

FIRST REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 97

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MAYHEW.

1662H.01I

JOSEPH ENGLER, 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 six new sections in lieu thereof relating to abortion, with penalty provisions.

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Section A. Section 36, Article I, Constitution of Missouri, is repealed and six new sections adopted in lieu thereof, to be known as Sections 36(a), 36(b), 36(c), 36(d), 36(e), and 36(f), to read as follows:

Section 36(a). 1. For purposes of Sections 36(b), 36(c), 36(d), 36(e), and 36(f) of Article I of this Constitution, the following terms mean:

(1) "Abortion", the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

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.

8 (2) "Complications", any physical, psychological, or emotionally harmful event
9 that occurs to a pregnant woman during or after an abortion;

10 (3) "Conception", the fecundation of the ovum by the spermatozoa;

11 (4) "Dismemberment abortion", an abortion in which, with the purpose of
12 causing the death of an unborn child, a person purposely dismembers the body of a
13 living unborn child and extracts him or her one piece at a time from the uterus through
14 use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the
15 convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's
16 body to cut or rip it off;

17 (5) "Emergency situation", a condition that, on the basis of the physician's good
18 faith clinical judgment, so complicates the medical condition of a pregnant woman as to
19 necessitate the immediate abortion of her pregnancy to avert her death or for which a
20 delay will create serious risk of substantial impairment of a major bodily function or the
21 fetus;

22 (6) "Fetal viability", the stage of fetal development when the life of the unborn
23 child may be continued indefinitely outside the womb by natural or artificial life-
24 supportive systems;

25 (7) "Gestational age", the age of the unborn child starting from the first day of
26 the last menstrual cycle based on the reasonable judgment of the physician;

27 (8) "Government":

28 (a) The state of Missouri; or

29 (b) Any municipality, city, town, village, township, district, authority, public
30 subdivision, or public corporation having the power to tax or regulate, or any portion of
31 two or more such entities within the state of Missouri;

32 (9) "Hospital", an establishment as defined in the hospital licensing law,
33 subsection 2 of section 197.020, or a hospital operated by the state;

34 (10) "Late-term", that stage of fetal development when the life of the unborn
35 child may be continued indefinitely outside the womb by natural or artificial life-
36 supportive systems;

37 (11) "Late-term abortion", an abortion on a fetus at the fetal development when
38 the life of the unborn child may be continued indefinitely outside the womb by natural
39 or artificial life-supportive systems;

40 (12) "Minor", a person less than eighteen years of age;

41 (13) "Negligible risk", a risk that a reasonable person would consider to be
42 immaterial to a decision to undergo an elective medical procedure;

43 (14) "Partial birth abortion", occurs when a physician deliberately and
44 intentionally vaginally delivers a living fetus until, in the case of a head-first

45 presentation, the entire fetal head is outside the body of the mother, or, in the case of
46 breech presentation, any part of the fetal trunk past the navel is outside the body of the
47 mother, for the purpose of performing an overt act that the person knows will kill the
48 partially delivered living fetus and performs the overt act, other than completion of
49 delivery, that kills the partially delivered living fetus;

50 (15) "Physician", a doctor of medicine or osteopathy legally authorized to
51 practice medicine and surgery by the state in which the doctor performs such activity,
52 or any other individual legally authorized by the state to perform abortions; provided,
53 however, that any individual who is not a physician or not otherwise legally authorized
54 by the state to perform abortions, but who nevertheless directly performs a late-term
55 abortion, shall be subject to the provisions of this section;

56 (16) "Pregnant", the condition of a woman who has unborn human life within
57 her as the result of conception;

58 (17) "Risk factor associated with abortion", any factor, including any physical,
59 psychological, emotional, demographic, or situational factor, for which there is a
60 statistical association with one or more complications associated with abortion;

61 (18) "Self-induced abortion", any abortion or menstrual extraction attempted or
62 completed by a pregnant woman on her own body;

63 (19) "Ultrasound", the use of ultrasonic waves for diagnostic or therapeutic
64 purposes, specifically to monitor an unborn child;

65 (20) "Woman", any female human being whether she has reached the age of
66 majority.

