

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 126
100TH GENERAL ASSEMBLY

0461S.18T

2019

AN ACT

To repeal sections 135.630, 188.010, 188.015, 188.027, 188.028, 188.043, and 188.052, RSMo, and to enact in lieu thereof seventeen new sections relating to abortion, with penalty provisions, a contingent effective date for a certain section, and an emergency clause for a certain section.

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

Section A. Sections 135.630, 188.010, 188.015, 188.027, 188.028, 188.043, and
2 188.052, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known
3 as sections 135.630, 188.010, 188.015, 188.017, 188.018, 188.026, 188.027, 188.028, 188.033,
4 188.038, 188.043, 188.044, 188.052, 188.056, 188.057, 188.058, and 188.375, to read as
5 follows:

135.630. 1. As used in this section, the following terms mean:

2 (1) "Contribution", a donation of cash, stock, bonds, or other marketable securities, or
3 real property;

4 (2) "Director", the director of the department of social services;

5 (3) "Pregnancy resource center", a nonresidential facility located in this state:

6 (a) Established and operating primarily to provide assistance to women **and families**
7 with crisis pregnancies or unplanned pregnancies by offering pregnancy testing, counseling,
8 emotional and material support, and other similar services **or by offering services as described**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 **under subsection 2 of section 188.325**, to encourage and assist such women **and families** in
10 carrying their pregnancies to term; and

11 (b) Where childbirths are not performed; and

12 (c) Which does not perform, induce, or refer for abortions and which does not hold itself
13 out as performing, inducing, or referring for abortions; and

14 (d) Which provides direct client services at the facility, as opposed to merely providing
15 counseling or referral services by telephone; and

16 (e) Which provides its services at no cost to its clients; and

17 (f) When providing medical services, such medical services must be performed in
18 accordance with Missouri statute; and

19 (g) Which is exempt from income taxation pursuant to the Internal Revenue Code of
20 1986, as amended;

21 (4) "State tax liability", in the case of a business taxpayer, any liability incurred by such
22 taxpayer pursuant to the provisions of chapters 143, 147, 148, and 153, excluding sections
23 143.191 to 143.265 and related provisions, and in the case of an individual taxpayer, any liability
24 incurred by such taxpayer pursuant to the provisions of chapter 143, excluding sections 143.191
25 to 143.265 and related provisions;

26 (5) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder in an S
27 corporation doing business in the state of Missouri and subject to the state income tax imposed
28 by the provisions of chapter 143, or a corporation subject to the annual corporation franchise tax
29 imposed by the provisions of chapter 147, or an insurance company paying an annual tax on its
30 gross premium receipts in this state, or other financial institution paying taxes to the state of
31 Missouri or any political subdivision of this state pursuant to the provisions of chapter 148, or
32 an express company which pays an annual tax on its gross receipts in this state pursuant to
33 chapter 153, or an individual subject to the state income tax imposed by the provisions of chapter
34 143, or any charitable organization which is exempt from federal income tax and whose Missouri
35 unrelated business taxable income, if any, would be subject to the state income tax imposed
36 under chapter 143.

37 2. (1) Beginning on March 29, 2013, any contribution to a pregnancy resource center
38 made on or after January 1, 2013, shall be eligible for tax credits as provided by this section.

39 (2) For all tax years beginning on or after January 1, 2007, **and ending on or before**
40 **December 31, 2020**, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state
41 tax liability in an amount equal to fifty percent of the amount such taxpayer contributed to a
42 pregnancy resource center. **For all tax years beginning on or after January 1, 2021, a**
43 **taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability in**

44 **an amount equal to seventy percent of the amount such taxpayer contributed to a**
45 **pregnancy resource center.**

46 3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's
47 state tax liability for the tax year for which the credit is claimed, and such taxpayer shall not be
48 allowed to claim a tax credit in excess of fifty thousand dollars per tax year. However, any tax
49 credit that cannot be claimed in the tax year the contribution was made may be carried over only
50 to the next succeeding tax year. No tax credit issued under this section shall be assigned,
51 transferred, or sold.

52 4. Except for any excess credit which is carried over pursuant to subsection 3 of this
53 section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such
54 taxpayer's contribution or contributions to a pregnancy resource center or centers in such
55 taxpayer's tax year has a value of at least one hundred dollars.

56 5. The director shall determine, at least annually, which facilities in this state may be
57 classified as pregnancy resource centers. The director may require of a facility seeking to be
58 classified as a pregnancy resource center whatever information which is reasonably necessary
59 to make such a determination. The director shall classify a facility as a pregnancy resource
60 center if such facility meets the definition set forth in subsection 1 of this section.

