

SENATE BILL NO. 108

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

0861S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 188.017, 188.026, 188.056, 188.057, 188.058, and 188.375, RSMo, relating to abortion, with an emergency clause.

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

Section A. Sections 188.017, 188.026, 188.056, 188.057,
2 188.058, and 188.375, RSMo, are repealed, to read as follows:

3 [188.017. 1. This section shall be known
4 and may be cited as the "Right to Life of the
5 Unborn Child Act".

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

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

27 4. The enactment of this section shall
28 only become effective upon notification to the
29 revisor of statutes by an opinion by the
30 attorney general of Missouri, a proclamation by
31 the governor of Missouri, or the adoption of a
32 concurrent resolution by the Missouri general
33 assembly that:

(1) The United States Supreme Court has
overruled, in whole or in part, Roe v. Wade, 410

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

34 U.S. 113 (1973), restoring or granting to the
35 state of Missouri the authority to regulate
36 abortion to the extent set forth in this
37 section, and that as a result, it is reasonably
38 probable that this section would be upheld by
39 the court as constitutional;

40 (2) An amendment to the Constitution of
41 the United States has been adopted that has the
42 effect of restoring or granting to the state of
43 Missouri the authority to regulate abortion to
44 the extent set forth in this section; or

45 (3) The United States Congress has enacted
46 a law that has the effect of restoring or
47 granting to the state of Missouri the authority
48 to regulate abortion to the extent set forth in
49 this section.]

[188.026. 1. This section and sections
2 188.056, 188.057, and 188.058 shall be known and
3 may be cited as the "Missouri Stands for the
4 Unborn Act".

5 2. In *Roe v. Wade*, 410 U.S. 113 (1973),
6 certain information about the development of the
7 unborn child, human pregnancy, and the effects
8 of abortion was either not part of the record or
9 was not available at the time. Since 1973,
10 advances in medical and scientific technology
11 have greatly expanded our knowledge of prenatal
12 life and the effects of abortion on women. The
13 general assembly of this state finds:

14 (1) At conception, a new genetically
15 distinct human being is formed;

16 (2) The fact that the life of an
17 individual human being begins at conception has
18 long been recognized in Missouri law: "[T]he
19 child is, in truth, alive from the moment of
20 conception". *State v. Emerich*, 13 Mo. App. 492,
21 495 (1883), affirmed, 87 Mo. 110 (1885). Under
22 section 1.205, the general assembly has
23 recognized that the life of each human being
24 begins at conception and that unborn children
25 have protectable interests in life, health, and
26 well-being;

27 (3) The first prohibition of abortion in
28 Missouri was enacted in 1825. Since then, the
29 repeal and reenactment of prohibitions of
30 abortion have made distinctions with respect to
31 penalties for performing or inducing abortion on
32 the basis of "quickenin"; however, the unborn
33 child was still protected from conception onward;

34 (4) In ruling that Missouri's prohibition
35 on abortion was constitutional in 1972, the
36 Missouri supreme court accepted as a stipulation
37 of the parties that "[i]nfant Doe, Intervenor
38 Defendant in this case, and all other unborn
39 children have all the qualities and attributes
40 of adult human persons differing only in age or

41 maturity. Medically, human life is a continuum
42 from conception to death.'" *Rodgers v. Danforth*,
43 486 S.W.2d 258, 259 (1972);

44 (5) In *Webster v. Reproductive Health*
45 *Services*, 492 U.S. 490 (1989), the Supreme
46 Court, while considering the "preamble" that set
47 forth "findings" in section 1.205, stated: "We
48 think the extent to which the preamble's
49 language might be used to interpret other state
50 statutes or regulations is something that only
51 the courts of Missouri can definitively decide.
52 State law has offered protections to unborn
53 children in tort and probate law". *Id.* at 506.
54 Since *Webster*, Missouri courts have construed
55 section 1.205 and have consistently found that
56 an unborn child is a person for purposes of
57 Missouri's homicide and assault laws when the
58 unborn child's mother was killed or assaulted by
59 another person. Section 1.205 has even been
60 found applicable to the manslaughter of an
61 unborn child who was eight weeks gestational age
62 or earlier. *State v. Harrison*, 390 S.W.3d 927
63 (Mo. Ct. App. 2013);

64 (6) In medicine, a special emphasis is
65 placed on the heartbeat. The heartbeat is a
66 discernible sign of life at every stage of human
67 existence. During the fifth week of gestational
68 age, an unborn child's heart begins to beat and
69 blood flow begins during the sixth week;

