investigation, that the physician performing or**
49 **inducing the abortion had complied or would comply with this section; or**

50 **(2) A defendant under subdivision (3) of subsection 1 of this section reasonably**
51 **believed, after conducting a reasonable investigation, that the physician performing or**
52 **inducing the abortion will comply with this section.**

53

54 **The defendant has the burden of proving an affirmative defense under subdivision (1)**
55 **or (2) of this subsection by a preponderance of the evidence.**

56 **7. This section shall not be construed to impose liability on any speech or**
57 **conduct protected by the First Amendment of the Constitution of the United States, as**
58 **made applicable to the states through the United States Supreme Court's interpretation**
59 **of the Fourteenth Amendment of the Constitution of the United States, or by the**
60 **Constitution of Missouri.**

61 **8. Notwithstanding any other provision of law to the contrary, the state, any**
62 **state official, or a prosecuting or circuit attorney shall not intervene in an action**
63 **brought under this section. This subsection shall not prohibit a person described by this**
64 **subsection from filing an amicus curiae brief in the action.**

65 **9. Notwithstanding any other provision of law to the contrary, a court shall not**
66 **award costs or attorney's fees to a defendant in an action brought under this section.**

67 **10. Notwithstanding any other provision of law to the contrary, a civil action**
68 **under this section shall not be brought by a person who impregnated the pregnant**
69 **woman through an act of rape, sexual assault, or incest.**

70 **11. Notwithstanding any other provision of law to the contrary, a civil action**
71 **under this section shall not be brought against a woman upon whom an abortion was**
72 **performed or induced, or attempted to be performed or induced, in violation of Section**
73 **36(b) of this article.**

Section 36(d). 1. A defendant against whom an action is brought under Section
2 **36(c) of this article shall not have standing to assert the rights of women seeking an**
3 **abortion as a defense to liability under that section unless:**

4 **(1) The United States Supreme Court holds that the courts of this state are**
5 **required to confer standing on that defendant to assert the third-party rights of women**
6 **seeking an abortion in state court as a matter of federal constitutional law; or**

7 **(2) The defendant has standing to assert the rights of women seeking an abortion**
8 **under the tests for third-party standing established by the United States Supreme**
9 **Court.**

10 **2. A defendant in an action brought under Section 36(c) of this article may assert**
11 **an affirmative defense to liability if:**

12 **(1) The defendant has standing to assert the third-party rights of a woman or**
13 **group of women seeking an abortion in accordance with subsection 1 of this section; and**

14 **(2) The defendant demonstrates that the relief sought by the claimant will**
15 **impose an undue burden on that woman or that group of women seeking an abortion.**

16 **3. A court shall not find an undue burden under subsection 2 of this section**
17 **unless the defendant introduces evidence proving that:**

18 **(1) An award or relief will prevent a woman or a group of women from**
19 **obtaining an abortion; or**

20 **(2) An award of relief will place a substantial obstacle in the path of a woman or**
21 **a group of women who are seeking an abortion.**

22 **4. A defendant shall not establish an undue burden under this section by:**

23 **(1) Merely demonstrating that an award of relief will prevent women from**
24 **obtaining support or assistance, financial or otherwise, from others in their effort to**
25 **obtain an abortion; or**

26 **(2) Arguing or attempting to demonstrate that an award of relief against other**
27 **defendants or other potential defendants will impose an undue burden on women**
28 **seeking an abortion.**

29 **5. The affirmative defense under subsection 2 of this section shall not be**
30 **available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973)**
31 **or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct**
32 **on which the cause of action is based occurred before the Supreme Court overruled**
33 **either of those decisions.**

34 **6. Nothing in this section shall in any way limit or preclude a defendant from**
35 **asserting the defendant's personal constitutional rights as a defense to liability under**
36 **Section 36(c) of this article, and a court shall not award relief under Section 36(c) of this**
37 **article if the conduct for which the defendant has been sued was an exercise of state or**
38 **federal constitutional rights that personally belong to the defendant.**

Section 36(e). 1. Notwithstanding any other provision of law to the contrary, a
2 **civil action brought under Section 36(c) of this article may be brought in:**

3 **(1) The county in which all or a substantial part of the events or omissions giving**
4 **rise to the claim occurred;**

5 (2) The county of residence for any one of the natural person defendants at the
6 time the cause of action accrued;

7 (3) The county of the principal office in this state of any one of the defendants
8 that is not a natural person; or

9 (4) The county of residence for the claimant if the claimant is a natural person
10 residing in this state.