61 6. The director shall establish a procedure by which a taxpayer can determine if a facility
62 has been classified as a pregnancy resource center. Pregnancy resource centers shall be permitted
63 to decline a contribution from a taxpayer. The cumulative amount of tax credits which may be
64 claimed by all the taxpayers contributing to pregnancy resource centers in any one fiscal year
65 shall not exceed two million dollars for all fiscal years ending on or before June 30, 2014, and
66 two million five hundred thousand dollars for all fiscal years beginning on or after July 1, 2014,
67 and ending on or before June 30, 2019, and three million five hundred thousand dollars for all
68 fiscal years beginning on or after July 1, 2019, **and ending on or before June 30, 2021. For**
69 **all fiscal years beginning on or after July 1, 2021, there shall be no limit imposed on the**
70 **cumulative amount of tax credits that may be claimed by all taxpayers contributing to**
71 **pregnancy resource centers under the provisions of this section.** Tax credits shall be issued
72 in the order contributions are received. If the amount of tax credits redeemed in a fiscal year is
73 less than the cumulative amount authorized under this subsection, the difference shall be carried
74 over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax
75 credits that may be authorized in that fiscal year or years.

76 7. **For all fiscal years ending on or before June 30, 2021,** the director shall establish
77 a procedure by which, from the beginning of the fiscal year until some point in time later in the
78 fiscal year to be determined by the director, the cumulative amount of tax credits are equally
79 apportioned among all facilities classified as pregnancy resource centers. If a pregnancy resource

80 center fails to use all, or some percentage to be determined by the director, of its apportioned tax
 81 credits during this predetermined period of time, the director may reapportion these unused tax
 82 credits to those pregnancy resource centers that have used all, or some percentage to be
 83 determined by the director, of their apportioned tax credits during this predetermined period of
 84 time. The director may establish more than one period of time and reapportion more than once
 85 during each fiscal year. To the maximum extent possible, the director shall establish the
 86 procedure described in this subsection in such a manner as to ensure that taxpayers can claim all
 87 the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

88 8. Each pregnancy resource center shall provide information to the director concerning
 89 the identity of each taxpayer making a contribution to the pregnancy resource center who is
 90 claiming a tax credit pursuant to this section and the amount of the contribution. The director
 91 shall provide the information to the director of revenue. The director shall be subject to the
 92 confidentiality and penalty provisions of section 32.057 relating to the disclosure of tax
 93 information.

94 9. ~~Under section 23.253 of the Missouri sunset act:~~

95 ~~—— (1) The provisions of the program authorized under this section shall automatically~~
 96 ~~sunset on December thirty-first six years after August 28, 2018, unless reauthorized by an act of~~
 97 ~~the general assembly;~~

98 ~~—— (2) If such program is reauthorized, the program authorized under this section shall~~
 99 ~~automatically sunset on December thirty-first six years after the effective date of the~~
 100 ~~reauthorization of this section;~~

101 ~~—— (3) This section shall terminate on September first of the calendar year immediately~~
 102 ~~following the calendar year in which a program authorized under this section is sunset; and~~

103 ~~—— (4) The provisions of this subsection shall not be construed to limit or in any way impair~~
 104 ~~the department's ability to issue tax credits authorized on or before the date the program~~
 105 ~~authorized under this section expires or a taxpayer's ability to redeem such tax credits.] The~~
 106 **provisions of section 23.253 shall not apply to this section.**

188.010. **In recognition that Almighty God is the author of life, that all men and**
 2 **women are "endowed by their Creator with certain unalienable Rights, that among these**
 3 **are Life", and that article I, section 2 of the Constitution of Missouri provides that all**
 4 **persons have a natural right to life, it is the intention of the general assembly of the state of**
 5 **Missouri to [grant]:**

6 **(1) Defend the right to life [tø] of all humans, born and unborn[,-and tø];**

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

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

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

2 (1) "Abortion":

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

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

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

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

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

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

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

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

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

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

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

29 ~~[(10)]~~ (11) "Viability" or "viable", that stage of fetal development when the life of the
30 unborn child may be continued indefinitely outside the womb by natural or artificial life-
31 supportive systems;

32 (12) **"Viable pregnancy" or "viable intrauterine pregnancy", in the first trimester**
33 **of pregnancy, an intrauterine pregnancy that can potentially result in a liveborn baby.**