70 (7) Depending on the ultrasound equipment
71 being used, the unborn child's heartbeat can be
72 visually detected as early as six to eight weeks
73 gestational age. By about twelve weeks
74 gestational age, the unborn child's heartbeat
75 can consistently be made audible through the use
76 of a handheld Doppler fetal heart rate device;

77 (8) Confirmation of a pregnancy can be
78 indicated through the detection of the unborn
79 child's heartbeat, while the absence of a
80 heartbeat can be an indicator of the death of
81 the unborn child if the child has reached the
82 point of development when a heartbeat should be
83 detectable;

84 (9) Heart rate monitoring during pregnancy
85 and labor is utilized to measure the heart rate
86 and rhythm of the unborn child, at an average
87 rate between one hundred ten and one hundred
88 sixty beats per minute, and helps determine the
89 health of the unborn child;

90 (10) The Supreme Court in *Roe* discussed
91 "the difficult question of when life begins" and
92 wrote: "[p]hysicians and their scientific
93 colleagues have regarded [quickening] with less
94 interest and have tended to focus either upon
95 conception, upon live birth, or upon the interim
96 point at which the fetus becomes 'viable', that
97 is, potentially able to live outside the

98 mother's womb, albeit with artificial aid".
99 Roe, 410 U.S. at 160. Today, however,
100 physicians' and scientists' interests on life in
101 the womb also focus on other markers of
102 development in the unborn child, including, but
103 not limited to, presence of a heartbeat, brain
104 development, a viable pregnancy or viable
105 intrauterine pregnancy during the first
106 trimester of pregnancy, and the ability to
107 experience pain;

108 (11) In Planned Parenthood of Central
109 Missouri v. Danforth, 428 U.S. 52 (1976), the
110 Supreme Court noted that "we recognized in Roe
111 that viability was a matter of medical judgment,
112 skill, and technical ability, and we preserved
113 the flexibility of the term". Id. at 64. Due to
114 advances in medical technology and diagnoses,
115 present-day physicians and scientists now
116 describe the viability of an unborn child in an
117 additional manner, by determining whether there
118 is a viable pregnancy or viable intrauterine
119 pregnancy during the first trimester of
120 pregnancy;

121 (12) While the overall risk of miscarriage
122 after clinical recognition of pregnancy is
123 twelve to fifteen percent, the incidence
124 decreases significantly if cardiac activity in
125 the unborn child has been confirmed. The
126 detection of a heartbeat in an unborn child is a
127 reliable indicator of a viable pregnancy and
128 that the unborn child will likely survive to
129 birth, especially if presenting for a prenatal
130 visit at eight weeks gestational age or later.
131 For asymptomatic women attending a first
132 prenatal visit between six and eleven weeks
133 gestational age where a heartbeat was confirmed
134 through an ultrasound, the subsequent risk of
135 miscarriage is one and six-tenths percent.
136 Although the risk is higher at six weeks
137 gestational age at nine and four-tenths percent,
138 it declines rapidly to one and five-tenths
139 percent at eight weeks gestational age, and less
140 than one percent at nine weeks gestational age
141 or later;

142 (13) The presence of a heartbeat in an
143 unborn child represents a more definable point
144 of ascertaining survivability than the ambiguous
145 concept of viability that has been adopted by
146 the Supreme Court, especially since if a
147 heartbeat is detected at eight weeks gestational
148 age or later in a normal pregnancy, there is
149 likely to be a viable pregnancy and there is a
150 high probability that the unborn child will
151 survive to birth;

152 (14) The placenta begins developing during
153 the early first trimester of pregnancy and
154 performs a respiratory function by making oxygen

155 supply to and carbon dioxide removal from the
156 unborn child possible later in the first
157 trimester and throughout the second and third
158 trimesters of pregnancy;

159 (15) By the fifth week of gestation, the
160 development of the brain of the unborn child is
161 underway. Brain waves have been measured and
162 recorded as early as the eighth week of
163 gestational age in children who were removed
164 during an ectopic pregnancy or hysterectomy.
165 Fetal magnetic resonance imaging (MRI) of an
166 unborn child's brain is used during the second
167 and third trimesters of pregnancy and brain
168 activity has been observed using MRI;

