

FIRST REGULAR SESSION  
[PERFECTED WITH PERFECTING AMENDMENT]

# HOUSE BILL NO. 126

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

0461H.01D

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 188.010, 188.015, 188.020, 188.027, 188.028, 188.043, and 188.052, RSMo, and to enact in lieu thereof thirteen new sections relating to abortion, with penalty provisions.

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

Section A. Sections 188.010, 188.015, 188.020, 188.027, 188.028, 188.043, and 188.052, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 188.010, 188.015, 188.017, 188.020, 188.026, 188.027, 188.028, 188.033, 188.038,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

188.010. **In recognition that God is the author of life and that Article I, Section 2 of the Constitution of Missouri provides that all persons have a natural right to life**, it is the intention of the general assembly of the state of Missouri to ~~grant~~:

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

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

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

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

(1) "Abortion":

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.

3 (a) The act of using or prescribing any instrument, device, medicine, drug, or any other  
4 means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's  
5 womb; or

6 (b) The intentional termination of the pregnancy of a mother by using or prescribing any  
7 instrument, device, medicine, drug, or other means or substance with an intention other than to  
8 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 which  
10 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;**

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

16 [~~(6)~~] (7) "Medical emergency", a condition which, based on reasonable medical  
17 judgment, so complicates the medical condition of a pregnant woman as to necessitate the  
18 immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a  
19 delay will create a serious risk of substantial and irreversible physical impairment of a major  
20 bodily function of the pregnant woman;

21 [~~(7)~~] (8) "Physician", any person licensed to practice medicine in this state by the state  
22 board of registration for the healing arts;

23 [~~(8)~~] (9) "Reasonable medical judgment", a medical judgment that would be made by  
24 a reasonably prudent physician, knowledgeable about the case and the treatment possibilities  
25 with respect to the medical conditions involved;

26 [~~(9)~~] (10) "Unborn child", the offspring of human beings from the moment of  
27 conception until birth and at every stage of its biological development, including the human  
28 conceptus, zygote, morula, blastocyst, embryo, and fetus;

29 [~~(10)~~] (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.

**188.017. 1. This section shall be known and may be cited as the "Right to Life of  
2 the 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. Any person  
5 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  
7 of 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. The defendant shall have the burden of persuasion that  
13 the defense is more probably true than not."

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

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

3 2. In *Roe v. Wade*, 410 U.S. 113 (1973), certain information about the development  
4 of the unborn child, human pregnancy, and the effects of abortion was either not part of  
5 the 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  
7 abortion on women. The general assembly of this state finds that:

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

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

11 (3) Confirmation of pregnancy can be indicated through the detection of the unborn  
12 child's heartbeat, while the absence of the unborn child's heartbeat can be an indicator of  
13 the death of the unborn child if the child has reached that point of development;

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

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

18 (6) Heart rate monitoring during pregnancy and labor is used to measure the heart  
19 rate and rhythm of the unborn child, at an average rate between 110 and 160 beats per  
20 minute, and helps determine the health of the unborn child;

21 (7) The placenta begins developing during the early first trimester of pregnancy,

22 and later in the first trimester and throughout the second and third trimesters of  
23 pregnancy performs a respiratory function making oxygen supply to and carbon dioxide  
24 removal from the unborn child possible;

25 (8) By the fifth week of gestation, the development of the brain of the unborn child  
26 is underway; brainwaves have been measured and recorded during the eighth week of  
27 gestation;

28 (9) It has been established under section 1.205 that the life of each human being  
29 begins at conception. Missouri law also identifies the presence of circulation, respiration  
30 and brain function as indicia of life under section 194.005 (legal definition of death), as the  
31 presence of circulation, respiration, and brain function indicates that such person is not  
32 legally dead, but is legally alive;

33 (10) Vital Statistics Annual Report includes the annual statistical report on  
34 abortions performed for that year as required by Section 188.052.5, RSMo. Missouri Vital  
35 Statistics Annual Reports from 2017 include annual abortion statistics; sixty-five abortions  
36 took place after twenty-one weeks gestation (as defined by last menstrual date; fifty-four  
37 abortions took place during the twentieth week; one hundred ninety three abortions took  
38 place between seventeen and nineteen weeks gestation; one hundred eighty two abortions  
39 took place between thirteen and fourteen weeks gestation; four hundred ninety two  
40 abortions took place between weeks eleven and twelve gestation; nine hundred and fifty  
41 seven abortions took place between weeks nine and ten gestation; one thousand six  
42 hundred and seventy three abortions took place prior to week nine of gestation;