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

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

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

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

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

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

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

(2) The fact that the life of an individual human being begins at conception has long been recognized in Missouri law: "[T]he child is, in truth, alive from the moment of conception". *State v. Emerich*, 13 Mo. App. 492, 495 (1883), affirmed, 87 Mo. 110 (1885). Under section 1.205, the general assembly has recognized that the life of each human being

13 begins at conception and that unborn children have protectable interests in life, health, and
14 well-being;

15 (3) The first prohibition of abortion in Missouri was enacted in 1825. Since then,
16 the repeal and reenactment of prohibitions of abortion have made distinctions with respect
17 to penalties for performing or inducing abortion on the basis of "quickening"; however,
18 the unborn child was still protected from conception onward;

19 (4) In ruling that Missouri's prohibition on abortion was constitutional in 1972, the
20 Missouri supreme court accepted as a stipulation of the parties that "[i]nfant Doe,
21 Intervenor Defendant in this case, and all other unborn children have all the qualities and
22 attributes of adult human persons differing only in age or maturity. Medically, human life
23 is a continuum from conception to death." *Rodgers v. Danforth*, 486 S.W.2d 258, 259
24 (1972);

25 (5) In *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), the Supreme
26 Court, while considering the "preamble" that set forth "findings" in section 1.205, stated:
27 "We think the extent to which the preamble's language might be used to interpret other
28 state statutes or regulations is something that only the courts of Missouri can definitively
29 decide. State law has offered protections to unborn children in tort and probate law". *Id.*
30 at 506. Since *Webster*, Missouri courts have construed section 1.205 and have consistently
31 found that an unborn child is a person for purposes of Missouri's homicide and assault
32 laws when the unborn child's mother was killed or assaulted by another person. Section
33 1.205 has even been found applicable to the manslaughter of an unborn child who was
34 eight weeks gestational age or earlier. *State v. Harrison*, 390 S.W.3d 927 (Mo. Ct. App.
35 2013);

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

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

44 (8) Confirmation of a pregnancy can be indicated through the detection of the
45 unborn child's heartbeat, while the absence of a heartbeat can be an indicator of the death
46 of the unborn child if the child has reached the point of development when a heartbeat
47 should be detectable;

48 **(9) Heart rate monitoring during pregnancy and labor is utilized to measure the**
49 **heart rate and rhythm of the unborn child, at an average rate between one hundred ten**
50 **and one hundred sixty beats per minute, and helps determine the health of the unborn**
51 **child;**

52 **(10) The Supreme Court in *Roe* discussed "the difficult question of when life**
53 **begins" and wrote: "[p]hysicians and their scientific colleagues have regarded [quickening]**
54 **with less interest and have tended to focus either upon conception, upon live birth, or upon**
55 **the interim point at which the fetus becomes 'viable', that is, potentially able to live outside**
56 **the mother's womb, albeit with artificial aid". *Roe*, 410 U.S. at 160. Today, however,**
57 **physicians' and scientists' interests on life in the womb also focus on other markers of**
58 **development in the unborn child, including, but not limited to, presence of a heartbeat,**
59 **brain development, a viable pregnancy or viable intrauterine pregnancy during the first**
60 **trimester of pregnancy, and the ability to experience pain;**

61 **(11) In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976),**
62 **the Supreme Court noted that "we recognized in *Roe* that viability was a matter of medical**
63 **judgment, skill, and technical ability, and we preserved the flexibility of the term". *Id.* at**
64 **64. Due to advances in medical technology and diagnoses, present-day physicians and**
65 **scientists now describe the viability of an unborn child in an additional manner, by**
66 **determining whether there is a viable pregnancy or viable intrauterine pregnancy during**
67 **the first trimester of pregnancy;**

68 **(12) While the overall risk of miscarriage after clinical recognition of pregnancy**
69 **is twelve to fifteen percent, the incidence decreases significantly if cardiac activity in the**
70 **unborn child has been confirmed. The detection of a heartbeat in an unborn child is a**
71 **reliable indicator of a viable pregnancy and that the unborn child will likely survive to**
72 **birth, especially if presenting for a prenatal visit at eight weeks gestational age or later.**
73 **For asymptomatic women attending a first prenatal visit between six and eleven weeks**
74 **gestational age where a heartbeat was confirmed through an ultrasound, the subsequent**
75 **risk of miscarriage is one and six-tenths percent. Although the risk is higher at six weeks**
76 **gestational age at nine and four-tenths percent, it declines rapidly to one and five-tenths**
77 **percent at eight weeks gestational age, and less than one percent at nine weeks gestational**
78 **age or later;**