169 (16) Missouri law identifies the presence
170 of circulation, respiration, and brain function
171 as indicia of life under section 194.005, as the
172 presence of circulation, respiration, and brain
173 function indicates that such person is not
174 legally dead, but is legally alive;

175 (17) Unborn children at eight weeks
176 gestational age show spontaneous movements, such
177 as a twitching of the trunk and developing
178 limbs. It has been reported that unborn
179 children at this stage show reflex responses to
180 touch. The perioral area is the first part of
181 the unborn child's body to respond to touch at
182 about eight weeks gestational age and by
183 fourteen weeks gestational age most of the
184 unborn child's body is responsive to touch;

185 (18) Peripheral cutaneous sensory
186 receptors, the receptors that feel pain, develop
187 early in the unborn child. They appear in the
188 perioral cutaneous area at around seven to eight
189 weeks gestational age, in the palmar regions at
190 ten to ten and a half weeks gestational age, the
191 abdominal wall at fifteen weeks gestational age,
192 and over all of the unborn child's body at
193 sixteen weeks gestational age;

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

203 (20) When intrauterine needling is
204 performed on an unborn child at sixteen weeks
205 gestational age or later, the reaction to this
206 invasive stimulus is blood flow redistribution
207 to the brain. Increased blood flow to the brain
208 is the same type of stress response seen in a
209 born child and an adult;

210 (21) By sixteen weeks gestational age,
211 pain transmission from a peripheral receptor to
212 the cortex is possible in the unborn child;
213 (22) Physicians provide anesthesia during
214 in utero treatment of unborn children as early
215 as sixteen weeks gestational age for certain
216 procedures, including those to correct fetal
217 urinary tract obstruction. Anesthesia is
218 administered by ultrasound-guided injection into
219 the arm or leg of the unborn child;
220 (23) A leading textbook on prenatal
221 development of the human brain states, "It may
222 be concluded that, although nociperception (the
223 actual perception of pain) awaits the appearance
224 of consciousness, nociception (the experience of
225 pain) is present some time before birth. In the
226 absence of disproof, it is merely prudent to
227 assume that pain can be experienced even early
228 in prenatal life (Dr. J. Wisser, Zürich): the
229 fetus should be given the benefit of the
230 doubt". Ronan O'Rahilly & Fabiola Müller. The
231 Embryonic Human Brain: An Atlas of
232 Developmental Stages (3d ed. 2005);
233 (24) By fourteen or fifteen weeks
234 gestational age or later, the predominant
235 abortion method in Missouri is dilation and
236 evacuation (D&E). The D&E abortion method
237 includes the dismemberment, disarticulation, and
238 exsanguination of the unborn child, causing the
239 unborn child's death;
240 (25) The Supreme Court acknowledged in
241 *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007),
242 that "the standard D&E is in some respects as
243 brutal, if not more, than the intact D&E"
244 partial birth abortion method banned by Congress
245 and upheld as facially constitutional by the
246 Supreme Court, even though the federal ban was
247 applicable both before and after viability and
248 had no exception for the health of the mother;
249 (26) Missouri's ban on the partial birth
250 abortion method, section 565.300, is in effect
251 because of *Gonzales v. Carhart* and the Supreme
252 Court's subsequent decision in *Nixon v.*
253 *Reproductive Health Services of Planned*
254 *Parenthood of the St. Louis Region, Inc.*, 550
255 U.S. 901 (2007), to vacate and remand to the
256 appellate court the prior invalidation of
257 section 565.300. Since section 565.300, like
258 Congress' ban on partial birth abortion, is
259 applicable both before and after viability,
260 there is ample precedent for the general
261 assembly to constitutionally prohibit the brutal
262 D&E abortion method at fourteen weeks
263 gestational age or later, even before the unborn
264 child is viable, with a medical emergency
265 exception;

266 (27) In *Roper v. Simmons*, 543 U.S. 551
267 (2005), the Supreme Court determined that
268 "evolving standards of decency" dictated that a
269 Missouri statute allowing the death penalty for
270 a conviction of murder in the first degree for a
271 person under eighteen years of age when the
272 crime was committed was unconstitutional under
273 the Eighth and Fourteenth Amendments to the
274 United States Constitution because it violated
275 the prohibition against "cruel and unusual
276 punishments";

277 (28) In *Bucklew v. Precythe*, 139 S. Ct.
278 1112, 1123 (2019), the Supreme Court noted that
279 "'[d]isgusting' practices" like disemboweling
280 and quartering "readily qualified as 'cruel and
281 unusual', as a reader at the time of the Eighth
282 Amendment's adoption would have understood those
283 words";