Section 36(b). 1. (1) Except in the case of a medical emergency, no person shall
2 knowingly perform or induce an abortion upon a pregnant woman less than fifteen
3 years of age unless the attending physician has secured the informed written consent of
4 the minor and one parent or guardian of the minor, and the consenting parent or
5 guardian of the minor has notified any other custodial parent in writing.

6 (2) For purposes of this section, "custodial parent" shall only mean a parent of a
7 minor who has been awarded joint legal custody or joint physical custody of such minor
8 by a court of competent jurisdiction. Notice shall not be required under this subsection
9 for any parent:

10 (a) Who has been found guilty of, or who has criminal charges pending or who is
11 under investigation by a local, state, or federal law enforcement agency or the family
12 support division of the department of social services for any offense against the person,
13 sexual offense, prostitution, offense against the family, or pornography, if a child was a
14 victim;

- 15 (b) Who has been found guilty of any offense in any other state or foreign
16 country, or under federal, tribal, or military jurisdiction, if a child was a victim, that
17 would be an offense against the person, sexual offense, prostitution, offense against the
18 family, or pornography, if committed in this state;
- 19 (c) Who is listed on the state sexual offender registry;
- 20 (d) Against whom a permanent or temporary order of protection has been
21 issued, including a foreign permanent or temporary order of protection given full faith
22 and credit in this state;
- 23 (e) Whose custodial, parental, or guardianship rights have been terminated and
24 have not been reinstated by a court of competent jurisdiction;
- 25 (f) Whose whereabouts are unknown after reasonable inquiry;
- 26 (g) Who is a fugitive from justice; or
- 27 (h) Who is habitually in an intoxicated or drugged condition that is proven by a
28 record of three or more arrests in the preceding five years in which drug and alcohol use
29 were relevant to the arrest by a local, state, or law enforcement agency, or drug and
30 alcohol use were relevant to admissions at a medical facility on three or more occasions
31 in the last five years, or who has been declared mentally incompetent or incapacitated
32 by a court of competent jurisdiction.
- 33 (3) Notice shall not be required under this subsection if the minor is emancipated
34 and the attending physician has received the informed written consent of the
35 emancipated minor.
- 36 2. No abortion shall be performed except with the voluntary and informed
37 consent of the pregnant woman or pregnant minor woman upon whom the abortion is to
38 be performed. Except in the case of an emergency situation, consent to an abortion is
39 voluntary and informed only if:
- 40 (1) The pregnant woman seeking an abortion and, if a minor woman seeking an
41 abortion is less than fifteen years of age, the minor, the minor's consenting parent or
42 legal guardian, and the informed custodial parent is told the following by the physician
43 who is to perform the abortion, by the referring physician, or by a physician assistant or
44 registered nurse who is licensed in Missouri and an agent of either physician, at least
45 twenty-four hours before the abortion:
- 46 (a) The particular medical risks associated with the particular abortion
47 procedure to be employed including, when medically accurate, the risk of infection,
48 hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;
- 49 (b) The probable gestational age of the unborn child at the time the abortion is to
50 be performed;
- 51 (c) The medical risks associated with carrying the child to term; and

52 (d) That the pregnant woman cannot be forced or required by anyone to have an
53 abortion and that she is free to withhold or withdraw her consent for an abortion;

54 (2) The pregnant woman is instructed by the physician who is to perform the
55 abortion, by the referring physician, or by a physician assistant or registered nurse who
56 is licensed in Missouri and an agent of either physician, at least twenty-four hours
57 before the abortion as follows:

58 (a) That she has the right to review the printed materials described in
59 subsections 1 and 2 of Section 36(c) of Article I of this Constitution. The physician or his
60 or her agent shall orally inform the woman that the materials have been provided by the
61 department of health and senior services and that they describe the unborn child, list
62 agencies that offer alternatives to abortion, and include information on finding
63 immediate medical assistance if she changes her mind after taking mifepristone and
64 wants to continue her pregnancy. If the adult pregnant woman, the pregnant minor less
65 than eighteen years of age, the minor's consenting parent, or the minor's informed
66 custodial parent chooses to review the materials, the materials shall either be given to
67 such persons at least twenty-four hours before the abortion or mailed to the pregnant
68 woman, the minor's consenting parent if applicable, and the minor's informed parent if
69 applicable at least seventy-two hours before the abortion by certified mail. The
70 physician and his or her agent may disassociate themselves from the materials and may
71 comment or refrain from commenting on the materials as the physician chooses; and