79 **(13) The presence of a heartbeat in an unborn child represents a more definable**
80 **point of ascertaining survivability than the ambiguous concept of viability that has been**
81 **adopted by the Supreme Court, especially since if a heartbeat is detected at eight weeks**
82 **gestational age or later in a normal pregnancy, there is likely to be a viable pregnancy and**
83 **there is a high probability that the unborn child will survive to birth;**

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

88 (15) By the fifth week of gestation, the development of the brain of the unborn child
89 is underway. Brain waves have been measured and recorded as early as the eighth week
90 of gestational age in children who were removed during an ectopic pregnancy or
91 hysterectomy. Fetal magnetic resonance imaging (MRI) of an unborn child's brain is used
92 during the second and third trimesters of pregnancy and brain activity has been observed
93 using MRI;

94 (16) Missouri law identifies the presence of circulation, respiration, and brain
95 function as indicia of life under section 194.005, as the presence of circulation, respiration,
96 and brain function indicates that such person is not legally dead, but is legally alive;

97 (17) Unborn children at eight weeks gestational age show spontaneous movements,
98 such as a twitching of the trunk and developing limbs. It has been reported that unborn
99 children at this stage show reflex responses to touch. The perioral area is the first part of
100 the unborn child's body to respond to touch at about eight weeks gestational age and by
101 fourteen weeks gestational age most of the unborn child's body is responsive to touch;

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

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

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

116 (21) By sixteen weeks gestational age, pain transmission from a peripheral receptor
117 to the cortex is possible in the unborn child;

118 (22) Physicians provide anesthesia during in utero treatment of unborn children
119 as early as sixteen weeks gestational age for certain procedures, including those to correct

120 fetal urinary tract obstruction. Anesthesia is administered by ultrasound-guided injection
121 into the arm or leg of the unborn child;

122 (23) A leading textbook on prenatal development of the human brain states, "It
123 may be concluded that, although nociperception (the actual perception of pain) awaits the
124 appearance of consciousness, nociception (the experience of pain) is present some time
125 before birth. In the absence of disproof, it is merely prudent to assume that pain can be
126 experienced even early in prenatal life (Dr. J. Wisser, Zürich): the fetus should be given
127 the benefit of the doubt". Ronan O'Rahilly & Fabiola Müller. *The Embryonic Human*
128 *Brain: An Atlas of Developmental Stages* (3d ed. 2005);

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

133 (25) The Supreme Court acknowledged in *Gonzales v. Carhart*, 550 U.S. 124, 160
134 (2007), that "the standard D & E is in some respects as brutal, if not more, than the intact
135 D & E" partial birth abortion method banned by Congress and upheld as facially
136 constitutional by the Supreme Court, even though the federal ban was applicable both
137 before and after viability and had no exception for the health of the mother;

138 (26) Missouri's ban on the partial birth abortion method, section 565.300, is in
139 effect because of *Gonzales v. Carhart* and the Supreme Court's subsequent decision in
140 *Nixon v. Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc.*,
141 550 U.S. 901 (2007), to vacate and remand to the appellate court the prior invalidation of
142 section 565.300. Since section 565.300, like Congress' ban on partial birth abortion, is
143 applicable both before and after viability, there is ample precedent for the general
144 assembly to constitutionally prohibit the brutal D & E abortion method at fourteen weeks
145 gestational age or later, even before the unborn child is viable, with a medical emergency
146 exception;

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

153 (28) In *Bucklew v. Precythe*, 139 S. Ct. 1112, 1123 (2019), the Supreme Court noted
154 that "'[d]isgusting' practices" like disemboweling and quartering "readily qualified as

155 'cruel and unusual', as a reader at the time of the Eighth Amendment's adoption would
156 have understood those words";

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

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

162 (b) An animal, it would be unlawful under state law because it would not be a
163 humane method, humane euthanasia, or humane killing of certain animals under chapters
164 273 and 578;

165 (30) In *Roper*, the Supreme Court also found that "[i]t is proper that we
166 acknowledge the overwhelming weight of international opinion against the juvenile death
167 penalty.... The opinion of the world community, while not controlling our outcome, does
168 provide respected and significant confirmation for our own conclusions". *Roper*, 543 U.S.
169 at 578. In its opinion, the Supreme Court was instructed by "international covenants
170 prohibiting the juvenile death penalty", such as the International Covenant on Civil and
171 Political Rights, 999 U.N.T.S. 171. *Id.* at 577;