284 (29) Evolving standards of decency dictate
285 that Missouri should prohibit the brutal and
286 painful D&E abortion method at fourteen weeks
287 gestational age or later, with a medical
288 emergency exception, because if a comparable
289 method of killing was used on:

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

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

297 (30) In *Roper*, the Supreme Court also
298 found that "[i]t is proper that we acknowledge
299 the overwhelming weight of international opinion
300 against the juvenile death penalty.... The
301 opinion of the world community, while not
302 controlling our outcome, does provide respected
303 and significant confirmation for our own
304 conclusions". *Roper*, 543 U.S. at 578. In its
305 opinion, the Supreme Court was instructed by
306 "international covenants prohibiting the
307 juvenile death penalty", such as the
308 International Covenant on Civil and Political
309 Rights, 999 U.N.T.S. 171. *Id.* at 577;

310 (31) The opinion of the world community,
311 reflected in the laws of the United Nation's 193-
312 member states and six other entities, is that in
313 most countries, most abortions are prohibited
314 after twelve weeks gestational age or later;

315 (32) The opinion of the world community is
316 also shared by most Americans, who believe that
317 most abortions in the second and third
318 trimesters of pregnancy should be illegal, based
319 on polling that has remained consistent since
320 1996;

321 (33) Abortion procedures performed later
322 in pregnancy have a higher medical risk for

323 women. Compared to an abortion at eight weeks
324 gestational age or earlier, the relative risk
325 increases exponentially at later gestational
326 ages. The relative risk of death for a pregnant
327 woman who had an abortion performed or induced
328 upon her at:

329 (a) Eleven to twelve weeks gestational age
330 is between three and four times higher than an
331 abortion at eight weeks gestational age or
332 earlier;

333 (b) Thirteen to fifteen weeks gestational
334 age is almost fifteen times higher than an
335 abortion at eight weeks gestational age or
336 earlier;

337 (c) Sixteen to twenty weeks gestational
338 age is almost thirty times higher than an
339 abortion at eight weeks gestational age or
340 earlier; and

341 (d) Twenty-one weeks gestational age or
342 later is more than seventy-five times higher
343 than an abortion at eight weeks gestational age
344 or earlier;

345 (34) In addition to the short-term risks
346 of an abortion, studies have found that the long-
347 term physical and psychological consequences of
348 abortion for women include, but are not limited
349 to, an increased risk of preterm birth, low
350 birthweight babies, and placenta previa in
351 subsequent pregnancies, as well as serious
352 behavioral health issues. These risks increase
353 as abortions are performed or induced at later
354 gestational ages. These consequences of an
355 abortion have a detrimental effect not only on
356 women, their children, and their families, but
357 also on an already burdened health care system,
358 taxpayers, and the workforce;

359 (35) A large percentage of women who have
360 an abortion performed or induced upon them in
361 Missouri each year are at less than eight weeks
362 gestational age, a large majority are at less
363 than fourteen weeks gestational age, a larger
364 majority are at less than eighteen weeks
365 gestational age, and an even larger majority are
366 at less than twenty weeks gestational age. A
367 prohibition on performing or inducing an
368 abortion at eight weeks gestational age or
369 later, with a medical emergency exception, does
370 not amount to a substantial obstacle to a large
371 fraction of women for whom the prohibition is
372 relevant, which is pregnant women in Missouri
373 who are seeking an abortion while not
374 experiencing a medical emergency. The burden
375 that a prohibition on performing or inducing an
376 abortion at eight, fourteen, eighteen, or twenty
377 weeks gestational age or later, with a medical
378 emergency exception, might impose on abortion

379 access, is outweighed by the benefits conferred
380 upon the following:

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

383 (b) Unborn children at later stages of
384 development;

385 (c) The medical profession, by preserving
386 its integrity and fulfilling its commitment to
387 do no harm; and

388 (d) Society, by fostering respect for
389 human life, born and unborn, at all stages of
390 development, and by lessening societal tolerance
391 of violence against innocent human life;

