

SENATE BILL NO. 241

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WEBBER.

1316S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 188.015, 188.017, 188.026, 188.027, 188.038, 188.052, 188.056, 188.057, 188.058, 188.080, and 188.375, RSMo, and to enact in lieu thereof four new sections relating to abortion, with an emergency clause.

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

Section A. Sections 188.015, 188.017, 188.026, 188.027,
2 188.038, 188.052, 188.056, 188.057, 188.058, 188.080, and
3 188.375, RSMo, are repealed and four new sections enacted in
4 lieu thereof, to be known as sections 188.015, 188.027, 188.052,
5 and 188.080, to read as follows:

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

3 (1) "Abortion":

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

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

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

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

16 (3) "Affiliate", a person who or entity that enters
17 into, with an abortion facility, a legal relationship
18 created or governed by at least one written instrument,
19 including a certificate of formation, a franchise agreement,
20 standards of affiliation, bylaws, or a license, that
21 demonstrates:

22 (a) Common ownership, management, or control between
23 the parties to the relationship;

24 (b) A franchise granted by the person or entity to the
25 affiliate; or

26 (c) The granting or extension of a license or other
27 agreement authorizing the affiliate to use the other
28 person's or entity's brand name, trademark, service mark, or
29 other registered identification mark;

30 (4) "Conception", the fertilization of the ovum of a
31 female by a sperm of a male;

32 (5) "Department", the department of health and senior
33 services;

34 (6) ["Down Syndrome", the same meaning as defined in
35 section 191.923;

36 (7)] "Gestational age", length of pregnancy as
37 measured from the first day of the woman's last menstrual
38 period;

39 [(8)] (7) "Medical emergency", a condition which,
40 based on reasonable medical judgment, so complicates the
41 medical condition of a pregnant woman as to necessitate the
42 immediate abortion of her pregnancy to avert the death of
43 the pregnant woman or for which a delay will create a
44 serious risk of substantial and irreversible physical
45 impairment of a major bodily function of the pregnant woman;

46 [(9)] (8) "Physician", any person licensed to practice
47 medicine in this state by the state board of registration
48 for the healing arts;

49 [(10)] (9) "Reasonable medical judgment", a medical
50 judgment that would be made by a reasonably prudent
51 physician, knowledgeable about the case and the treatment
52 possibilities with respect to the medical conditions
53 involved;

54 [(11)] (10) "Unborn child", the offspring of human
55 beings from the moment of conception until birth and at
56 every stage of its biological development, including the
57 human conceptus, zygote, morula, blastocyst, embryo, and
58 fetus;

59 [(12)] (11) "Viability" or "viable", that stage of
60 fetal development when the life of the unborn child may be
61 continued indefinitely outside the womb by natural or
62 artificial life-supportive systems;

63 [(13)] (12) "Viable pregnancy" or "viable intrauterine
64 pregnancy", in the first trimester of pregnancy, an
65 intrauterine pregnancy that can potentially result in a
66 liveborn baby.

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

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

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

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

16 a. A description of the proposed abortion method;

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

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

28 (c) Alternatives to the abortion which shall include
29 making the woman aware that information and materials shall
30 be provided to her detailing such alternatives to the
31 abortion;

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

37 (e) [The location of the hospital that offers
38 obstetrical or gynecological care located within thirty
39 miles of the location where the abortion is performed or
40 induced and at which the physician performing or inducing
41 the abortion has clinical privileges and where the woman may

42 receive follow-up care by the physician if complications
43 arise;

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

46 [(g)] (f) The anatomical and physiological
47 characteristics of the unborn child at the time the abortion
48 is to be performed or induced;

49 (2) The physician who is to perform or induce the
50 abortion or a qualified professional has presented the
51 woman, in person, printed materials provided by the
52 department, which describe the probable anatomical and
53 physiological characteristics of the unborn child at two-
54 week gestational increments from conception to full term,
55 including color photographs or images of the developing
56 unborn child at two-week gestational increments. Such
57 descriptions shall include information about brain and heart
58 functions, the presence of external members and internal
59 organs during the applicable stages of development and
60 information on when the unborn child is viable. The printed
61 materials shall prominently display the following
62 statement: "The life of each human being begins at
63 conception. Abortion will terminate the life of a separate,
64 unique, living human being.";

65 (3) The physician who is to perform or induce the
66 abortion, a qualified professional, or the referring
67 physician has presented the woman, in person, printed
68 materials provided by the department, which describe the
69 various surgical and drug-induced methods of abortion
70 relevant to the stage of pregnancy, as well as the immediate
71 and long-term medical risks commonly associated with each
72 abortion method including, but not limited to, infection,
73 hemorrhage, cervical tear or uterine perforation, harm to