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

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

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

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

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

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

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

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

198 **(35) A large percentage of women who have an abortion performed or induced**
199 **upon them in Missouri each year are at less than eight weeks gestational age, a large**
200 **majority are at less than fourteen weeks gestational age, a larger majority are at less than**
201 **eighteen weeks gestational age, and an even larger majority are at less than twenty weeks**
202 **gestational age. A prohibition on performing or inducing an abortion at eight weeks**
203 **gestational age or later, with a medical emergency exception, does not amount to a**
204 **substantial obstacle to a large fraction of women for whom the prohibition is relevant,**
205 **which is pregnant women in Missouri who are seeking an abortion while not experiencing**
206 **a medical emergency. The burden that a prohibition on performing or inducing an**
207 **abortion at eight, fourteen, eighteen, or twenty weeks gestational age or later, with a**
208 **medical emergency exception, might impose on abortion access, is outweighed by the**
209 **benefits conferred upon the following:**

210 **(a) Women more advanced in pregnancy who are at greater risk of harm from**
211 **abortion;**

212 **(b) Unborn children at later stages of development;**

213 **(c) The medical profession, by preserving its integrity and fulfilling its commitment**
214 **to do no harm; and**

215 **(d) Society, by fostering respect for human life, born and unborn, at all stages of**
216 **development, and by lessening societal tolerance of violence against innocent human life;**

217 **(36) In *Webster*, the Supreme Court noted, in upholding a Missouri statute, "that**
218 **there may be a 4-week error in estimating gestational age". *Webster*, 492 U.S. at 516.**
219 **Thus, an unborn child thought to be eight weeks gestational age might in fact be twelve**
220 **weeks gestational age, when an abortion poses a greater risk to the woman and the unborn**
221 **child is considerably more developed. An unborn child at fourteen weeks gestational age**
222 **might be eighteen weeks gestational age and an unborn child at eighteen weeks gestational**
223 **age might be twenty-two weeks gestational age, when an abortion poses a greater risk to**
224 **the woman, the unborn child is considerably more developed, the abortion method likely**
225 **to be employed is more brutal, and the risk of pain experienced by the unborn child is**

226 greater. An unborn child at twenty weeks gestational age might be twenty-four weeks
227 gestational age, when an abortion poses a greater risk to the woman, the unborn child is
228 considerably more developed, the abortion method likely to be employed is more brutal,
229 the risk of pain experienced by the unborn child is greater, and the unborn child may be
230 viable.

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

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

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

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

250 (2) Encouraging childbirth over abortion;

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

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

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

261 **(6) Ending the incongruities in state law by permitting some unborn children to be**
262 **killed by abortion, while requiring that unborn children be protected in non-abortion**
263 **circumstances through, including, but not limited to, homicide, assault, self-defense, and**
264 **defense of another statutes; laws guaranteeing prenatal health care, emergency care, and**
265 **testing; state-sponsored health insurance for unborn children; the prohibition of restraints**
266 **in correctional institutions to protect pregnant offenders and their unborn children; and**
267 **protecting the interests of unborn children by the appointment of conservators, guardians,**
268 **and representatives;**

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

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

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

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

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

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

11 a. A description of the proposed abortion method;

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

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

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

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

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

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

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

32 (2) The physician who is to perform or induce the abortion or a qualified professional
33 has presented the woman, in person, printed materials provided by the department, which
34 describe the probable anatomical and physiological characteristics of the unborn child at
35 two-week gestational increments from conception to full term, including color photographs or
36 images of the developing unborn child at two-week gestational increments. Such descriptions
37 shall include information about brain and heart functions, the presence of external members and
38 internal organs during the applicable stages of development and information on when the unborn
39 child is viable. The printed materials shall prominently display the following statement: "The
40 life of each human being begins at conception. Abortion will terminate the life of a separate,
41 unique, living human being.";

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

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

57 and, if available, website addresses. Should the woman decide to obtain an ultrasound from a
58 provider, facility, or clinic other than the abortion facility, the woman shall be offered a
59 reasonable time to obtain the ultrasound examination before the date and time set for performing
60 or inducing an abortion. The person conducting the ultrasound shall ensure that the active
61 ultrasound image is of a quality consistent with standard medical practice in the community,
62 contains the dimensions of the unborn child, and accurately portrays the presence of external
63 members and internal organs, if present or viewable, of the unborn child. The auscultation of
64 fetal heart tone must also be of a quality consistent with standard medical practice in the
65 community. If the woman chooses to view the ultrasound or hear the heartbeat or both at the
66 abortion facility, the viewing or hearing or both shall be provided to her at the abortion facility
67 at least seventy-two hours prior to the abortion being performed or induced;

