

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 279, 139 & 345

AN ACT

To repeal sections 188.010, 188.015, 188.028, 188.035, 188.043, and 188.052, RSMo, and to enact in lieu thereof fifteen new sections relating to abortion, with penalty provisions, a contingent effective date for a certain section, and an emergency clause for a certain section.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 188.010, 188.015, 188.028, 188.035,
2 188.043, and 188.052, RSMo, are repealed and fifteen new sections
3 enacted in lieu thereof, to be known as sections 188.010,
4 188.015, 188.017, 188.026, 188.028, 188.033, 188.035, 188.038,
5 188.043, 188.044, 188.052, 188.056, 188.057, 188.058, and 188.375
6 to read as follows:

7 188.010. In recognition that God is the author of life and
8 that article I, section 2 of the Constitution of Missouri
9 provides that all persons have a natural right to life, it is the
10 intention of the general assembly of the state of Missouri to
11 **[grant]:**

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

14 (2) Declare that the state and all of its political
15 subdivisions are a "sanctuary of life" that protects pregnant

1 women and their unborn children; and

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

5 188.015. As used in this chapter, the following terms mean:

6 (1) "Abortion":

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

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

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

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

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

23 (5) "Down Syndrome", the same meaning as defined in section
24 191.923;

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

27 [(6)] (7) "Medical emergency", a condition which, based on
28 reasonable medical judgment, so complicates the medical condition

1 of a pregnant woman as to necessitate the immediate abortion of
2 her pregnancy to avert the death of the pregnant woman or for
3 which a delay will create a serious risk of substantial and
4 irreversible physical impairment of a major bodily function of
5 the pregnant woman;

6 [(7)] (8) "Physician", any person licensed to practice
7 medicine in this state by the state board of registration for the
8 healing arts;

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

13 [(9)] (10) "Unborn child", the offspring of human beings
14 from the moment of conception until birth and at every stage of
15 its biological development, including the human conceptus,
16 zygote, morula, blastocyst, embryo, and fetus;

17 [(10)] (11) "Viability" or "viable", that stage of fetal
18 development when the life of the unborn child may be continued
19 indefinitely outside the womb by natural or artificial life-
20 supportive systems.

21 188.017. 1. This section shall be known and may be cited
22 as the "Right to Life of the Unborn Child Act".

23 2. Notwithstanding any other provision of law to the
24 contrary, no abortion shall be performed or induced upon a woman,
25 except in cases of medical emergency. Any person who knowingly
26 performs or induces an abortion of an unborn child in violation
27 of this subsection shall be guilty of a class B felony, as well
28 as subject to suspension or revocation of his or her professional

1 license by his or her professional licensing board. A woman upon
2 whom an abortion is performed or induced in violation of this
3 subsection shall not be prosecuted for a conspiracy to violate
4 the provisions of this subsection.

5 3. It shall be an affirmative defense for any person
6 alleged to have violated the provisions of subsection 2 of this
7 section that the person performed or induced an abortion because
8 of a medical emergency. The defendant shall have the burden of
9 persuasion that the defense is more probably true than not.

10 188.026. 1. This section shall be known and may be cited
11 as the "Missouri Stands for the Unborn Act". The provisions of
12 this section shall apply to sections 188.056, 188.057, 188.058,
13 and 188.375.

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

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

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

26 (3) Confirmation of pregnancy can be indicated through the
27 detection of the unborn child's heartbeat, while the absence of
28 the unborn child's heartbeat can be an indicator of the death of

1 the unborn child if the child has reached that point of
2 development;

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

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

9 (6) Heart rate monitoring during pregnancy and labor is
10 used to measure the heart rate and rhythm of the unborn child, at
11 an average rate between one hundred ten and one hundred sixty
12 beats per minute, and helps determine the health of the unborn
13 child;

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

19 (8) By the fifth week of gestation, the development of the
20 brain of the unborn child is underway. Brain waves have been
21 measured and recorded during the eighth week of gestation;

22 (9) It has been established under section 1.205 that the
23 life of each human being begins at conception. Missouri law also
24 identifies the presence of circulation, respiration, and brain
25 function as indicia of life under section 194.005, as the
26 presence of circulation, respiration, and brain function
27 indicates that such person is not legally dead, but is legally
28 alive;