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

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

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

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

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

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

69           (17) From sixteen weeks gestational age, pain transmission from a peripheral  
70 receptor to the cortex is possible in the unborn child;

71           (18) Physicians are providing anesthesia during in utero treatment of unborn  
72 children as young as sixteen weeks gestational age, such as to correct fetal urinary tract  
73 obstruction. Anesthesia is administered by ultrasound-guided injection into the arm or leg  
74 of the unborn child;

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

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

86           (21) The D & E abortion method was found in *Gonzales v. Carhart*, 550 U.S. 124  
87 (2007) to be "in some respects as brutal, if not more, than the intact D & E" partial birth  
88 abortion method banned by Congress and upheld as facially constitutional by the Supreme  
89 Court, even though the federal ban was applicable both before and after viability and had  
90 no exception for the health of the mother;

91           (22) Missouri's ban on the partial birth abortion method, section 565.300, is in effect  
92 because of *Gonzales v. Carhart* and the Supreme Court's subsequent decision in *Nixon v.  
93 Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc.*, 550 U.S.

94 **901 (2007) to vacate and remand to the appeals court the prior invalidation of section**  
95 **565.300. Since section 565.300, like the congressional ban on partial birth abortion, is**  
96 **applicable both before and after viability, there is ample precedent for the general**  
97 **assembly to constitutionally prohibit the brutal D & E abortion method at fourteen weeks**  
98 **gestational age and later, even before the unborn child is viable, with a medical emergency**  
99 **exception;**

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

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

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

112 **(b) An animal, it would be unlawful under state law because it would not be a**  
113 **humane method, humane euthanasia, or humane killing of certain animals under chapters**  
114 **273 and 578, RSMo;**

115 **(25) In Roper v. Simmons, the Court also found that "[i]t is proper that we**  
116 **acknowledge the overwhelming weight of international opinion against the juvenile death**  
117 **penalty ... The opinion of the world community, while not controlling our outcome, does**  
118 **provide respected and significant confirmation for our own conclusions." In its opinion,**  
119 **the Court was instructed by "international covenants prohibiting the juvenile death**  
120 **penalty", such as the International Covenant on Civil and Political Rights, 999 U.N.T.S.**  
121 **171;**

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

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

128 **(28) Abortion procedures performed later in pregnancy have a higher medical risk**  
129 **for women. Compared to an abortion at eight weeks gestational age or earlier, the relative**

130 risk increases exponentially at higher gestational ages. The relative risk of death for a  
131 pregnant woman who had an abortion performed or induced upon her at:

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

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

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

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

145 3. The state of Missouri is bound by Article VI, clause 2 of the Constitution of the  
146 United States that "all treaties made, or which shall be made, under the authority of the  
147 United States, shall be the supreme law of the land". One such treaty is the International  
148 Covenant on Civil and Political Rights, 999 U.N.T.S. 171, (entered into force March 23,  
149 1976, adopted by the United States September 8, 1992). In ratifying the Covenant, the  
150 United States declared that while the provisions of Articles 1 through 27 of the Covenant  
151 are not self-executing, the United States' understanding is that state governments share  
152 responsibility with the federal government in implementing the Covenant.

153 4. Article 6, paragraph 1, U.N.T.S. at 174, of the International Covenant on Civil  
154 and Political Rights states: "Every human being has the inherent right to life. This right  
155 shall be protected by law. No one shall be arbitrarily deprived of his life." The state of  
156 Missouri takes seriously its obligation to comply with the Covenant and to implement this  
157 paragraph as it relates to: the inherent right to life of unborn human beings; protecting the  
158 rights of unborn human beings by law; and ensuring that such unborn human beings are  
159 not arbitrarily deprived of life. The state of Missouri hereby implements Article 6,  
160 paragraph 1 of the Covenant by the regulation of abortion, as provided herein.