72 (b) That she has the right to request a comprehensive list, compiled by the
73 department of health and senior services, of health care providers, facilities, and clinics
74 that offer to have ultrasounds performed by a person at least as qualified as a registered
75 nurse who is licensed in Missouri, including and specifying those that offer to perform
76 such ultrasounds free of charge. The list shall be arranged geographically and shall
77 include the name, address, hours of operation, and telephone number of each entity. If
78 requested by the pregnant woman or a minor's consenting parent, the physician who is
79 to perform the abortion, the referring physician, or his or her agent shall provide such a
80 list as compiled by the department; and

81 (3) If an abortion is to be performed using mifepristone, the pregnant woman is
82 given the following notice by the physician, the referring physician, or physician
83 assistant or registered nurse who is licensed in Missouri and an agent of either
84 physician, at least twenty-four hours before the abortion:

85 "Research indicates that mifepristone alone is not always effective in ending a
86 pregnancy. You may still have a viable pregnancy after taking mifepristone. If
87 you change your mind and want to continue your pregnancy after taking

88 mifepristone, information on finding immediate medical assistance is available
89 on the website of the Missouri Department of Health and Senior Services."

90 3. The person providing the information specified in this section to the person
91 upon whom the abortion is to be performed shall be deemed qualified to so advise and
92 provide such information only if, at a minimum, he or she has had training in each of
93 the following subjects: Sexual and reproductive health, abortion technology,
94 contraceptive technology, short-term counseling skills, community resources and
95 referral, and informed consent.

96 4. If an ultrasound is used prior to the performance of an abortion, the physician
97 who is to perform the abortion, the referring physician, or a physician assistant or
98 registered nurse who is licensed in Missouri who is an agent of either physician, or any
99 qualified agent of either physician, shall:

100 (1) Perform an ultrasound of the woman's unborn child of a quality consistent
101 with standard medical practice in the community at least one hour prior to the
102 performance of the abortion;

103 (2) Simultaneously display the ultrasound images so that the woman may choose
104 to view the ultrasound images or not view the ultrasound images. The woman shall be
105 informed that the ultrasound images will be displayed so that she is able to view them.
106 Nothing in this subsection shall be construed to require the woman to view the displayed
107 ultrasound images; and

108 (3) If the woman requests information about the displayed ultrasound image,
109 her questions shall be answered. If she requests a detailed, simultaneous medical
110 description of the ultrasound image, one shall be provided that includes the dimensions
111 of the unborn child, the presence of cardiac activity, if present and viewable, and the
112 presence of external members and internal organs, if present and viewable.

113 5. At least one hour prior to the performance of an abortion, a physician,
114 psychiatrist, psychologist, mental health practitioner, physician assistant, registered
115 nurse licensed in Missouri, social worker with authorization to practice in Missouri, or
116 licensed professional counselor shall:

117 (1) Evaluate the pregnant woman to identify if the pregnant woman had the
118 perception of feeling pressured or coerced into seeking or consenting to an abortion;

119 (2) Evaluate the pregnant woman to identify the presence of any risk factors
120 associated with abortion and, if the pregnant woman is a minor, the mandatory
121 reporters shall follow Missouri's mandatory reporting laws and obligations under
122 mandatory reporting and the following:

123 (a) If the pregnant woman is thirteen years of age or younger, the mandatory
124 reporter shall always make a report;

125 (b) If the pregnant woman is fourteen years of age, the mandatory reporter shall
126 make a report if the partner is eighteen years of age or older;

127 (c) If the pregnant woman is fifteen years of age, the mandatory reporter shall
128 make a report if the partner is nineteen years of age or older; and

