

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 126

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 and a contingent effective date for a certain section.

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Section A. Sections 188.010, 188.015, 188.020, 188.027, 188.028, 188.043, and 188.052, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 188.010, 188.015, 188.017, 188.020, 188.026, 188.027, 188.028, 188.033, 188.038,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

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

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

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

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

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

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

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

[(6)] (7) "Medical emergency", a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for

which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman;

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

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

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

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

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

2. Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this

subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection.

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

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

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

assembly of this state finds that:

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

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

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

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

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

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

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

(8) By the fifth week of gestation, the development of the

brain of the unborn child is underway. Brain waves have been measured and recorded during the eighth week of gestation;

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

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

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

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

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

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

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

(16) When intrauterine needling is performed on an unborn child at sixteen weeks gestational age and older, the reaction to this invasive stimulus is blood flow redistribution to the brain. Increased blood flow to the brain is the same type of stress

response seen in a born child and an adult;

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

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

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

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

(21) The D & E abortion method was found in Gonzales v. Carhart, 550 U.S. 124 (2007), to be "in some respects as brutal, if not more, than the intact D & E" partial birth abortion method



banned by Congress and was upheld as facially constitutional by the Supreme Court, even though the federal ban was applicable both before and after viability and had no exception for the health of the mother;

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

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

(24) Evolving standards of decency dictate that Missouri should prohibit the brutal and painful D & E, Laminaria, and curettage abortion methods at fourteen weeks gestational age and later, with a medical emergency exception, because if a

comparable method of killing was used on:

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

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

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

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

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

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

or induced upon her at:

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

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

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

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

3. The state of Missouri is bound by Article VI, Clause 2 of the Constitution of the United States that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land". One such treaty is the International Covenant on Civil and Political Rights, entered into force on March 23, 1976, and adopted by the United States on September 8, 1992. In ratifying the Covenant, the United States declared that while the provisions of Articles 1 through 27 of

the Covenant are not self-executing, the United States' understanding is that state governments share responsibility with the federal government in implementing the Covenant.

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

5. A large percentage of women who have an abortion performed or induced upon them in Missouri each year are at less than eight weeks gestational age. A prohibition on performing or inducing an abortion at eight weeks gestational age and later, with a medical emergency exception, does not amount to a substantial obstacle to a large fraction of women for whom the prohibition is relevant, which is pregnant women in Missouri who are seeking an abortion while not experiencing a medical emergency. The burden that a prohibition on performing or inducing an abortion at eight weeks gestational age and later, with a medical emergency exception, might impose on abortion access, is outweighed by the benefits conferred on, including, but not limited to:

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

(2) Unborn children at later stages of development;

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

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

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

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

(2) Encouraging childbirth over abortion;

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

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

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

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

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

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

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

9. A large majority, more than eighty-seven percent, of women who have an abortion performed or induced upon them in Missouri each year are at less than fourteen weeks gestational

age. A prohibition on performing or inducing an abortion at fourteen weeks gestational age and later, with a medical emergency exception, does not amount to a substantial obstacle to a large fraction of women for whom the prohibition is relevant, which is pregnant women in Missouri who are seeking an abortion while not experiencing a medical emergency. The burden that a prohibition on performing or inducing an abortion at fourteen weeks gestational age and later, with a medical emergency exception, might impose on abortion access, is outweighed by the benefits conferred on, including but not limited to:

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

(2) Unborn children at later stages of development;

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

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

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

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

(2) Encouraging childbirth over abortion;

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

(4) Safeguarding an unborn child who is fourteen weeks gestational age or older from serious harm of pain by an abortion method that would cause the unborn child to experience pain while

she or he was being killed;

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

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

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

11. A physician who intends to perform or induce an abortion upon a pregnant woman shall determine whether there is a detectable fetal heartbeat or brain function of the unborn child. The method of determining the presence of a fetal heartbeat or brain function shall be consistent with the physician's good faith understanding of standard medical practice. The physician shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the method used to test for the presence or absence of a fetal heartbeat or brain function, the date and time of the test, and the results of the test. The



physician shall give the pregnant woman the option to view or hear the fetal heartbeat.