1 (10) The 2017 Missouri Vital Statistics Annual Report
2 includes the following annual abortion statistics: sixty-five
3 abortions took place after twenty-one weeks gestational age, as
4 defined by the last menstrual date; fifty-four abortions took
5 place during twenty weeks gestational age; one hundred ninety-
6 three abortions took place between seventeen and nineteen weeks
7 gestational age; one hundred eighty-two abortions took place
8 between thirteen and fourteen weeks gestational age; four hundred
9 ninety-two abortions took place between eleven and twelve weeks
10 gestational age; nine hundred and fifty-seven abortions took
11 place between nine and ten weeks gestational age; and one
12 thousand six hundred and seventy-three abortions took place prior
13 to nine weeks gestational age;

14 (11) In Webster v. Reproductive Health Services, 492 U.S.
15 490 (1989), the Supreme Court noted, in upholding a Missouri
16 statute, "that there may be a 4-week error in estimating
17 gestational age". Thus, an unborn child thought to be fourteen
18 weeks gestational age might in fact be eighteen weeks gestational
19 age, when the unborn child is considerably more developed;

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

27 (13) Peripheral cutaneous sensory receptors, the receptors
28 that feel pain, develop early in the unborn child. They appear

1 in the perioral cutaneous area at around seven to eight weeks
2 gestational age, and later in the palmar regions at ten to ten
3 and a half weeks gestational age, the abdominal wall at fifteen
4 weeks gestational age, and then over all of the unborn child's
5 body at sixteen weeks gestational age;

6 (14) Substance P, a peptide that functions as a
7 neurotransmitter, especially in the transmission of pain, is
8 present in the dorsal horn of the spinal cord of the unborn child
9 at eight to ten weeks gestational age. Enkephalins, peptides
10 that play a role in neurotransmission and pain modulation, are
11 present in the dorsal horn at twelve to fourteen weeks
12 gestational age;

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

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

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

24 (18) Physicians provide anesthesia during in utero
25 treatment of unborn children as young as sixteen weeks
26 gestational age for some procedures, including those to correct
27 fetal urinary tract obstruction. Anesthesia is administered by
28 ultrasound-guided injection into the arm or leg of the unborn

1 child;

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

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

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

24 (22) Missouri's ban on the partial birth abortion method,
25 section 565.300, is in effect because of Gonzales v. Carhart and
26 the Supreme Court's subsequent decision in Nixon v. Reproductive
27 Health Services of Planned Parenthood of the St. Louis Region,
28 Inc., 550 U.S. 901 (2007), to vacate and remand to the appellate

1 court the prior invalidation of section 565.300. Since section
2 565.300, like Congress' ban on partial birth abortion, is
3 applicable both before and after viability, there is ample
4 precedent for the general assembly to constitutionally prohibit
5 the brutal D & E abortion method at fourteen weeks gestational
6 age and later, even before the unborn child is viable, with a
7 medical emergency exception;

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

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

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

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

26 (25) In Roper v. Simmons, the Court also found that "[i]t
27 is proper that we acknowledge the overwhelming weight of
28 international opinion against the juvenile death penalty ... The

1 opinion of the world community, while not controlling our
2 outcome, does provide respected and significant confirmation for
3 our own conclusions." In its opinion, the Court was instructed
4 by "international covenants prohibiting the juvenile death
5 penalty", such as the International Covenant on Civil and
6 Political Rights, 999 U.N.T.S. 171;

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

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

15 (28) Abortion procedures performed later in pregnancy have
16 a higher medical risk for women. Compared to an abortion at
17 eight weeks gestational age or earlier, the relative risk
18 increases exponentially at later gestational ages. The relative
19 risk of death for a pregnant woman who had an abortion performed
20 or induced upon her at:

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

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

27 (c) Twenty-one weeks gestational age or later is more than
28 seventy-five times higher than an abortion at eight weeks

1 gestational age or earlier; and

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

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

23 4. Article 6, Paragraph 1, U.N.T.S. at 174, of the
24 International Covenant on Civil and Political Rights states,
25 "Every human being has the inherent right to life. This right
26 shall be protected by law. No one shall be arbitrarily deprived
27 of his life." The state of Missouri takes seriously its
28 obligation to comply with the Covenant and to implement this

1 paragraph as it relates to the inherent right to life of unborn
2 human beings, protecting the rights of unborn human beings by
3 law, and ensuring that such unborn human beings are not
4 arbitrarily deprived of life. The state of Missouri hereby
5 implements Article 6, Paragraph 1 of the Covenant by the
6 regulation of abortion in this state.