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

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

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

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

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

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

85 ~~—— (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain to~~
86 ~~the unborn child]~~ **The printed materials provided by the department shall include**

87 **information on the possibility of an abortion causing pain in the unborn child. This**
88 **information shall include, but need not be limited to, the following:**

89 **(a) Unborn children as early as eight weeks gestational age start to show**
90 **spontaneous movements and unborn children at this stage in pregnancy show reflex**
91 **responses to touch;**

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

95 **(c) Pain receptors on the unborn child's skin develop around his or her mouth at**
96 **around seven to eight weeks gestational age, around the palms of his or her hands at ten**
97 **to ten and a half weeks, on the abdominal wall at fifteen weeks, and over all of his or her**
98 **body at sixteen weeks gestational age;**

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

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

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

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

110 (a) Identify on a geographical basis public and private agencies available to assist a
111 woman in carrying her unborn child to term, and to assist her in caring for her dependent child
112 or placing her child for adoption, including agencies commonly known and generally referred
113 to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption
114 agencies. Such materials shall provide a comprehensive list by geographical area of the agencies,
115 a description of the services they offer, and the telephone numbers and addresses of the agencies;
116 provided that such materials shall not include any programs, services, organizations, or affiliates
117 of organizations that perform or induce, or assist in the performing or inducing of, abortions or
118 that refer for abortions;

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

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

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

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

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

151 2. All information required to be provided to a woman considering abortion by
152 subsection 1 of this section shall be presented to the woman individually, in the physical
153 presence of the woman and in a private room, to protect her privacy, to maintain the
154 confidentiality of her decision, to ensure that the information focuses on her individual
155 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that she
156 is not a victim of coerced abortion. Should a woman be unable to read materials provided to her,
157 they shall be read to her. Should a woman need an interpreter to understand the information
158 presented in the written materials, an interpreter shall be provided to her. Should a woman ask
159 questions concerning any of the information or materials, answers shall be provided in a
160 language she can understand.

161 3. No abortion shall be performed or induced unless and until the woman upon whom
162 the abortion is to be performed or induced certifies in writing on a checklist form provided by
163 the department that she has been presented all the information required in subsection 1 of this

164 section, that she has been provided the opportunity to view an active ultrasound image of the
165 unborn child and hear the heartbeat of the unborn child if it is audible, and that she further
166 certifies that she gives her voluntary and informed consent, freely and without coercion, to the
167 abortion procedure.

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

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

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

183 ~~[6-]~~ 5. The physician who is to perform or induce the abortion shall, at least seventy-two
184 hours prior to such procedure, inform the woman orally and in person of:

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

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

192 ~~[7-]~~ 6. No physician shall perform or induce an abortion unless and until the physician
193 has received and signed a copy of the form prescribed in subsection 3 of this section. The
194 physician shall retain a copy of the form in the patient's medical record.

195 ~~[8-]~~ 7. In the event of a medical emergency ~~[as provided by section 188.039]~~, the
196 physician who performed or induced the abortion shall clearly certify in writing the nature and
197 circumstances of the medical emergency. This certification shall be signed by the physician who
198 performed or induced the abortion, and shall be maintained under section 188.060.

199 ~~[9-]~~ **8.** No person or entity shall require, obtain, or accept payment for an abortion from
200 or on behalf of a patient until at least seventy-two hours have passed since the time that the
201 information required by subsection 1 of this section has been provided to the patient. Nothing
202 in this subsection shall prohibit a person or entity from notifying the patient that payment for the
203 abortion will be required after the seventy-two-hour period has expired if she voluntarily chooses
204 to have the abortion.

205 ~~[10-]~~ **9.** The term "qualified professional" as used in this section shall refer to a
206 physician, physician assistant, registered nurse, licensed practical nurse, psychologist, licensed
207 professional counselor, or licensed social worker, licensed or registered under chapter 334, 335,
208 or 337, acting under the supervision of the physician performing or inducing the abortion, and
209 acting within the course and scope of his or her authority provided by law. The provisions of this
210 section shall not be construed to in any way expand the authority otherwise provided by law
211 relating to the licensure, registration, or scope of practice of any such qualified professional.