392 (36) In Webster, the Supreme Court noted,
393 in upholding a Missouri statute, "that there may
394 be a 4-week error in estimating gestational
395 age". Webster, 492 U.S. at 516. Thus, an
396 unborn child thought to be eight weeks
397 gestational age might in fact be twelve weeks
398 gestational age, when an abortion poses a
399 greater risk to the woman and the unborn child
400 is considerably more developed. An unborn child
401 at fourteen weeks gestational age might be
402 eighteen weeks gestational age and an unborn
403 child at eighteen weeks gestational age might be
404 twenty-two weeks gestational age, when an
405 abortion poses a greater risk to the woman, the
406 unborn child is considerably more developed, the
407 abortion method likely to be employed is more
408 brutal, and the risk of pain experienced by the
409 unborn child is greater. An unborn child at
410 twenty weeks gestational age might be twenty-
411 four weeks gestational age, when an abortion
412 poses a greater risk to the woman, the unborn
413 child is considerably more developed, the
414 abortion method likely to be employed is more
415 brutal, the risk of pain experienced by the
416 unborn child is greater, and the unborn child
417 may be viable.

418 3. The state of Missouri is bound by
419 Article VI, Clause 2 of the Constitution of the
420 United States that "all treaties made, or which
421 shall be made, under the authority of the United
422 States, shall be the supreme law of the land".
423 One such treaty is the International Covenant on
424 Civil and Political Rights, entered into force
425 on March 23, 1976, and adopted by the United
426 States on September 8, 1992. In ratifying the
427 Covenant, the United States declared that while
428 the provisions of Articles 1 through 27 of the
429 Covenant are not self-executing, the United
430 States' understanding is that state governments
431 share responsibility with the federal government
432 in implementing the Covenant.

433 4. Article 6, Paragraph 1, U.N.T.S. at
434 174, of the International Covenant on Civil and
435 Political Rights states, "Every human being has

436 the inherent right to life. This right shall be
437 protected by law. No one shall be arbitrarily
438 deprived of his life". The state of Missouri
439 takes seriously its obligation to comply with
440 the Covenant and to implement this paragraph as
441 it relates to the inherent right to life of
442 unborn human beings, protecting the rights of
443 unborn human beings by law, and ensuring that
444 such unborn human beings are not arbitrarily
445 deprived of life. The state of Missouri hereby
446 implements Article 6, Paragraph 1 of the
447 Covenant by the regulation of abortion in this
448 state.

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

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

454 (2) Encouraging childbirth over abortion;

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

457 (4) Safeguarding an unborn child from the
458 serious harm of pain by an abortion method that
459 would cause the unborn child to experience pain
460 while she or he is being killed;

461 (5) Preserving the integrity of the
462 medical profession and regulating and
463 restricting practices that might cause the
464 medical profession or society as a whole to
465 become insensitive, even disdainful, to life.

466 This includes regulating and restricting
467 abortion methods that are not only brutal and
468 painful, but if allowed to continue, will
469 further coarsen society to the humanity of not
470 only unborn children, but all vulnerable and
471 innocent human life, making it increasingly
472 difficult to protect such life;

473 (6) Ending the incongruities in state law
474 by permitting some unborn children to be killed
475 by abortion, while requiring that unborn
476 children be protected in nonabortion
477 circumstances through, including, but not
478 limited to, homicide, assault, self-defense, and
479 defense of another statutes; laws guaranteeing
480 prenatal health care, emergency care, and
481 testing; state-sponsored health insurance for
482 unborn children; the prohibition of restraints
483 in correctional institutions to protect pregnant
484 offenders and their unborn children; and
485 protecting the interests of unborn children by
486 the appointment of conservators, guardians, and
487 representatives;

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

491 (8) Avoiding burdens on the health care
492 system, taxpayers, and the workforce because of

493 increased preterm births, low birthweight
494 babies, compromised pregnancies, extended
495 postpartum recoveries, and behavioral health
496 problems caused by the long-term effects of
497 abortions performed or induced later in the
498 pregnancy.]

2 [188.056. 1. Notwithstanding any other
3 provision of law to the contrary, no abortion
4 shall be performed or induced upon a woman at
5 eight weeks gestational age or later, except in
6 cases of medical emergency. Any person who
7 knowingly performs or induces an abortion of an
8 unborn child in violation of this subsection
9 shall be guilty of a class B felony, as well as
10 subject to suspension or revocation of his or
11 her professional license by his or her
12 professional licensing board. A woman upon whom
13 an abortion is performed or induced in violation
14 of this subsection shall not be prosecuted for a
15 conspiracy to violate the provisions of this
16 section.]