7 188.028. 1. Except in the case of a medical emergency, no
8 person shall knowingly perform or induce an abortion upon a
9 pregnant woman under the age of eighteen years unless:

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

20 Notice shall not be required for any parent or guardian:

21 (a) Who has been found guilty of any offense in violation
22 of chapter 565, relating to offenses against the person; chapter
23 566, relating to sexual offenses; chapter 567, relating to
24 prostitution; chapter 568, relating to offenses against the
25 family; or chapter 573, related to pornography and related
26 offenses, if a child was a victim;

27 (b) Who has been found guilty of any offense in any other
28 state or foreign country, or under federal, tribal, or military

1 jurisdiction if a child was a victim, which would be a violation
2 of chapter 565, 566, 567, 568, or 573 if committed in this state;

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

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

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

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

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

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

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

26 2. The right of a minor to self-consent to an abortion
27 under subdivision (3) of subsection 1 of this section or court
28 consent under subdivision (4) of subsection 1 of this section may

1 be granted by a court pursuant to the following procedures:

2 (1) The minor or next friend shall make an application to
3 the juvenile court which shall assist the minor or next friend in
4 preparing the petition and notices required pursuant to this
5 section. The minor or the next friend of the minor shall
6 thereafter file a petition setting forth the initials of the
7 minor; the age of the minor; the names and addresses of each
8 parent, guardian, or, if the minor's parents are deceased and no
9 guardian has been appointed, any other person standing in loco
10 parentis of the minor; that the minor has been fully informed of
11 the risks and consequences of the abortion; that the minor is of
12 sound mind and has sufficient intellectual capacity to consent to
13 the abortion; that, if the court does not grant the minor
14 majority rights for the purpose of consent to the abortion, the
15 court should find that the abortion is in the best interest of
16 the minor and give judicial consent to the abortion; that the
17 court should appoint a guardian ad litem of the child; and if the
18 minor does not have private counsel, that the court should
19 appoint counsel. The petition shall be signed by the minor or
20 the next friend;

21 (2) A hearing on the merits of the petition, to be held on
22 the record, shall be held as soon as possible within five days of
23 the filing of the petition. If any party is unable to afford
24 counsel, the court shall appoint counsel at least twenty-four
25 hours before the time of the hearing. At the hearing, the court
26 shall hear evidence relating to the emotional development,
27 maturity, intellect and understanding of the minor; the nature,
28 possible consequences, and alternatives to the abortion; and any

1 other evidence that the court may find useful in determining
2 whether the minor should be granted majority rights for the
3 purpose of consenting to the abortion or whether the abortion is
4 in the best interests of the minor;

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

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

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

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

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

22 (5) An appeal from an order issued under the provisions of
23 this section may be taken to the court of appeals of this state
24 by the minor or by a parent or guardian of the minor. The notice
25 of intent to appeal shall be given within twenty-four hours from
26 the date of issuance of the order. The record on appeal shall be
27 completed and the appeal shall be perfected within five days from
28 the filing of notice to appeal. Because time may be of the

1 essence regarding the performance or induction of the abortion,
2 the supreme court of this state shall, by court rule, provide for
3 expedited appellate review of cases appealed under this section.

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

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

1 the state.

2 188.035. 1. This section shall be known and may be cited
3 as the "Born-Alive Abortion Survivors Protection Act".

4 2. Whoever[, with intent to do so, shall take the life]
5 knowingly causes the death of a child [aborted alive,] who was
6 born alive during or immediately after an attempted abortion
7 shall be guilty of murder [of] in the second degree under section
8 565.021.