161 5. A large percentage of women who have an abortion performed or induced upon  
162 them in Missouri each year are at less than eight weeks gestational age. A prohibition on  
163 performing or inducing an abortion at eight weeks gestational age and later, with a medical  
164 emergency exception, does not amount to a substantial obstacle to a large fraction of  
165 women for whom the prohibition is relevant, which is pregnant women in Missouri who

166 are seeking an abortion while not experiencing a medical emergency; and

167 (1) The burden that a prohibition on performing or inducing an abortion at eight  
168 weeks gestational age and later, with a medical emergency exception, might impose on  
169 abortion access, is outweighed by the benefits conferred on, including but not limited to:

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

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

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

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

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

178 (1) Protecting unborn children throughout pregnancy, and preserving and  
179 promoting their lives from conception to birth;

180 (2) Encouraging childbirth over abortion;

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

182 (4) Safeguarding an unborn child who is eight weeks gestational age or older from  
183 serious harm of pain by an abortion method which would cause the unborn child to  
184 experience pain while she or he was being killed;

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

191 (6) Reducing the risks of harm to pregnant women who obtain abortions later in  
192 pregnancy;

193 (7) Avoiding burdens on the health care system, taxpayers, and the workforce  
194 because of increased preterm births, low birthweight babies, compromised pregnancies,  
195 extended postpartum recoveries, and behavioral health problems caused by the long-term  
196 effects of abortions performed or induced later in pregnancy; and

197 (8) Notwithstanding any other provision of law to the contrary, no abortion shall  
198 be performed or induced upon a woman at eight weeks gestational age or later, such  
199 gestational age as the unborn child has detectable heart beat or measurable brain function  
200 except in cases of medical emergency. Any person who knowingly performs or induces an  
201 abortion of an unborn child in violation of this subsection shall be guilty of a class B felony,

202 as well as subject to suspension or revocation of his or her professional license by his or her  
203 professional licensing board. A woman upon whom an abortion is performed or induced  
204 in violation of this subsection shall not be prosecuted for a conspiracy to violate the  
205 provisions of this subsection.

206 7. It shall be an affirmative defense for any person alleged to have violated the  
207 provisions of subsection 6 of this section that the person performed or induced an abortion  
208 because of a medical emergency. The defendant shall have the burden of persuasion that  
209 the defense is more probably true than not.

210 8. If any one or more provisions, sections, subsections, sentences, clauses, phrases,  
211 or words of this section or the application thereof to any person, circumstance, or period  
212 of gestational age is found to be unconstitutional or invalid by a court of competent  
213 jurisdiction, the same is hereby declared to be severable and the balance of the section shall  
214 remain effective notwithstanding such unconstitutionality or invalidity. The general  
215 assembly hereby declares that it would have passed this section, and each provision,  
216 section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that  
217 any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of  
218 the section, or the application of the section to any person, circumstance, or period of  
219 gestational age, would be declared unconstitutional or invalid. If the prohibition on  
220 performing or inducing an abortion at eight weeks gestational age or later is declared  
221 unconstitutional or invalid, then the prohibition on performing or inducing an abortion  
222 shall be at fourteen weeks gestational age or later.

223 9. A large majority, more than eight-seven percent, of women who have an abortion  
224 performed or induced upon them in Missouri each year are at less than fourteen weeks  
225 gestational age. A prohibition on performing or inducing an abortion at fourteen weeks  
226 gestational age and later, with a medical emergency exception, does not amount to a  
227 substantial obstacle to a large fraction of women for whom the prohibition is relevant,  
228 which is pregnant women in Missouri who are seeking an abortion while not experiencing  
229 a medical emergency; and

230 (1) The burden that a prohibition on performing or inducing an abortion at  
231 fourteen weeks gestational age and later, with a medical emergency exception, might  
232 impose on abortion access, is outweighed by the benefits conferred on, including but not  
233 limited to:

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

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

237 (c) The medical profession, by preserving its integrity and fulfilling its commitment

238 to do no harm; and

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

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

242 (1) Protecting unborn children throughout pregnancy, and preserving and  
243 promoting their lives from conception to birth;

244 (2) Encouraging childbirth over abortion;

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

246 (4) Safeguarding an unborn child who is fourteen weeks gestational age or older  
247 from serious harm of pain by an abortion method which would cause the unborn child to  
248 experience pain while she or he was being killed;

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

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

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

261 11. If any one or more provisions, sections, subsections, sentences, clauses, phrases,  
262 or words of this section or the application thereof to any person, circumstance, or period  
263 of gestational age is found to be unconstitutional or invalid by a court of competent  
264 jurisdiction, the same is hereby declared to be severable and the balance of the section shall  
265 remain effective notwithstanding such unconstitutionality or invalidity. The general  
266 assembly hereby declares that it would have passed this section, and each provision,  
267 section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that  
268 any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of  
269 the section, or the application of the section to any person, circumstance, or period of  
270 gestational age, would be declared unconstitutional or invalid. If the prohibition on  
271 performing or inducing an abortion at fourteen weeks gestational age or later is declared  
272 unconstitutional or invalid, then the prohibition on performing or inducing an abortion  
273 shall be at eighteen weeks gestational age or later; then section 188.375 shall be in effect.