17 2. It shall be an affirmative defense for
18 any person alleged to have violated the
19 provisions of subsection 1 of this section that
20 the person performed or induced an abortion
21 because of a medical emergency. The defendant
22 shall have the burden of persuasion that the
23 defense is more probably true than not.

24 3. Prosecution under this section shall
25 bar prosecution under section* 188.057, 188.058,
26 or 188.375 if prosecution under such sections
27 would violate the provisions of Amendment V to
28 the Constitution of the United States or Article
29 I, Section 19 of the Constitution of Missouri.

30 4. If any one or more provisions,
31 subsections, sentences, clauses, phrases, or
32 words of this section or the application thereof
33 to any person, circumstance, or period of
34 gestational age is found to be unenforceable,
35 unconstitutional, or invalid by a court of
36 competent jurisdiction, the same is hereby
37 declared to be severable and the balance of the
38 section shall remain effective notwithstanding
39 such unenforceability, unconstitutionality, or
40 invalidity. The general assembly hereby
41 declares that it would have passed this section,
42 and each provision, subsection, sentence,
43 clause, phrase, or word thereof, irrespective of
44 the fact that any one or more provisions,
45 subsections, sentences, clauses, phrases, or
46 words of the section, or the application of the
47 section to any person, circumstance, or period
48 of gestational age, would be declared
unenforceable, unconstitutional, or invalid.]

2 [188.057. 1. Notwithstanding any other
provision of law to the contrary, no abortion

3 shall be performed or induced upon a woman at
4 fourteen weeks gestational age or later, except
5 in cases of medical emergency. Any person who
6 knowingly performs or induces an abortion of an
7 unborn child in violation of this subsection
8 shall be guilty of a class B felony, as well as
9 subject to suspension or revocation of his or
10 her professional license by his or her
11 professional licensing board. A woman upon whom
12 an abortion is performed or induced in violation
13 of this subsection shall not be prosecuted for a
14 conspiracy to violate the provisions of this
15 section.

16 2. It shall be an affirmative defense for
17 any person alleged to have violated the
18 provisions of subsection 1 of this section that
19 the person performed or induced an abortion
20 because of a medical emergency. The defendant
21 shall have the burden of persuasion that the
22 defense is more probably true than not.

23 3. Prosecution under this section shall
24 bar prosecution under section 188.056, 188.058,
25 or 188.375 if prosecution under such sections
26 would violate the provisions of Amendment V to
27 the Constitution of the United States or Article
28 I, Section 19 of the Constitution of Missouri.

29 4. If any one or more provisions,
30 subsections, sentences, clauses, phrases, or
31 words of this section or the application thereof
32 to any person, circumstance, or period of
33 gestational age is found to be unenforceable,
34 unconstitutional, or invalid by a court of
35 competent jurisdiction, the same is hereby
36 declared to be severable and the balance of the
37 section shall remain effective notwithstanding
38 such unenforceability, unconstitutionality, or
39 invalidity. The general assembly hereby
40 declares that it would have passed this section,
41 and each provision, subsection, sentence,
42 clause, phrase, or word thereof, irrespective of
43 the fact that any one or more provisions,
44 subsections, sentences, clauses, phrases, or
45 words of the section, or the application of the
46 section to any person, circumstance, or period
47 of gestational age, would be declared
48 unenforceable, unconstitutional, or invalid.]

2 [188.058. 1. Notwithstanding any other
3 provision of law to the contrary, no abortion
4 shall be performed or induced upon a woman at
5 eighteen weeks gestational age or later, except
6 in cases of medical emergency. Any person who
7 knowingly performs or induces an abortion of an
8 unborn child in violation of this subsection
9 shall be guilty of a class B felony, as well as
10 subject to suspension or revocation of his or
her professional license by his or her

11 professional licensing board. A woman upon whom
12 an abortion is performed or induced in violation
13 of this section shall not be prosecuted for a
14 conspiracy to violate the provisions of this
15 section.

16 2. It shall be an affirmative defense for
17 any person alleged to have violated the
18 provisions of subsection 1 of this section that
19 the person performed or induced an abortion
20 because of a medical emergency. The defendant
21 shall have the burden of persuasion that the
22 defense is more probably true than not.

23 3. Prosecution under this section shall
24 bar prosecution under section 188.056, 188.057,
25 or 188.375 if prosecution under such sections
26 would violate the provisions of Amendment V to
27 the Constitution of the United States or Article
28 I, Section 19 of the Constitution of Missouri.