129 (d) If the pregnant woman is sixteen years of age, the mandatory reporter shall
130 make a report if the partner is twenty years of age or older;

131 (3) Inform the pregnant woman and the physician who is to perform the
132 abortion of the results of the evaluation performed in accordance with this subsection in
133 writing and retain a copy of the written evaluation results in the pregnant woman's
134 permanent record; and

135 (4) If any risk factors associated with abortion are identified during the
136 evaluation performed in accordance with this subsection, the pregnant woman shall be
137 informed of the following in such manner and detail that a reasonable person would
138 consider material to a decision of undergoing an elective medical procedure:

139 (a) Each complication associated with each identified risk factor; and

140 (b) Any quantifiable risk rates whenever such relevant data exists.

141 6. The physician performing the abortion shall have formed a reasonable
142 medical judgment, documented in the permanent record, that:

143 (1) The preponderance of statistically validated medical studies demonstrates
144 that the physical, psychological, and familial risks associated with abortion for patients
145 with risk factors similar to the patient's risk factors are negligible risks;

146 (2) Continuance of the pregnancy would involve risk of injury to the physical or
147 mental health of the pregnant woman greater than if the pregnancy were terminated by
148 induced abortion; or

149 (3) Continuance of the pregnancy would involve less risk of injury to the
150 physical or mental health of the pregnant woman than if the pregnancy were terminated
151 by an induced abortion.

152 7. The woman and her consenting parent shall certify in writing, prior to the
153 abortion, that:

154 (1) The information described in subsection 2 of this section has been furnished
155 to her;

156 (2) She has been informed of her right to review such information;

157 (3) The requirements of subsection 4 of this section have been performed if an
158 ultrasound is performed prior to the performance of the abortion; and

159 (4) Prior to the performance of the abortion, the physician who is to perform the
160 abortion or his or her agent receives a copy of the written certification prescribed by

161 this subsection. The physician or his or her agent shall retain a copy of the signed
162 certification form in the woman's medical record.

163 8. The department of health and senior services shall cause to be published the
164 following easily comprehensible printed materials:

165 (1) Geographically indexed materials designed to inform the woman of public
166 and private agencies and services available to assist a woman through pregnancy, upon
167 childbirth, and while the child is dependent, including adoption agencies and agencies
168 and services for prevention of unintended pregnancies. Such materials shall include a
169 comprehensive list of the agencies available, a description of the services they offer, and
170 a description of the manner, including telephone numbers and addresses in which such
171 agencies may be contacted or printed materials, including a toll-free, twenty-four-hour-
172 a-day telephone number that may be called to orally obtain such a list and description of
173 agencies in the locality of the caller and of the services they offer;

174 (2) Materials designed to inform the woman of the probable anatomical and
175 physiological characteristics of the unborn child at two-week gestational increments
176 from the time when a woman can be known to be pregnant to full term, including
177 pictures or drawings representing the development of unborn children at the two-week
178 gestational increments, and any relevant information on the possibility of the unborn
179 child's survival. Any such pictures or drawings shall contain the dimensions of the
180 unborn child and shall be realistic and appropriate for the stage of pregnancy depicted.
181 The materials shall be objective, nonjudgmental, and designed to convey only accurate
182 scientific information about the unborn child at the various gestational ages. The
183 materials shall also contain objective information describing the methods of abortion
184 procedures commonly employed, the medical risks commonly associated with each such
185 procedure, the possible detrimental psychological effects of abortion, the medical risks
186 commonly associated with abortion, and the medical risks commonly associated with
187 carrying a child to term;

188 (3) A comprehensive list of health care providers, facilities, and clinics that offer
189 to have ultrasounds performed by a person at least as qualified as a registered nurse
190 who is licensed in Missouri, including and specifying those that offer to perform such
191 ultrasounds free of charge. The list shall be arranged geographically and shall include
192 the name, address, hours of operation, and telephone number of each entity;

193 (4) Materials designed to inform the woman that she may still have a viable
194 pregnancy after taking mifepristone. The materials shall include the following
195 statements: "Research indicates that mifepristone alone is not always effective in
196 ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If

197 you change your mind and want to continue your pregnancy after taking mifepristone,
198 it may not be too late."; and

199 (5) Materials, including contact information, that will assist the woman in
200 finding a medical professional who can help her continue her pregnancy after taking
201 mifepristone.