9 3. Whoever recklessly causes the death of a child who was
10 born alive during or immediately after an attempted abortion
11 shall be guilty of involuntary manslaughter in the first degree
12 under section 565.024.

13 4. Whoever, with criminal negligence, causes the death of a
14 child who was born alive during or immediately after an attempted
15 abortion shall be guilty of involuntary manslaughter in the
16 second degree under section 565.027.

17 5. In any circumstance where a person unlawfully performs
18 or induces an abortion or attempts to perform or induce an
19 abortion, the parents and the siblings of the deceased or unborn
20 child shall be entitled to bring an action for wrongful death
21 under chapter 537 against the person who performed or induced or
22 attempted to perform or induce the abortion. Damages may be
23 recovered for medical, hospital, and medication expenses, loss of
24 services and support, loss of love and companionship of the child
25 and sibling, and for injury to or destruction of the parent-
26 child-sibling relationship in such amount as, under all the
27 circumstances of the case, may be just.

28 188.038. 1. No person shall perform or induce an abortion

1 on a woman if the person knows that the woman is seeking the
2 abortion solely because of a prenatal diagnosis, test, or
3 screening indicating Down Syndrome or the potential of Down
4 Syndrome in an unborn child.

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

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

12 188.043. 1. No person shall perform or induce [a surgical
13 or medical] an abortion on another unless such person has [proof
14 of] medical malpractice insurance with coverage amounts of at
15 least [five hundred thousand dollars] one million dollars per
16 occurrence and three million dollars in the annual aggregate.

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

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

1 engaged by such facility or hospital which is no less than the
2 coverage amounts set forth in this section.

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

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

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

25 3. No abortion facility or hospital shall employ or engage
26 the services of a person to induce an abortion on another using
27 any drug or chemical, or combination thereof, which may cause
28 birth defects if the person does not have tail insurance pursuant

1 to this section, except that the abortion facility or hospital
2 may provide tail insurance for the services of persons employed
3 or engaged by such facility or hospital which is no less than the
4 coverage amounts and duration set forth in this section.

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

9 188.052. 1. An individual abortion report for each
10 abortion performed or induced upon a woman shall be completed by
11 [her attending physician] the person who performed or induced the
12 abortion. Abortion reports shall include, but not be limited to,
13 the estimated gestational age of the unborn child. When the
14 reason for the abortion is for a medical emergency, the report
15 shall specify the medical condition that the abortion is asserted
16 to address and the medical rationale for the person's conclusion
17 that the abortion is necessary to address that condition.

18 Additionally, the report shall include a certification that the
19 person who performed or induced the abortion does not have any
20 knowledge that the woman sought the abortion solely because of a
21 prenatal diagnosis, test, or screening indicating Down Syndrome
22 or the potential of Down Syndrome in an unborn child or solely
23 because of the sex or race of the unborn child.

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

- 27 (1) The date of the abortion;
28 (2) The name and address of the abortion facility or

1 hospital where the abortion was performed or induced; and

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

4 3. All abortion reports shall be signed by the [attending]
5 physician who performed or induced the abortion[,] and submitted
6 to the [state] department [of health and senior services] within
7 forty-five days from the date of the abortion. All complication
8 reports shall be signed by the physician providing the post-
9 abortion care and submitted to the department [of health and
10 senior services] within forty-five days from the date of the
11 post-abortion care.

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

15 5. The [state] department [of health and senior services]
16 shall be responsible for collecting all abortion reports and
17 complication reports and collating and evaluating all data
18 gathered therefrom and shall annually publish a statistical
19 report based on such data from abortions performed or induced in
20 the previous calendar year.