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

283           **13. If a fetal heartbeat or brain function is detected, the physician shall, in writing,**  
284 **inform the pregnant woman that a fetal heartbeat or brain function has been detected and**  
285 **that an abortion may not be performed under Missouri law except in cases of medical**  
286 **emergency. If an abortion is not performed within ninety-six hours of the conclusion of**  
287 **the fetal heartbeat or brain function detection test, a new fetal heartbeat detection test shall**  
288 **be conducted by a physician who intends to perform or induce an abortion on the pregnant**  
289 **woman.**

290           **14. Notwithstanding the provisions of section 188.075, a physician who fails to**  
291 **conduct a fetal heartbeat or brain function detection test prior to the performance or**  
292 **inducement of an abortion upon a pregnant woman shall, for each instance of failure, be**  
293 **subject to having his or her license or license application rejected, revoked, or suspended**  
294 **by the state board of registration for the healing arts in accordance with the provisions of**  
295 **section 334.100 for a period of six months and shall be subject to a fine of one thousand**  
296 **dollars.**

297           **15. Notwithstanding the provisions of section 188.075, a physician who performs**  
298 **or induces an abortion upon a pregnant woman after a fetal heartbeat or brain function**  
299 **detection test reveals the presence of a fetal heartbeat or brain function in the unborn child**  
300 **shall have his or her license revoked, and any future license application rejected, by the**  
301 **state board of registration for the healing arts in accordance with the provisions of section**  
302 **334.100.**

303           **16. If any one or more provisions, sections, subsections, sentences, clauses,**  
304 **phrases, or words of this section or the application thereof to any person, circumstance,**  
305 **or period of gestational age is found to be unconstitutional or invalid by a court of**  
306 **competent jurisdiction, the same is hereby declared to be severable and the balance of**  
307 **the section shall remain effective notwithstanding such unconstitutionality or**  
308 **invalidity. The general assembly hereby declares that it would have passed this section,**  
309 **and each provision, section, subsection, sentence, clause, phrase, or word thereof,**

310 **irrespective of the fact that any one or more provisions, sections, subsections, sentences,**  
 311 **clauses, phrases, or words of the section, or the application of the section to any person,**  
 312 **circumstance, or period of gestational age, would be declared unconstitutional or**  
 313 **invalid. If the prohibition on performing or inducing an abortion at:**

314 **(1) Eight weeks gestational age or later is declared unconstitutional or invalid,**  
 315 **then the prohibition on performing or inducing an abortion shall be at fourteen weeks**  
 316 **gestational age or later;**

317 **(2) Fourteen weeks gestational age or later is declared unconstitutional or**  
 318 **invalid, then the prohibition on performing or inducing an abortion shall be at eighteen**  
 319 **weeks gestational age or later; or**

320 **(3) Eighteen weeks gestational age or later is declared unconstitutional or**  
 321 **invalid, then the prohibition on performing or inducing an abortion shall be at twenty-**  
 322 **one weeks gestational age or later; then section 188.375 shall be in effect.**

323 **17. A pregnant woman upon whom an abortion is performed or induced in**  
 324 **violation of this section shall not be prosecuted for a conspiracy to violate the provisions**  
 325 **of this section.**

188.027. 1. Except in ~~the case~~ **cases** of medical emergency, 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  
 17 anesthesia and medication that is to be administered, the unborn child's gestational age, and  
 18 the woman's 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  
22 for any questions concerning the abortion, together with the telephone number that the  
23 physician 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  
35 two-week gestational increments from conception to full term, including color photographs  
36 or images of the developing unborn child at two-week gestational increments. Such  
37 descriptions shall include information about brain and heart functions, the presence of  
38 external members and internal organs during the applicable stages of development and  
39 information on when the unborn child is viable. The printed materials shall prominently  
40 display the following statement: "The life of each human being begins at conception.  
41 Abortion will terminate the 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  
48 ability to carry a subsequent child to term, and the possible adverse psychological effects  
49 associated 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~~  
53 ~~if 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  
62 the community, contains the dimensions of the unborn child, and accurately portrays the  
63 presence of external members and internal organs, if present or viewable, of the unborn child.  
64 ~~[The auscultation of fetal heart tone must also be of a quality consistent with standard~~  
65 ~~medical practice in the community.]~~ If the woman chooses to view the ultrasound ~~[or hear~~  
66 ~~the heartbeat or both]~~ at the abortion facility, the viewing ~~[or hearing or both]~~ shall be  
67 provided to her at the abortion facility at least seventy-two hours prior to the abortion being  
68 performed or induced;