202 9. The printed materials shall be printed in a typeface large enough to be clearly
203 legible.

204 10. The printed materials required under subsection 8 of this section shall be
205 available from the department upon the request by any person, facility, or hospital for
206 an amount equal to the cost incurred by the department to publish the materials.

Section 36(c). 1. The department of health and senior services shall make
2 available on its website a printable publication of geographically indexed materials
3 designed to inform the woman of public and private agencies with services available to
4 assist a woman with mental health concerns, following a risk factor evaluation. Such
5 services shall include, but not be limited to, outpatient and crisis intervention services
6 and crisis hotlines. The materials shall include a comprehensive list of the agencies
7 available, a description of the services offered, and a description of the manner in which
8 such agencies may be contacted, including addresses and telephone numbers of such
9 agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided
10 by the department that may be called to orally obtain the names of the agencies and the
11 services they provide in the locality of the woman. The department shall update the
12 publication as necessary.

13 2. (1) The department of health and senior services shall publish and make
14 available on its website materials designed to inform the woman that she may still have a
15 viable pregnancy after taking mifepristone. The materials shall include the following
16 statements:

17
18 "Research indicates that mifepristone alone is not always effective in ending a
19 pregnancy. You may still have a viable pregnancy after taking mifepristone. If you
20 change your mind and want to continue your pregnancy after taking mifepristone, it
21 may not be too late.".

22 (2) The materials shall also include information, including contact information,
23 that will assist the woman in finding a medical professional who can help her continue
24 her pregnancy after taking mifepristone.

25 3. The department of health and senior services shall review and update
26 regularly, the materials, including contact information, regarding medical professionals
27 who can help a woman continue her pregnancy after taking mifepristone.

28 **4. (1) The department of health and senior services shall prescribe a reporting**
29 **form that shall be used for the reporting of every attempt at continuing a woman's**
30 **pregnancy after taking mifepristone as described in this section performed in this state.**
31 **Such form shall include the following items:**

- 32 **(a) The age of the pregnant woman;**
33 **(b) The location of the facility where the service was performed;**
34 **(c) The type of service provided;**
35 **(d) Complications, if any;**
36 **(e) The name of the attending medical professional;**
37 **(f) The pregnant woman's obstetrical history regarding previous pregnancies,**
38 **abortions, and live births;**
39 **(g) The state of the pregnant woman's legal residence;**
40 **(h) Whether an emergency situation caused the physician to waive any of the**
41 **requirements of this section; and**
42 **(i) Such other information as may be prescribed in accordance with this section.**

43 **(2) The completed form shall be signed by the attending medical professional**
44 **and sent to the department within fifteen days after each reporting month. The**
45 **completed form shall be an original, typed or written legibly in durable ink, and shall**
46 **not be deemed complete unless the omission of any item of information required shall**
47 **have been disclosed or satisfactorily accounted for. Carbon copies shall not be**
48 **acceptable. The reporting form shall not include the name of the person for whom the**
49 **service was provided. The reporting form shall be confidential and shall not be revealed**
50 **except upon the order of a court of competent jurisdiction in a civil or criminal**
51 **proceeding.**

52 **5. When an emergency situation compels the performance of an abortion, the**
53 **physician shall inform the woman prior to the abortion, if practicable, of the medical**
54 **indications supporting his or her judgment that an abortion is necessary to avert her**
55 **death or to avert substantial impairment of a major bodily function.**

56 **6. No civil liability for failure to comply with subsection 2 of Section 36(b) of**
57 **Article I of this Constitution or that portion of subsection 7 of Section 36(b) of Article I**
58 **of this Constitution of this section requiring a written certification that the woman has**
59 **been informed of her right to review the information referred to in subsection 4 of**
60 **Section 36(b) of Article I of this Constitution may be imposed unless the department of**
61 **health and senior services has published and made available the printed materials at the**
62 **time the physician or his or her agent is required to inform the woman of her right to**
63 **review them.**