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

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

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

15. If any one or more provisions, subsections, sentences, clauses, phrases, or words of this section or the application thereof to any person, circumstance, or period of gestational age is found to be unconstitutional or invalid by a court of competent jurisdiction, the same is hereby declared to be severable and the balance of the section shall remain effective notwithstanding such unconstitutionality or invalidity. The general assembly hereby declares that it would have passed this section, and each provision, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, subsections, sentences, clauses, phrases, or words of the section, or the application of the section to any person, circumstance, or period of gestational age, would be declared unconstitutional or invalid. If the prohibition on performing or inducing an abortion at:

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

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

(3) Eighteen weeks gestational age or later is declared unconstitutional or invalid, then section 188.375 shall be in effect.

16. A pregnant woman upon whom an abortion is performed or induced in violation of this section shall not be prosecuted for

a conspiracy to violate the provisions of this section.

188.027. 1. Except in [the case] cases of medical emergency, no abortion shall be performed or induced on a woman without her voluntary and informed consent, given freely and without coercion. Consent to an abortion is voluntary and informed and given freely and without coercion if, and only if, at least seventy-two hours prior to the abortion:

(1) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician has informed the woman orally, reduced to writing, and in person, of the following:

(a) The name of the physician who will perform or induce the abortion;

(b) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including:

a. A description of the proposed abortion method;

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

c. The immediate and long-term medical risks to the woman, in light of the anesthesia and medication that is to be administered, the unborn child's gestational age, and the woman's medical history and medical condition;

(c) Alternatives to the abortion which shall include making

the woman aware that information and materials shall be provided to her detailing such alternatives to the abortion;

(d) A statement that the physician performing or inducing the abortion is available for any questions concerning the abortion, together with the telephone number that the physician may be later reached to answer any questions that the woman may have;

(e) The location of the hospital that offers obstetrical or gynecological care located within thirty miles of the location where the abortion is performed or induced and at which the physician performing or inducing the abortion has clinical privileges and where the woman may receive follow-up care by the physician if complications arise;

(f) The gestational age of the unborn child at the time the abortion is to be performed or induced; and

(g) The anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed or induced;

(2) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department, which describe the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from conception to full term, including color photographs or images of the developing unborn child at two-week gestational increments. Such descriptions shall include information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development and information on

when the unborn child is viable. The printed materials shall prominently display the following statement: "The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being.";

(3) The physician who is to perform or induce the abortion, a qualified professional, or the referring physician has presented the woman, in person, printed materials provided by the department, which describe the various surgical and drug-induced methods of abortion relevant to the stage of pregnancy, as well as the immediate and long-term medical risks commonly associated with each abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent child to term, and the possible adverse psychological effects associated with an abortion;

(4) The physician who is to perform or induce the abortion or a qualified professional shall provide the woman with the opportunity to view at least seventy-two hours prior to the abortion an active ultrasound of the unborn child [and hear the heartbeat of the unborn child if the heartbeat is audible]. The woman shall be provided with a geographically indexed list maintained by the department of health care providers, facilities, and clinics that perform ultrasounds, including those that offer ultrasound services free of charge. Such materials shall provide contact information for each provider, facility, or clinic including telephone numbers and, if available, website addresses. Should the woman decide to obtain an ultrasound from a provider, facility, or clinic other than the abortion facility,

the woman shall be offered a reasonable time to obtain the ultrasound examination before the date and time set for performing or inducing an abortion. The person conducting the ultrasound shall ensure that the active ultrasound image is of a quality consistent with standard medical practice in the community, contains the dimensions of the unborn child, and accurately portrays the presence of external members and internal organs, if present or viewable, of the unborn child. [The auscultation of fetal heart tone must also be of a quality consistent with standard medical practice in the community.] If the woman chooses to view the ultrasound [or hear the heartbeat or both] at the abortion facility, the viewing [or hearing or both] shall be provided to her at the abortion facility at least seventy-two hours prior to the abortion being performed or induced;

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

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

(b) A description of the actual steps in the abortion

procedure to be performed or induced, and at which steps the abortion procedure could be painful to the unborn child;

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

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

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

(f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to the unborn child;

(6) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department explaining to the woman alternatives to abortion she may wish to consider. Such materials shall:

(a) Identify on a geographical basis public and private agencies available to assist a woman in carrying her unborn child to term, and to assist her in caring for her dependent child or placing her child for adoption, including agencies commonly known and generally referred to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption agencies. Such materials shall provide a comprehensive list by geographical area of the agencies, a description of the services they offer, and the telephone numbers and addresses of the agencies; provided that such materials shall not include any programs, services,

organizations, or affiliates of organizations that perform or induce, or assist in the performing or inducing of, abortions or that refer for abortions;

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

(c) Identify the state website for the Missouri alternatives to abortion services program under section 188.325, and any toll-free number established by the state operated in conjunction with the program;