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

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

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

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

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

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

86 (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to  
87 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

93 child or placing her child for adoption, including agencies commonly known and generally  
94 referred to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and  
95 adoption agencies. Such materials shall provide a comprehensive list by geographical area of  
96 the agencies, a description of the services they offer, and the telephone numbers and  
97 addresses of the agencies; provided that such materials shall not include any programs,  
98 services, organizations, or affiliates of organizations that perform or induce, or assist in the  
99 performing 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  
138 provided to her, they shall be read to her. Should a woman need an interpreter to understand  
139 the information presented in the written materials, an interpreter shall be provided to her.  
140 Should a woman ask questions concerning any of the information or materials, answers shall  
141 be 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  
148 the abortion procedure.

149 4. No abortion shall be performed or induced on an unborn child of twenty-two  
150 weeks gestational age or older unless and until the woman upon whom the abortion is to be  
151 performed or induced has been provided the opportunity to choose to have an anesthetic or  
152 analgesic administered to eliminate or alleviate pain to the unborn child caused by the  
153 particular method of abortion to be performed or induced. The administration of anesthesia  
154 or analgesics shall be performed in a manner consistent with standard medical practice in the  
155 community.

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

- 162 (1) Rape crisis centers, as defined in section 455.003;  
163 (2) Shelters for victims of domestic violence, as defined in section 455.200; and

- 164 (3) Orders of protection, pursuant to chapter 455.
- 165 6. The physician who is to perform or induce the abortion shall, at least seventy-two  
166 hours prior to such procedure, inform the woman orally and in person of:
- 167 (1) The immediate and long-term medical risks to the woman associated with the  
168 proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear  
169 or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent  
170 child to term, and possible adverse psychological effects associated with the abortion; and
- 171 (2) The immediate and long-term medical risks to the woman, in light of the  
172 anesthesia and medication that is to be administered, the unborn child's gestational age, and  
173 the woman's medical history and medical conditions.
- 174 7. No physician shall perform or induce an abortion unless and until the physician  
175 has received and signed a copy of the form prescribed in subsection 3 of this section. The  
176 physician shall retain a copy of the form in the patient's medical record.
- 177 8. In the event of a medical emergency as provided by section 188.039, the physician  
178 who performed or induced the abortion shall clearly certify in writing the nature and  
179 circumstances of the medical emergency. This certification shall be signed by the physician  
180 who performed or induced the abortion, and shall be maintained under section 188.060.
- 181 9. No person or entity shall require, obtain, or accept payment for an abortion from or  
182 on behalf of a patient until at least seventy-two hours have passed since the time that the  
183 information required by subsection 1 of this section has been provided to the patient.  
184 Nothing in this subsection shall prohibit a person or entity from notifying the patient that  
185 payment for the abortion will be required after the seventy-two-hour period has expired if she  
186 voluntarily chooses to have the abortion.
- 187 10. The term "qualified professional" as used in this section shall refer to a physician,  
188 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed  
189 professional counselor, or licensed social worker, licensed or registered under chapter 334,  
190 335, or 337, acting under the supervision of the physician performing or inducing the  
191 abortion, and acting within the course and scope of his or her authority provided by law. The  
192 provisions of this section shall not be construed to in any way expand the authority otherwise  
193 provided by law relating to the licensure, registration, or scope of practice of any such  
194 qualified professional.
- 195 11. By November 30, 2010, the department shall produce the written materials and  
196 forms described in this section. Any written materials produced shall be printed in a typeface  
197 large enough to be clearly legible. All information shall be presented in an objective,  
198 unbiased manner designed to convey only accurate scientific and medical information. The  
199 department shall furnish the written materials and forms at no cost and in sufficient quantity

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

208 12. In order to preserve the compelling interest of the state to ensure that the choice  
209 to consent to an abortion is voluntary and informed, and given freely and without coercion,  
210 the department shall use the procedures for adoption of emergency rules under section  
211 536.025 in order to promulgate all necessary rules, forms, and other necessary material to  
212 implement this section by November 30, 2010.