Section 36(d). 1. Any person upon whom an abortion has been performed or attempted in violation of this section or the parent or guardian of a minor upon whom an abortion has been performed or attempted in violation of such section shall have a right to maintain a civil cause of action against the person who performed the abortion or attempted to perform the abortion. A violation of subsections 1, 2, 3, 4, 5, and 6 of Section 36(b) of Article I of this Constitution shall be prima facie evidence of professional negligence. The written certifications prescribed by subsection 7 of Section 36(b) of Article I of this Constitution signed by the person upon whom an abortion has been performed or attempted shall constitute and create a rebuttable presumption of full compliance with all provisions of this section in favor of the physician who performed or attempted to perform the abortion, the referring physician, or the agent of either physician. The written certification shall be admissible as evidence in the cause of action for professional negligence or in any criminal action. If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

2. In every civil action brought under subsection 1 of this section, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion by a party or on its own motion, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone given standing under subsection 1 of this section who brings a civil action under such section shall do so under a pseudonym. This subsection may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

3. In addition to whatever remedies are available under the common or statutory laws of this state, the intentional, knowing, or negligent failure to comply with the requirements of subsections 1, 2, 3, 4, 5, and 6 of Section 36(b) of Article I of this Constitution shall provide a basis for the following damages:

(1) The award of reasonable costs and attorney's fees; and

37 (2) A recovery for the pregnant woman for the wrongful death of her unborn
38 child under subsection 1 of this section upon proving by a preponderance of evidence
39 that the physician knew or should have known that the pregnant woman's consent was
40 either not fully informed or not fully voluntary under subsection 2 of Section 36(b) of
41 Article I of this Constitution.

42 4. If a physician performed an abortion on a pregnant woman who is a minor
43 less than fifteen years of age without providing the information required in subsections
44 1, 2, 3, 4, 5, and 6 of Section 36(b) of Article I of this Constitution to the pregnant
45 woman's parent or legal guardian, the physician bears the burden of proving that the
46 pregnant woman was capable of independently evaluating the information given to her.

47 5. Except in the case of an emergency situation, if a pregnant woman is provided
48 with the information required by subsection 2 of Section 36(b) of Article I of this
49 Constitution less than twenty-four hours before her scheduled abortion, the physician
50 shall bear the burden of proving that the pregnant woman had sufficient reflection time,
51 given her age, maturity, emotional state, and mental capacity, to comprehend and
52 consider such information.

53 6. In a civil action under subsections 1 and 2 of this section, the following shall
54 apply:

55 (1) In determining the liability of the physician and the validity of the consent of
56 a pregnant woman, the failure to comply with the requirements of subsections 1, 2, 3, 4,
57 5, and 6 of Section 36(b) of Article I of this Constitution shall create a rebuttable
58 presumption that the pregnant woman would not have undergone the recommended
59 abortion had subsections 1, 2, 3, 4, 5, and 6 of Section 36(b) of Article I of this
60 Constitution been complied with by the physician;

61 (2) The absence of physical injury shall not preclude an award of noneconomic
62 damages, including pain, suffering, inconvenience, mental suffering, emotional distress,
63 psychological trauma, loss of society or companionship, loss of consortium, injury to
64 reputation, or humiliation associated with the abortion;

65 (3) The fact that a physician does not perform elective abortions or has not
66 performed elective abortions in the past shall not automatically disqualify such
67 physician from being an expert witness. A licensed obstetrician or family practitioner
68 who regularly assists pregnant women in resolving medical matters related to
69 pregnancy may be qualified to testify as an expert on the screening, counseling,
70 management, and treatment of pregnancies;

71 (4) Any physician advertising services in this state shall be deemed to be
72 transacting business in this state under section 506.500 and shall be subject to the
73 provisions of subsection 2 of Section 36(b) of Article I of this Constitution;