21 188.056. 1. A large percentage of women who have an
22 abortion performed or induced upon them in Missouri each year are
23 at less than eight weeks gestational age. A prohibition on
24 performing or inducing an abortion at eight weeks gestational age
25 and later, with a medical emergency exception, does not amount to
26 a substantial obstacle to a large fraction of women for whom the
27 prohibition is relevant, which is pregnant women in Missouri who
28 are seeking an abortion while not experiencing a medical

1 emergency. The burden that a prohibition on performing or
2 inducing an abortion at eight weeks gestational age and later,
3 with a medical emergency exception, might impose on abortion
4 access is outweighed by the benefits conferred on, including, but
5 not limited to:

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

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

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

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

14 2. The state of Missouri has interests that include, but
15 are not limited to:

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

18 (2) Encouraging childbirth over abortion;

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

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

25 (5) Preserving the integrity of the medical profession and
26 regulating and restricting practices that might cause the medical
27 profession or society as a whole to become insensitive, even
28 disdainful, to life. This includes regulating and restricting

1 abortion methods that are not only brutal and painful, but if
2 allowed to continue, will further coarsen society to the humanity
3 of not only unborn children, but all vulnerable and innocent
4 human life, making it increasingly difficult to protect such
5 life;

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

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

14 3. Notwithstanding any other provision of law to the
15 contrary, no abortion shall be performed or induced upon a woman
16 at eight weeks gestational age or later, such gestational age as
17 the unborn child has a detectable heartbeat, except in cases of
18 medical emergency. Any person who knowingly performs or induces
19 an abortion of an unborn child in violation of this subsection
20 shall be guilty of a class B felony, as well as subject to
21 suspension or revocation of his or her professional license by
22 his or her professional licensing board. A woman upon whom an
23 abortion is performed or induced in violation of this subsection
24 shall not be prosecuted for a conspiracy to violate the
25 provisions of this subsection.

26 4. It shall be an affirmative defense for any person
27 alleged to have violated the provisions of subsection 3 of this
28 section that the person performed or induced an abortion because

1 of a medical emergency. The defendant shall have the burden of
2 persuasion that the defense is more probably true than not.

3 5. Prosecution under this section shall bar prosecution
4 under sections 188.057 and 188.058 if prosecution under such
5 sections would violate the provisions of Amendment V to the
6 Constitution of the United States or article I, section 19 of the
7 Constitution of Missouri.

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

22 188.057. 1. A large majority, more than eighty-seven
23 percent, of women who have an abortion performed or induced upon
24 them in Missouri each year are at less than fourteen weeks
25 gestational age. A prohibition on performing or inducing an
26 abortion at fourteen weeks gestational age and later, with a
27 medical emergency exception, does not amount to a substantial
28 obstacle to a large fraction of women for whom the prohibition is

1 relevant, which is pregnant women in Missouri who are seeking an
2 abortion while not experiencing a medical emergency. The burden
3 that a prohibition on performing or inducing an abortion at
4 fourteen weeks gestational age and later, with a medical
5 emergency exception, might impose on abortion access, is
6 outweighed by the benefits conferred on, including, but not
7 limited to:

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

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

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

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

16 2. The state of Missouri has interests that include, but
17 are not limited to:

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

20 (2) Encouraging childbirth over abortion;

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

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

27 (5) Preserving the integrity of the medical profession and
28 regulating and restricting practices that might cause the medical

1 profession or society as a whole to become insensitive, even
2 disdainful, to life. This includes regulating and restricting
3 abortion methods that are not only brutal and painful, but if
4 allowed to continue, will further coarsen society to the humanity
5 of not only unborn children, but all vulnerable and innocent
6 human life, making it increasingly difficult to protect such
7 life;

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

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

16 3. Notwithstanding any other provision of law to the
17 contrary, no abortion shall be performed or induced upon a woman
18 at fourteen weeks gestational age or later, except in cases of
19 medical emergency. Any person who knowingly performs or induces
20 an abortion of an unborn child in violation of this subsection
21 shall be guilty of a class B felony, as well as subject to
22 suspension or revocation of his or her professional license by
23 his or her professional licensing board. A woman upon whom an
24 abortion is performed or induced in violation of this subsection
25 shall not be prosecuted for a conspiracy to violate the
26 provisions of this subsection.

27 4. It shall be an affirmative defense for any person
28 alleged to have violated the provisions of subsection 3 of this

1 section that the person performed or induced an abortion because
2 of a medical emergency. The defendant shall have the burden of
3 persuasion that the defense is more probably true than not.