(d) Prominently display the statement: "There are public and private agencies willing and able to help you carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The state of Missouri encourages you to contact those agencies before making a final decision about abortion. State law requires that your physician or a qualified professional give you the opportunity to call agencies like these



before you undergo an abortion.";

(7) The physician who is to perform or induce the abortion or a qualified professional has presented the woman, in person, printed materials provided by the department explaining that the father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. Such materials shall include information on the legal duties and support obligations of the father of a child, including, but not limited to, child support payments, and the fact that paternity may be established by the father's name on a birth certificate or statement of paternity, or by court action. Such printed materials shall also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling the family support division within the Missouri department of social services; and

(8) The physician who is to perform or induce the abortion or a qualified professional shall inform the woman that she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

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

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

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

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

5. No physician shall perform or induce an abortion unless and until the physician has obtained from the woman her voluntary

and informed consent given freely and without coercion. If the physician has reason to believe that the woman is being coerced into having an abortion, the physician or qualified professional shall inform the woman that services are available for her and shall provide her with private access to a telephone and information about such services, including but not limited to the following:

(1) Rape crisis centers, as defined in section 455.003;

(2) Shelters for victims of domestic violence, as defined in section 455.200; and

(3) Orders of protection, pursuant to chapter 455.

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

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

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

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

8. In the event of a medical emergency as provided by section 188.039, the physician who performed or induced the abortion shall clearly certify in writing the nature and circumstances of the medical emergency. This certification shall be signed by the physician who performed or induced the abortion, and shall be maintained under section 188.060.

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

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

11. By November 30, 2010, the department shall produce the written materials and forms described in this section. Any

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

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

13. If the provisions in subsections 1 and 9 of this section requiring a seventy-two-hour waiting period for an abortion are ever temporarily or permanently restrained or enjoined by judicial order, then the waiting period for an

abortion shall be twenty-four hours; provided, however, that if such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be seventy-two hours.

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

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

Notice shall not be required for any parent or guardian:

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

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

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

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

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

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

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

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

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

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

(1) The minor or next friend shall make an application to

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

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



purpose of consenting to the abortion or whether the abortion is in the best interests of the minor;

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

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

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

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

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

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

expedited appellate review of cases appealed under this section.

3. If a minor desires an abortion, then she shall be orally informed of and, if possible, sign the written consent required [by section 188.039] under this chapter in the same manner as an adult person. No abortion shall be performed or induced on any minor against her will, except that an abortion may be performed or induced against the will of a minor pursuant to a court order described in subdivision (4) of subsection 1 of this section that the 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 persons employed or engaged by such facility or hospital which is no less than the coverage amounts set forth in this section.

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

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

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

3. No abortion facility or hospital shall employ or engage the services of a person to induce an abortion on another using any drug or chemical, or combination thereof, which may cause

birth defects if the person does not have tail insurance pursuant to this section, except that the abortion facility or hospital may provide tail insurance for the services of persons employed or engaged by such facility or hospital which is no less than the coverage amounts and duration set forth in this section.

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

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

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

- (1) The date of the abortion;
- (2) The name and address of the abortion facility or hospital where the abortion was performed or induced;
- (3) The nature of the abortion complication diagnosed or treated;
- (4) Certification that the attending physician does not have any knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating

Down Syndrome or the potential of Down Syndrome in an unborn child; and

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

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

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

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

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

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

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

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

5. When in cases of medical emergency a physician performs or induces an abortion upon a woman carrying a late-term pain-capable unborn child, the physician shall utilize the available method or technique of abortion most likely to preserve the life or health of the unborn child. In cases where the method or technique of abortion most likely to preserve the life or health of the unborn child would present a greater risk to the life or health of the woman than another legally permitted and available method or technique, the physician may utilize such other method or technique. In all cases where the physician performs or induces an abortion upon a woman carrying a late-term pain-capable unborn child, the physician shall certify in writing the

available method or techniques considered and the reasons for choosing the method or technique employed.

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

7. Any physician who knowingly violates any of the provisions of subsections 5 or 6 of this section shall be guilty of a class D felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of subsections 5 or 6 of this section shall 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 upon notification to the revisor of statutes by an opinion by the attorney general of Missouri, a proclamation by the governor of Missouri, or the adoption of a concurrent resolution by the Missouri general assembly that:

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

(2) An amendment to the Constitution of the United States



has been adopted that has the effect of restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in section 188.017; or

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