74 (5) It shall be an affirmative defense to an allegation of inadequate disclosure
75 under the requirements of subsection 2 of Section 36(b) of Article I of this Constitution
76 that the defendant omitted the contested information because statistically validated
77 surveys of the general population of women of reproductive age, conducted within the
78 three years before or after the contested abortion, demonstrate that less than five
79 percent of women would consider the contested information to be relevant to an
80 abortion decision; and

81 (6) In addition to the other remedies available under the laws available in this
82 state, a woman or her survivors shall have a cause of action for reckless endangerment
83 against any person, other than a physician licensed under chapter 334 or pharmacist
84 licensed under chapter 338, who attempts or completes an abortion on the pregnant
85 woman or aids or abets the commission of a self-induced abortion. Proof of injury shall
86 not be required to recover an award, including reasonable costs and attorney's fees, for
87 wrongful death under this subdivision.

88 7. (1) In the event that any portion of subsection 1, 2, 3, 4, 5, or 6 of this section
89 is enjoined and subsequently upheld, the statute of limitations for filing a civil suit under
90 subsection 1 of this section shall be tolled during the period for which the injunction is
91 pending and for two years thereafter.

92 (2) Nothing in this section shall be construed as defining a standard of care for
93 any medical procedure other than an induced abortion.

Section 36(e). 1. No partial-birth abortion or later-term abortion shall be
2 performed in this state, unless such procedure is necessary to save the life of the mother
3 whose life is endangered by a physical disorder, physical illness, or physical injury,
4 including a life-endangering physical or mental condition caused by or arising from the
5 pregnancy itself.

6 (1) No woman upon whom an unlawful partial-birth abortion is performed shall
7 be prosecuted under this section or for conspiracy to violate this section.

8 (2) The intentional and knowing performance of an unlawful partial-birth
9 abortion shall result in the automatic suspension and revocation of an attending
10 physician's license to practice medicine in Missouri.

11 (3) Upon the filing of criminal charges under this section by the attorney general
12 or a county attorney, the attorney general shall also file a petition to suspend and revoke
13 the attending physician's license to practice medicine under chapter 334. A hearing on
14 such administrative petition shall be set in accordance with chapter 334. At such
15 hearing, the attending physician shall have the opportunity to present evidence that the
16 physician's conduct was necessary to save the life of a mother whose life was endangered
17 by a physical disorder, physical illness, or physical injury, including a life-endangering

18 physical condition caused by or arising from the pregnancy itself. A defendant against
19 whom criminal charges are brought under this section may bring a motion to delay the
20 beginning of the trial. The findings of the director of the department as to whether the
21 attending physician's conduct was necessary to save the life of a woman whose life was
22 endangered by a physical disorder, physical illness, or physical injury, including a life-
23 endangering physical condition caused by or arising from the pregnancy itself, shall be
24 admissible in the criminal proceedings brought under this section.

25 2. No abortion shall be performed after the time at which, in the sound medical
26 judgment of the attending physician, the unborn child clearly appears to have reached
27 fetal viability, except when necessary to preserve the life or health of the mother.

28 3. In any abortion performed under subsection 2 of this section, all reasonable
29 precautions, in accord with the sound medical judgment of the attending physician and
30 compatible with preserving the life or health of the mother, shall be taken to ensure the
31 protection of the viable, unborn child.

32 4. When as the result of an abortion a child is, in the sound medical judgment of
33 the attending physician, born alive, then all reasonable steps, in accordance with the
34 sound medical judgment of the attending physician, shall be employed to preserve the
35 life of the child. For purposes of this section, "born alive" means the complete expulsion
36 or extraction of the child from the mother irrespective of the duration of the pregnancy
37 and after such expulsion or extraction such child breathes or shows any other evidence
38 of life such as beating of the heart, pulsation of the umbilical cord, or definite movement
39 of voluntary muscles whether or not the umbilical cord has been cut or the placenta is
40 attached.

41 5. The intentional and knowing violation of subsections 1, 2, 3, and 4 of this
42 section is a class D felony.

43 6. (1) The performing of an abortion by any person other than a licensed
44 physician is a class D felony.