4 5. Prosecution under this section shall bar prosecution
5 under sections 188.056 and 188.058 if prosecution under such
6 sections would violate the provisions of Amendment V to the
7 Constitution of the United States or article I, section 19 of the
8 Constitution of Missouri.

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

23 188.058. 1. A large majority, more than ninety percent, of
24 women who have an abortion performed or induced upon them in
25 Missouri each year are at less than eighteen weeks gestational
26 age. A prohibition on performing or inducing an abortion at
27 eighteen weeks gestational age and later, with a medical
28 emergency exception, does not amount to a substantial obstacle to

1 a large fraction of women for whom the prohibition is relevant,
2 which is pregnant women in Missouri who are seeking an abortion
3 while not experiencing a medical emergency. The burden that a
4 prohibition on performing or inducing an abortion at eighteen
5 weeks gestational age and later, with a medical emergency
6 exception, might impose on abortion access, is outweighed by the
7 benefits conferred on, including, but not limited to:

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

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

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

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

16 2. The state of Missouri has interests that include, but
17 are not limited to:

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

20 (2) Encouraging childbirth over abortion;

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

23 (4) Safeguarding an unborn child who is eighteen weeks
24 gestational age or older from serious harm of pain by an abortion
25 method that would cause the unborn child to experience pain while
26 she or he was being killed;

27 (5) Preserving the integrity of the medical profession and
28 regulating and restricting practices that might cause the medical

1 profession or society as a whole to become insensitive, even
2 disdainful, to life. This includes regulating and restricting
3 abortion methods that are not only brutal and painful, but if
4 allowed to continue, will further coarsen society to the humanity
5 of not only unborn children, but all vulnerable and innocent
6 human life, making it increasingly difficult to protect such
7 life;

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

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

16 3. Notwithstanding any other provision of law to the
17 contrary, no abortion shall be performed or induced upon a woman
18 at eighteen weeks gestational age or later, except in cases of
19 medical emergency. Any person who knowingly performs or induces
20 an abortion of an unborn child in violation of this subsection
21 shall be guilty of a class B felony, as well as subject to
22 suspension or revocation of his or her professional license by
23 his or her professional licensing board. A woman upon whom an
24 abortion is performed or induced in violation of this subsection
25 shall not be prosecuted for a conspiracy to violate the
26 provisions of this subsection.

27 4. It shall be an affirmative defense for any person
28 alleged to have violated the provisions of subsection 3 of this

1 section that the person performed or induced an abortion because
2 of a medical emergency. The defendant shall have the burden of
3 persuasion that the defense is more probably true than not.

4 5. Prosecution under this section shall bar prosecution
5 under sections 188.056 and 188.057 if prosecution under such
6 sections would violate the provisions of Amendment V to the
7 Constitution of the United States or article I, section 19 of the
8 Constitution of Missouri.

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

23 188.375. 1. This section shall be known and may be cited
24 as the "Late-Term Pain-Capable Unborn Child Protection Act".

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

28 3. Notwithstanding any other provision of law to the

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

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

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

1 choosing the method or technique employed.

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

8 7. Any physician who knowingly violates any of the
9 provisions of subsections 5 or 6 of this section shall be guilty
10 of a class D felony, as well as subject to suspension or
11 revocation of his or her professional license by his or her
12 professional licensing board. A woman upon whom an abortion is
13 performed or induced in violation of subsections 5 or 6 of this
14 section shall not be prosecuted for a conspiracy to violate the
15 provisions of those subsections.

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

1 age, would be declared unconstitutional or invalid.

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

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

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

17 (3) The United States Congress has enacted a law that has
18 the effect of restoring or granting to the state of Missouri the
19 authority to regulate abortion to the extent set forth in section
20 188.017.

21 Section C. Because of the need to protect the health and
22 safety of women and their children, both unborn and born, the
23 repeal and reenactment of section 188.035 of this act is deemed
24 necessary for the immediate preservation of the public health,
25 welfare, peace and safety, and is hereby declared to be an
26 emergency act within the meaning of the constitution, and the
27 repeal and reenactment of section 188.035 of this act shall be in
28 full force and effect upon its passage and approval.