74 subsequent pregnancies or the ability to carry a subsequent
75 child to term, and the possible adverse psychological
76 effects associated with an abortion;

77 (4) The physician who is to perform or induce the
78 abortion or a qualified professional shall provide the woman
79 with the opportunity to view at least seventy-two hours
80 prior to the abortion an active ultrasound of the unborn
81 child and hear the heartbeat of the unborn child if the
82 heartbeat is audible. The woman shall be provided with a
83 geographically indexed list maintained by the department of
84 health care providers, facilities, and clinics that perform
85 ultrasounds, including those that offer ultrasound services
86 free of charge. Such materials shall provide contact
87 information for each provider, facility, or clinic including
88 telephone numbers and, if available, website addresses.
89 Should the woman decide to obtain an ultrasound from a
90 provider, facility, or clinic other than the abortion
91 facility, the woman shall be offered a reasonable time to
92 obtain the ultrasound examination before the date and time
93 set for performing or inducing an abortion. The person
94 conducting the ultrasound shall ensure that the active
95 ultrasound image is of a quality consistent with standard
96 medical practice in the community, contains the dimensions
97 of the unborn child, and accurately portrays the presence of
98 external members and internal organs, if present or
99 viewable, of the unborn child. The auscultation of fetal
100 heart tone must also be of a quality consistent with
101 standard medical practice in the community. If the woman
102 chooses to view the ultrasound or hear the heartbeat or both
103 at the abortion facility, the viewing or hearing or both
104 shall be provided to her at the abortion facility at least

105 seventy-two hours prior to the abortion being performed or
106 induced;

107 (5) The printed materials provided by the department
108 shall include information on the possibility of an abortion
109 causing pain in the unborn child. This information shall
110 include, but need not be limited to, the following:

111 (a) Unborn children as early as eight weeks
112 gestational age start to show spontaneous movements and
113 unborn children at this stage in pregnancy show reflex
114 responses to touch;

115 (b) In the unborn child, the area around his or her
116 mouth and lips is the first part of the unborn child's body
117 to respond to touch and by fourteen weeks gestational age
118 most of the unborn child's body is responsive to touch;

119 (c) Pain receptors on the unborn child's skin develop
120 around his or her mouth at around seven to eight weeks
121 gestational age, around the palms of his or her hands at ten
122 to ten and a half weeks, on the abdominal wall at fifteen
123 weeks, and over all of his or her body at sixteen weeks
124 gestational age;

125 (d) Beginning at sixteen weeks gestational age and
126 later, it is possible for pain to be transmitted from
127 receptors to the cortex of the unborn child's brain, where
128 thinking and perceiving occur;

129 (e) When a physician performs a life-saving surgery,
130 he or she provides anesthesia to unborn children as young as
131 sixteen weeks gestational age in order to alleviate the
132 unborn child's pain; and

133 (f) A description of the actual steps in the abortion
134 procedure to be performed or induced and at which steps the
135 abortion procedure could be painful to the unborn child;

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

141 (a) Identify on a geographical basis public and
142 private agencies available to assist a woman in carrying her
143 unborn child to term, and to assist her in caring for her
144 dependent child or placing her child for adoption, including
145 agencies commonly known and generally referred to as
146 pregnancy resource centers, crisis pregnancy centers,
147 maternity homes, and adoption agencies. Such materials
148 shall provide a comprehensive list by geographical area of
149 the agencies, a description of the services they offer, and
150 the telephone numbers and addresses of the agencies;
151 provided that such materials shall not include any programs,
152 services, organizations, or affiliates of organizations that
153 perform or induce, or assist in the performing or inducing
154 of, abortions or that refer for abortions;

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

167 placement services; drug and alcohol testing and treatment;
168 and adoption assistance;

169 (c) Identify the state website for the Missouri
170 alternatives to abortion services program under section
171 188.325, and any toll-free number established by the state
172 operated in conjunction with the program;

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

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

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

206 2. All information required to be provided to a woman
207 considering abortion by subsection 1 of this section shall
208 be presented to the woman individually, in the physical
209 presence of the woman and in a private room, to protect her
210 privacy, to maintain the confidentiality of her decision, to
211 ensure that the information focuses on her individual
212 circumstances, to ensure she has an adequate opportunity to
213 ask questions, and to ensure that she is not a victim of
214 coerced abortion. Should a woman be unable to read
215 materials provided to her, they shall be read to her.
216 Should a woman need an interpreter to understand the
217 information presented in the written materials, an
218 interpreter shall be provided to her. Should a woman ask
219 questions concerning any of the information or materials,
220 answers shall be provided in a language she can understand.