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

188.028. 1. **Except in the case of a medical emergency**, no person shall knowingly  
2 perform **or induce** an abortion upon a pregnant woman under the age of eighteen years  
3 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**  
6 **notified any other custodial parent or guardian in writing prior to the securing of the**  
7 **informed written consent of the minor and one parent or guardian. For purposes of**  
8 **this subdivision, "custodial parent" means any parent of a minor in a family in which**  
9 **the parents have not separated or dissolved their marriage, or any parent of a minor**  
10 **who has been awarded joint legal custody or joint physical custody of such minor by a**  
11 **court of competent jurisdiction. Notice shall not be required for any parent or**  
12 **guardian:**

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

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

20           **(c) Who is listed on the sexual offender registry under sections 589.400 to**  
21 **589.425;**

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

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

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

29 [øø]

30           (2) The minor is emancipated and the attending physician has received the informed  
31 written consent of the minor; [øø]

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

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

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

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

52 counsel, that the court should appoint counsel. The petition shall be signed by the minor or  
53 the next friend;

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

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

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

64 [~~or~~]

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

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

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

74 (5) An appeal from an order issued under the provisions of this section may be taken  
75 to the court of appeals of this state by the minor or by a parent or guardian of the minor. The  
76 notice of intent to appeal shall be given within twenty-four hours from the date of issuance of  
77 the order. The record on appeal shall be completed and the appeal shall be perfected within  
78 five days from the filing of notice to appeal. Because time may be of the essence regarding  
79 the performance **or inducement** of the abortion, the supreme court of this state shall, by court  
80 rule, provide for expedited appellate review of cases appealed under this section.

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

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

**188.038. 1. No person shall perform or induce an abortion on a woman if the person knows that the woman is seeking the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in an unborn child.**

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

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

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

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

**3. No abortion facility or hospital shall employ or engage the services of a person to perform ~~[one or more abortions]~~ or induce an abortion on another if the person does not have ~~[proof of]~~ medical malpractice insurance pursuant to this section, except that the abortion facility or hospital may provide medical malpractice insurance for the services of**

13 persons employed or engaged by such facility or hospital **which is no less than the coverage**  
14 **amounts set forth in this section.**

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

**188.044. 1. When a drug or chemical, or combination thereof, used by a**  
2 **physician to induce an abortion carries a warning from its manufacturer or distributor,**  
3 **a peer-reviewed medical journal article, or a Food and Drug Administration label, that**  
4 **its use may cause birth defects in a child who survives the abortion, then in addition to**  
5 **the requirements of section 188.043, that physician shall also carry tail insurance with**  
6 **coverage amounts of at least one million dollars per occurrence and three million**  
7 **dollars in the annual aggregate for personal injury to or death of a child who survives**  
8 **such abortion. Such policy shall be maintained in force or be in effect as required**  
9 **under section 516.105.**

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

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

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

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

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

9 shall include:

10 (1) The date of the abortion;

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

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

14 **(4) Certification that the attending physician does not have any knowledge that**  
15 **the woman sought the abortion solely because of a prenatal diagnosis, test, or screening**  
16 **indicating Down Syndrome or the potential of Down Syndrome in an unborn child; and**

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

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

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

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

30 performed **or induced** in the previous calendar year.

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

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

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

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

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

30           **6. When in cases of medical emergency a physician performs or induces an**  
31 **abortion upon a woman carrying a late-term pain-capable unborn child, there shall be**  
32 **in attendance a physician other than the physician performing or inducing the abortion**  
33 **who shall take control of and provide immediate medical care for a child born as a**  
34 **result of the abortion.**

35           **7. Any physician who knowingly violates any of the provisions of subsections 5**  
36 **or 6 shall be guilty of a class D felony, as well as subject to suspension or revocation of**  
37 **his or her professional license by his or her professional licensing board. A woman**  
38 **upon whom an abortion is performed or induced in violation of subsections 5 or 6 shall**  
39 **not be prosecuted for a conspiracy to violate the provisions of those subsections.**

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

5           (1) The United States Supreme Court has overruled, in whole or in part, *Roe v.*  
6 *Wade*, 410 U.S. 113 (1973), restoring or granting to the state of Missouri the authority to  
7 regulate abortion to the extent set forth in section 188.017, and that as a result, it is  
8 reasonably probable that section 188.017 of this act would be upheld by the court as  
9 constitutional;

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

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

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