45 (2) No abortion shall be performed, induced, or attempted unless the physician
46 who uses or prescribes any instrument, device, medicine, drug, or other substance to
47 perform, induce, or attempt the abortion is physically present in the same room with the
48 patient when the physician performs, induces, or attempts to perform or induce the
49 abortion. Any person who knowingly or recklessly violates this subsection shall be
50 guilty of a class D felony. No civil or criminal penalty shall be assessed against the
51 patient upon whom the abortion is performed, induced, or attempted to be performed
52 or induced.

53 7. The performing of an abortion by using anything other than accepted medical
54 procedures is a class D felony.

Section 36(f). 1. No hospital, clinic, institution, or other facility in this state shall
2 be required to admit any patient for the purpose of performing an abortion nor
3 required to allow the performance of an abortion therein, but the hospital, clinic,
4 institution, or other facility shall inform the patient of its policy not to participate in
5 abortion procedures. No cause of action shall arise against any hospital, clinic,
6 institution, or other facility for refusing to perform or allow an abortion.

7 2. No person shall be required to perform or participate in any abortion, and the
8 refusal of any person to participate in an abortion shall not be a basis for civil liability to
9 any person. No hospital, governing board, or any other person, firm, association, or
10 group shall terminate the employment or alter the position of, prevent or impair the
11 practice or occupation of, or impose any other sanction or otherwise discriminate
12 against any person who refuses to participate in an abortion.

13 3. Any violation of subsections 1 and 2 of this section is a class B misdemeanor.

14 4. Any person whose employment or position has been in any way altered,
15 impaired, or terminated in violation of section 36(a), 36(b), 36(c), 36(d), 36(e), or 36(f) of
16 Article I of this Constitution may sue in the district court for all consequential damages,
17 lost wages, reasonable attorney's fees incurred, and the cost of litigation.

18 5. Any person whose employment or position has in any way been altered,
19 impaired, or terminated because of his or her refusal to participate in an abortion shall
20 have the right to injunctive relief, including temporary relief, pending trial upon
21 showing of an emergency, in the district court, in accordance with the statutes, rules,
22 and practices applicable in other similar cases.

23 6. The knowing, willful, or intentional sale, transfer, distribution, or giving away
24 of any live or viable aborted child for any form of experimentation is a class C felony.
25 The knowing, willful, or intentional consenting to, aiding, or abetting of any such sale,
26 transfer, distribution, or other unlawful disposition of an aborted child is a class C
27 felony. This section shall not prohibit or regulate diagnostic or remedial procedures the
28 purpose of which is to preserve the life or health of the aborted child or the mother.

29 8. A physician's failure to complete the report required under subsection 4 of
30 Section 36(c) of Article I of this Constitution is a class B misdemeanor.

31 9. The department of health and senior services shall prepare and keep on
32 permanent file compilations of the information submitted on the abortion reporting
33 forms required under subsection 4 of Section 36(c) of Article I of this Constitution and
34 reporting forms regarding attempts at continuing a woman's pregnancy after taking
35 mifepristone under such rules and regulations as established by the department, which
36 compilations shall be a matter of public record. Under no circumstances shall the
37 compilations of information include the name of any attending physician or identify in

38 any respect facilities where abortions are performed. The department, in order to
39 maintain and keep such compilations current, shall file with such reports any new or
40 amended information.

41 10. No person shall knowingly, intentionally, or willfully use any premature
42 infant aborted alive for any type of scientific, research, laboratory, or other kind of
43 experimentation except as necessary to protect or preserve the life or health of such
44 premature infant aborted alive. Violation of this section is a class D felony.

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

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

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

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

25 ~~5. No person shall be penalized, prosecuted, or otherwise subjected to~~
26 ~~adverse action based on their actual, potential, perceived, or alleged pregnancy~~
27 ~~outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor~~
28 ~~shall any person assisting a person in exercising their right to reproductive~~
29 ~~freedom with that person's consent be penalized, prosecuted, or otherwise~~
30 ~~subjected to adverse action for doing so.~~

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

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

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

38 ~~(1) "Fetal Viability", the point in pregnancy when, in the good faith~~
~~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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