221 3. No abortion shall be performed or induced unless
222 and until the woman upon whom the abortion is to be
223 performed or induced certifies in writing on a checklist
224 form provided by the department that she has been presented
225 all the information required in subsection 1 of this
226 section, that she has been provided the opportunity to view
227 an active ultrasound image of the unborn child and hear the
228 heartbeat of the unborn child if it is audible, and that she
229 further certifies that she gives her voluntary and informed

230 consent, freely and without coercion, to the abortion
231 procedure.

232 4. No physician shall perform or induce an abortion
233 unless and until the physician has obtained from the woman
234 her voluntary and informed consent given freely and without
235 coercion. If the physician has reason to believe that the
236 woman is being coerced into having an abortion, the
237 physician or qualified professional shall inform the woman
238 that services are available for her and shall provide her
239 with private access to a telephone and information about
240 such services, including but not limited to the following:

- 241 (1) Rape crisis centers, as defined in section 455.003;
242 (2) Shelters for victims of domestic violence, as
243 defined in section 455.200; and
244 (3) Orders of protection, pursuant to chapter 455.

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

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

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

259 6. No physician shall perform or induce an abortion
260 unless and until the physician has received and signed a
261 copy of the form prescribed in subsection 3 of this

262 section. The physician shall retain a copy of the form in
263 the patient's medical record.

264 7. In the event of a medical emergency, the physician
265 who performed or induced the abortion shall clearly certify
266 in writing the nature and circumstances of the medical
267 emergency. This certification shall be signed by the
268 physician who performed or induced the abortion, and shall
269 be maintained under section 188.060.

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

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

291 10. By November 30, 2010, the department shall produce
292 the written materials and forms described in this section.
293 Any written materials produced shall be printed in a

294 typeface large enough to be clearly legible. All
295 information shall be presented in an objective, unbiased
296 manner designed to convey only accurate scientific and
297 medical information. The department shall furnish the
298 written materials and forms at no cost and in sufficient
299 quantity to any person who performs or induces abortions, or
300 to any hospital or facility that provides abortions. The
301 department shall make all information required by subsection
302 1 of this section available to the public through its
303 department website. The department shall maintain a toll-
304 free, twenty-four-hour hotline telephone number where a
305 caller can obtain information on a regional basis concerning
306 the agencies and services described in subsection 1 of this
307 section. No identifying information regarding persons who
308 use the website shall be collected or maintained. The
309 department shall monitor the website on a regular basis to
310 prevent tampering and correct any operational deficiencies.

311 11. In order to preserve the compelling interest of
312 the state to ensure that the choice to consent to an
313 abortion is voluntary and informed, and given freely and
314 without coercion, the department shall use the procedures
315 for adoption of emergency rules under section 536.025 in
316 order to promulgate all necessary rules, forms, and other
317 necessary material to implement this section by November 30,
318 2010.

319 12. If the provisions in subsections 1 and 8 of this
320 section requiring a seventy-two-hour waiting period for an
321 abortion are ever temporarily or permanently restrained or
322 enjoined by judicial order, then the waiting period for an
323 abortion shall be twenty-four hours; provided, however, that
324 if such temporary or permanent restraining order or
325 injunction is stayed or dissolved, or otherwise ceases to

326 have effect, the waiting period for an abortion shall be
327 seventy-two hours.

188.052. 1. An individual abortion report for each
2 abortion performed or induced upon a woman shall be
3 completed by the physician who performed or induced the
4 abortion. [Abortion reports shall include, but not be
5 limited to, a certification that the physician does not have
6 any knowledge that the woman sought the abortion solely
7 because of a prenatal diagnosis, test, or screening
8 indicating Down Syndrome or the potential of Down Syndrome
9 in the unborn child and a certification that the physician
10 does not have any knowledge that the woman sought the
11 abortion solely because of the sex or race of the unborn
12 child.]

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

- 17 (1) The date of the abortion;
18 (2) The name and address of the abortion facility or
19 hospital where the abortion was performed or induced;
20 (3) The nature of the abortion complication diagnosed
21 or treated.

22 3. All abortion reports shall be signed by the
23 attending physician who performed or induced the abortion
24 and submitted to the department within forty-five days from
25 the date of the abortion. All complication reports shall be
26 signed by the physician providing the post-abortion care and
27 submitted to the department within forty-five days from the
28 date of the post-abortion care.

29 4. A copy of the abortion report shall be made a part
30 of the medical record of the patient of the abortion

31 facility or hospital in which the abortion was performed or
32 induced.

33 5. The department shall be responsible for collecting
34 all abortion reports and complication reports and collating
35 and evaluating all data gathered therefrom and shall
36 annually publish a statistical report based on such data
37 from abortions performed or induced in the previous calendar
38 year.