29 4. If any one or more provisions,
30 subsections, sentences, clauses, phrases, or
31 words of this section or the application thereof
32 to any person, circumstance, or period of
33 gestational age is found to be unenforceable,
34 unconstitutional, or invalid by a court of
35 competent jurisdiction, the same is hereby
36 declared to be severable and the balance of the
37 section shall remain effective notwithstanding
38 such unenforceability, unconstitutionality, or
39 invalidity. The general assembly hereby
40 declares that it would have passed this section,
41 and each provision, subsection, sentence,
42 clause, phrase, or word thereof, irrespective of
43 the fact that any one or more provisions,
44 subsections, sentences, clauses, phrases, or
45 words of the section, or the application of the
46 section to any person, circumstance, or period
47 of gestational age, would be declared
48 unenforceable, unconstitutional, or invalid.]

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

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

9 3. Notwithstanding any other provision of
10 law to the contrary, no abortion shall be
11 performed or induced upon a woman carrying a
12 late-term pain-capable unborn child, except in
13 cases of medical emergency. Any person who
14 knowingly performs or induces an abortion of a
15 late-term pain-capable unborn child in violation
16 of this subsection shall be guilty of a class B
17 felony, as well as subject to suspension or
18 revocation of his or her professional license by
his or her professional licensing board. A

19 woman upon whom an abortion is performed or
20 induced in violation of this subsection shall
21 not be prosecuted for a conspiracy to violate
22 the provisions of this subsection.

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

30 5. Prosecution under subsection 3 of this
31 section shall bar prosecution under
32 section 188.056, 188.057, or 188.058 if
33 prosecution under such sections would violate
34 the provisions of Amendment V to the
35 Constitution of the United States or Article I,
36 Section 19 of the Constitution of Missouri.

37 6. When in cases of medical emergency a
38 physician performs or induces an abortion upon a
39 woman in her third trimester carrying a late-
40 term pain-capable unborn child, the physician
41 shall utilize the available method or technique
42 of abortion most likely to preserve the life or
43 health of the unborn child. In cases where the
44 method or technique of abortion most likely to
45 preserve the life or health of the unborn child
46 would present a greater risk to the life or
47 health of the woman than another legally
48 permitted and available method or technique, the
49 physician may utilize such other method or
50 technique. In all cases where the physician
51 performs or induces an abortion upon a woman
52 during her third trimester carrying a late-term
53 pain-capable unborn child, the physician shall
54 certify in writing the available method or
55 techniques considered and the reasons for
56 choosing the method or technique employed.

57 7. When in cases of medical emergency a
58 physician performs or induces an abortion upon a
59 woman during her third trimester carrying a late-
60 term pain-capable unborn child, there shall be
61 in attendance a physician other than the
62 physician performing or inducing the abortion
63 who shall take control of and provide immediate
64 medical care for a child born as a result of the
65 abortion.

66 8. Any physician who knowingly violates
67 any of the provisions of subsection 6 or 7 of
68 this section shall be guilty of a class D
69 felony, as well as subject to suspension or
70 revocation of his or her professional license by
71 his or her professional licensing board. A
72 woman upon whom an abortion is performed or
73 induced in violation of subsection 6 or 7 of
74 this section shall not be prosecuted for a

75 conspiracy to violate the provisions of those
76 subsections.
77 9. If any one or more provisions,
78 subsections, sentences, clauses, phrases, or
79 words of this section or the application thereof
80 to any person, circumstance, or period of
81 gestational age is found to be unenforceable,
82 unconstitutional, or invalid by a court of
83 competent jurisdiction, the same is hereby
84 declared to be severable and the balance of the
85 section shall remain effective notwithstanding
86 such unenforceability, unconstitutionality, or
87 invalidity. The general assembly hereby
88 declares that it would have passed this section,
89 and each provision, subsection, sentence,
90 clause, phrase, or word thereof, irrespective of
91 the fact that any one or more provisions,
92 subsections, sentences, clauses, phrases, or
93 words of the section, or the application of the
94 section to any person, circumstance, or period
95 of gestational age, would be declared
96 unenforceable, unconstitutional, or invalid.]

Section B. Because of the need to protect the health
2 and safety of Missouri women, Section A of this act is
3 deemed necessary for the immediate preservation of the
4 public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the
6 constitution, and Section A of this act shall be in full
7 force and effect upon its passage and approval.

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