212 ~~[11-]~~ **10.** By November 30, 2010, the department shall produce the written materials and
213 forms described in this section. Any written materials produced shall be printed in a typeface
214 large enough to be clearly legible. All information shall be presented in an objective, unbiased
215 manner designed to convey only accurate scientific and medical information. The department
216 shall furnish the written materials and forms at no cost and in sufficient quantity to any person
217 who performs or induces abortions, or to any hospital or facility that provides abortions. The
218 department shall make all information required by subsection 1 of this section available to the
219 public through its department website. The department shall maintain a toll-free,
220 twenty-four-hour hotline telephone number where a caller can obtain information on a regional
221 basis concerning the agencies and services described in subsection 1 of this section. No
222 identifying information regarding persons who use the website shall be collected or maintained.
223 The department shall monitor the website on a regular basis to prevent tampering and correct any
224 operational deficiencies.

225 ~~[12-]~~ **11.** In order to preserve the compelling interest of the state to ensure that the choice
226 to consent to an abortion is voluntary and informed, and given freely and without coercion, the
227 department shall use the procedures for adoption of emergency rules under section 536.025 in
228 order to promulgate all necessary rules, forms, and other necessary material to implement this
229 section by November 30, 2010.

230 ~~[13-]~~ **12.** If the provisions in subsections 1 and ~~[9]~~ **8** of this section requiring a
231 seventy-two-hour waiting period for an abortion are ever temporarily or permanently restrained
232 or enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours;
233 provided, however, that if such temporary or permanent restraining order or injunction is stayed

234 or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall be
235 seventy-two hours.

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

3 (1) The attending physician has secured the informed written consent of the minor and
4 one parent or guardian, **and the consenting parent or guardian of the minor has notified any**
5 **other custodial parent in writing prior to the securing of the informed written consent of**
6 **the minor and one parent or guardian. For purposes of this subdivision, "custodial**
7 **parent" shall only mean a parent of a minor who has been awarded joint legal custody or**
8 **joint physical custody of such minor by a court of competent jurisdiction. Notice shall not**
9 **be required for any parent:**

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

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

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

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

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

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

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

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

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

33 2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection
34 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be
35 granted by a court pursuant to the following procedures:

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

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

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

57 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;
58 ~~or~~

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

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

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

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

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

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

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

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

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

10 **(3) The historical relationship of bias or discrimination by some family planning**
11 **programs and policies towards poor and minority populations, including, but not limited**
12 **to, the nonconsensual sterilization of mentally ill, poor, minority, and immigrant women**
13 **and other coercive family planning programs and policies, must be rejected;**

14 **(4) Among Missouri residents, the rate of black or African-American women who**
15 **undergo abortions is significantly higher, about three and a half times higher, than the rate**
16 **of white women who undergo abortions. Among Missouri residents, the rate of black or**
17 **African-American women who undergo repeat abortions is significantly higher, about one**
18 **and a half times higher, than the rate of white women who undergo repeat abortions;**

19 **(5) Performing or inducing an abortion because of the sex of the unborn child is**
20 **repugnant to the values of equality of females and males and the same opportunities for**
21 **girls and boys, and furthers a false mindset of female inferiority;**

22 **(6) Government has a legitimate interest in preventing the abortion of unborn**
23 **children with Down Syndrome because it is a form of bias or disability discrimination and**
24 **victimizes the disabled unborn child at his or her most vulnerable stage. Eliminating**
25 **unborn children with Down Syndrome raises grave concerns for the lives of those who do**
26 **live with disabilities. It sends a message of dwindling support for their unique challenges,**
27 **fosters a false sense that disability is something that could have been avoidable, and is**
28 **likely to increase the stigma associated with disability.**

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

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

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

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

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

9 3. No abortion facility or hospital shall employ or engage the services of a person to
10 perform ~~[one or more abortions]~~ **or induce an abortion on another** if the person does not have
11 ~~[proof of]~~ medical malpractice insurance pursuant to this section, except **that** the abortion facility
12 or hospital may provide medical malpractice insurance for the services of persons employed or
13 engaged by such facility or hospital **which is no less than the coverage amounts set forth in**
14 **this section.**

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

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

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

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

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

188.052. 1. An individual abortion report for each abortion performed or induced upon
2 a woman shall be completed by ~~[her attending]~~ **the physician who performed or induced the**
3 **abortion. Abortion reports shall include, but not be limited to, a certification that the**

4 **physician does not have any knowledge that the woman sought the abortion solely because**
5 **of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of**
6 **Down Syndrome in the unborn child and a certification that the physician does not have**
7 **any knowledge that the woman sought the abortion solely because of the sex or race of the**
8 **unborn child.**

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

11 (1) The date of the abortion;

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

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

15 3. All abortion reports shall be signed by the attending physician^[5] **who performed or**
16 **induced the abortion** and submitted to the [state] department [~~of health and senior services~~]
17 within forty-five days from the date of the abortion. All complication reports shall be signed by
18 the physician providing the post-abortion care and submitted to the department [~~of health and~~
19 ~~senior services~~] within forty-five days from the date of the post-abortion care.