188.080. Any person who is not a physician who
2 performs or induces or attempts to perform or induce an
3 abortion on another is guilty of a class B felony, and, upon
4 conviction, shall be punished as provided by law. [Any
5 physician performing or inducing an abortion who does not
6 have clinical privileges at a hospital which offers
7 obstetrical or gynecological care located within thirty
8 miles of the location at which the abortion is performed or
9 induced shall be guilty of a class A misdemeanor, and, upon
10 conviction shall be punished as provided by law.]

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

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

18 3. It shall be an affirmative defense for
19 any person alleged to have violated the

20 provisions of subsection 2 of this section that
21 the person performed or induced an abortion
22 because of a medical emergency. The defendant
23 shall have the burden of persuasion that the
24 defense is more probably true than not.

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

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

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

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

[188.038. 1. The general assembly of this
2 state finds that:

3 (1) Removing vestiges of any past bias or
4 discrimination against pregnant women, their
5 partners, and their family members, including
6 their unborn children, is an important task for
7 those in the legal, medical, social services,
8 and human services professions;

9 (2) Ending any current bias or
10 discrimination against pregnant women, their
11 partners, and their family members, including
12 their unborn children, is a legitimate purpose
13 of government in order to guarantee that those
14 who "are endowed by their Creator with certain
15 unalienable Rights" can enjoy "Life, Liberty and
16 the pursuit of Happiness";

17 (3) The historical relationship of bias or
18 discrimination by some family planning programs
19 and policies towards poor and minority
20 populations, including, but not limited to, the
21 nonconsensual sterilization of mentally ill,
22 poor, minority, and immigrant women and other
23 coercive family planning programs and policies,
24 must be rejected;

25 (4) Among Missouri residents, the rate of
26 black or African-American women who undergo
27 abortions is significantly higher, about three
28 and one-half times higher, than the rate of
29 white women who undergo abortions. Among
30 Missouri residents, the rate of black or African-
31 American women who undergo repeat abortions is
32 significantly higher, about one and one-half
33 times higher, than the rate of white women who
34 undergo repeat abortions;

35 (5) Performing or inducing an abortion
36 because of the sex of the unborn child is
37 repugnant to the values of equality of females
38 and males and the same opportunities for girls

39 and boys, and furthers a false mindset of female
40 inferiority;

41 (6) Government has a legitimate interest
42 in preventing the abortion of unborn children
43 with Down Syndrome because it is a form of bias
44 or disability discrimination and victimizes the
45 disabled unborn child at his or her most
46 vulnerable stage. Eliminating unborn children
47 with Down Syndrome raises grave concerns for the
48 lives of those who do live with disabilities.
49 It sends a message of dwindling support for
50 their unique challenges, fosters a false sense
51 that disability is something that could have
52 been avoidable, and is likely to increase the
53 stigma associated with disability.

54 2. No person shall perform or induce an
55 abortion on a woman if the person knows that the
56 woman is seeking the abortion solely because of
57 a prenatal diagnosis, test, or screening
58 indicating Down Syndrome or the potential of
59 Down Syndrome in an unborn child.

60 3. No person shall perform or induce an
61 abortion on a woman if the person knows that the
62 woman is seeking the abortion solely because of
63 the sex or race of the unborn child.

64 4. Any physician or other person who
65 performs or induces or attempts to perform or
66 induce an abortion prohibited by this section
67 shall be subject to all applicable civil
68 penalties under this chapter including, but not
69 limited to, sections 188.065 and 188.085.]

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
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 188.057, 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 [188.057. 1. Notwithstanding any other
3 provision of law to the contrary, no abortion
4 shall be performed or induced upon a woman at
5 fourteen weeks gestational age or later, except
6 in cases of medical emergency. Any person who
7 knowingly performs or induces an abortion of an
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
provision of law to the contrary, no abortion

3 shall be performed or induced upon a woman at
4 eighteen 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 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.]

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

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

8 3. Notwithstanding any other provision of
9 law to the contrary, no abortion shall be
10 performed or induced upon a woman carrying a
11 late-term pain-capable unborn child, except in
12 cases of medical emergency. Any person who
13 knowingly performs or induces an abortion of a
14 late-term pain-capable unborn child in violation
15 of this subsection shall be guilty of a class B
16 felony, as well as subject to suspension or
17 revocation of his or her professional license by
18 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 section
32 188.056, 188.057, or 188.058 if prosecution
33 under such sections would violate the provisions
34 of Amendment V to the Constitution of the United
35 States or Article I, Section 19 of the
36 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.

✓