11 2. If a civil action is brought under Section 36(c) of this article in any one of the
12 venues described by subsection 1 of this section, the action shall not be transferred to a
13 different venue without the written consent of all parties.

14 3. The state, a political subdivision of this state, and each officer and employee of
15 this state or a political subdivision of this state shall have all of the sovereign or official
16 immunities available to them in any action, claim, or counterclaim or any type of legal
17 or equitable action that challenges the validity of any provision or application of this
18 section or Sections 36(b), 36(c), and 36(d) of this article, on constitutional grounds or
19 otherwise. No provision of state law shall be construed to waive or abrogate any
20 immunity described in this section, unless it expressly waives immunity.

2 ~~[Section 36. — 1. This Section shall be known as "The Right to
Reproductive Freedom Initiative".~~

3 ~~2. The Government shall not deny or infringe upon a person's
4 fundamental right to reproductive freedom, which is the right to make and
5 carry out decisions about all matters relating to reproductive health care,
6 including but not limited to prenatal care, childbirth, postpartum care, birth
7 control, abortion care, miscarriage care, and respectful birthing conditions.~~

8 ~~3. The right to reproductive freedom shall not be denied, interfered
9 with, delayed, or otherwise restricted unless the Government demonstrates that
10 such action is justified by a compelling governmental interest achieved by the
11 least restrictive means. Any denial, interference, delay, or restriction of the
12 right to reproductive freedom shall be presumed invalid. For purposes of this
13 Section, a governmental interest is compelling only if it is for the limited
14 purpose and has the limited effect of improving or maintaining the health of a
15 person seeking care, is consistent with widely accepted clinical standards of
16 practice and evidence based medicine, and does not infringe on that person's
17 autonomous decision-making.~~

18 ~~4. Notwithstanding subsection 3 of this Section, the general assembly
19 may enact laws that regulate the provision of abortion after Fetal Viability
20 provided that under no circumstance shall the Government deny, interfere
21 with, delay, or otherwise restrict an abortion that in the good faith judgment of
22 a treating health care professional is needed to protect the life or physical or
23 mental health of the pregnant person.~~

24 ~~5. No person shall be penalized, prosecuted, or otherwise subjected to
25 adverse action based on their actual, potential, perceived, or alleged pregnancy
26 outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor~~

27 ~~shall any person assisting a person in exercising their right to reproductive~~
28 ~~freedom with that person's consent be penalized, prosecuted, or otherwise~~
29 ~~subjected to adverse action for doing so.~~

30 ~~6. The Government shall not discriminate against persons providing or~~
31 ~~obtaining reproductive health care or assisting another person in doing so.~~

32 ~~7. If any provision of this Section or the application thereof to anyone~~
33 ~~or to any circumstance is held invalid, the remainder of those provisions and~~
34 ~~the application of such provisions to others or other circumstances shall not be~~
35 ~~affected thereby.~~

36 ~~8. For purposes of this Section, the following terms mean:~~

37 ~~(1) "Fetal Viability", the point in pregnancy when, in the good faith~~
38 ~~judgment of a treating health care professional and based on the particular~~
39 ~~facts of the case, there is a significant likelihood of the fetus's sustained~~
40 ~~survival outside the uterus without the application of extraordinary medical~~
41 ~~measures.~~

42 ~~(2) "Government",~~

43 ~~a. the state of Missouri; or~~

44 ~~b. any municipality, city, town, village, township, district, authority,~~
45 ~~public subdivision or public corporation having the power to tax or regulate, or~~
46 ~~any portion of two or more such entities within the state of Missouri.]~~

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