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

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

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

9 2. It shall be an affirmative defense for any person alleged to have violated the
10 provisions of subsection 1 of this section that the person performed or induced an abortion
11 because of a medical emergency. The defendant shall have the burden of persuasion that
12 the defense is more probably true than not.

13 3. Prosecution under this section shall bar prosecution under sections 188.057,
14 **188.058, or 188.375 if prosecution under such sections would violate the provisions of**

15 **Amendment V to the Constitution of the United States or article I, section 19 of the**
16 **Constitution of Missouri.**

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

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

9 **2. It shall be an affirmative defense for any person alleged to have violated the**
10 **provisions of subsection 1 of this section that the person performed or induced an abortion**
11 **because of a medical emergency. The defendant shall have the burden of persuasion that**
12 **the defense is more probably true than not.**

13 **3. Prosecution under this section shall bar prosecution under sections 188.056,**
14 **188.058, or 188.375 if prosecution under such sections would violate the provisions of**
15 **Amendment V to the Constitution of the United States or article I, section 19 of the**
16 **Constitution of Missouri.**

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

25 of the section, or the application of the section to any person, circumstance, or period of
26 gestational age, would be declared unenforceable, unconstitutional, or invalid.

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

9 2. It shall be an affirmative defense for any person alleged to have violated the
10 provisions of subsection 1 of this section that the person performed or induced an abortion
11 because of a medical emergency. The defendant shall have the burden of persuasion that
12 the defense is more probably true than not.

13 3. Prosecution under this section shall bar prosecution under sections 188.056,
14 188.057, or 188.375 if prosecution under such sections would violate the provisions of
15 Amendment V to the Constitution of the United States or article I, section 19 of the
16 Constitution of Missouri.

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

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

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

5 3. Notwithstanding any other provision of law to the contrary, no abortion shall be
6 performed or induced upon a woman carrying a late-term pain-capable unborn child,
7 except in cases of medical emergency. Any person who knowingly performs or induces an
8 abortion of a late-term pain-capable unborn child in violation of this subsection shall be

9 guilty of a class B felony, as well as subject to suspension or revocation of his or her
10 professional license by his or her professional licensing board. A woman upon whom an
11 abortion is performed or induced in violation of this subsection shall not be prosecuted for
12 a conspiracy to violate the provisions of this subsection.

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

17 5. Prosecution under subsection 3 of this section shall bar prosecution under
18 sections 188.056, 188.057, or 188.058 if prosecution under such sections would violate the
19 provisions of Amendment V to the Constitution of the United States or article I, section 19
20 of the Constitution of Missouri.

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

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

37 8. Any physician who knowingly violates any of the provisions of subsections 6 or
38 7 of this section shall be guilty of a class D felony, as well as subject to suspension or
39 revocation of his or her professional license by his or her professional licensing board. A
40 woman upon whom an abortion is performed or induced in violation of subsections 6 or
41 7 of this section shall not be prosecuted for a conspiracy to violate the provisions of those
42 subsections.

43 9. If any one or more provisions, subsections, sentences, clauses, phrases, or words
44 of this section or the application thereof to any person, circumstance, or period of

45 **gestational age is found to be unenforceable, unconstitutional, or invalid by a court of**
46 **competent jurisdiction, the same is hereby declared to be severable and the balance of the**
47 **section shall remain effective notwithstanding such unenforceability, unconstitutionality,**
48 **or invalidity. The general assembly hereby declares that it would have passed this section,**
49 **and each provision, subsection, sentence, clause, phrase, or word thereof, irrespective of**
50 **the fact that any one or more provisions, subsections, sentences, clauses, phrases, or words**
51 **of the section, or the application of the section to any person, circumstance, or period of**
52 **gestational age, would be declared unenforceable, unconstitutional, or invalid.**

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

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

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

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

Section C. Because of the need to protect the health and safety of women and their
2 children, both unborn and born, the repeal and reenactment of section 188.028 of this act is
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the constitution, and the
5 repeal and reenactment of section 188.028 of this act shall be in full force and effect upon its
6 passage and approval.

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