

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 126

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:

1 Section A. Sections 135.630, 188.010, 188.015, 188.027,
2 188.028, 188.043, and 188.052, RSMo, are repealed and seventeen
3 new sections enacted in lieu thereof, to be known as sections
4 135.630, 188.010, 188.015, 188.017, 188.018, 188.026, 188.027,
5 188.028, 188.033, 188.038, 188.043, 188.044, 188.052, 188.056,
6 188.057, 188.058, and 188.375, to read as follows:

7 135.630. 1. As used in this section, the following terms
8 mean:

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

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

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

15 (a) Established and operating primarily to provide

1 assistance to women and families with crisis pregnancies or
2 unplanned pregnancies by offering pregnancy testing, counseling,
3 emotional and material support, and other similar services or by
4 offering services as described under subsection 2 of section
5 188.325, to encourage and assist such women and families in
6 carrying their pregnancies to term; and

7 (b) Where childbirths are not performed; and

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

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

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

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

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

20 (4) "State tax liability", in the case of a business
21 taxpayer, any liability incurred by such taxpayer pursuant to the
22 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
24 individual taxpayer, any liability incurred by such taxpayer
25 pursuant to the provisions of chapter 143, excluding sections
26 143.191 to 143.265 and related provisions;

27 (5) "Taxpayer", a person, firm, a partner in a firm,
28 corporation, or a shareholder in an S corporation doing business

1 in the state of Missouri and subject to the state income tax
2 imposed by the provisions of chapter 143, or a corporation
3 subject to the annual corporation franchise tax imposed by the
4 provisions of chapter 147, or an insurance company paying an
5 annual tax on its gross premium receipts in this state, or other
6 financial institution paying taxes to the state of Missouri or
7 any political subdivision of this state pursuant to the
8 provisions of chapter 148, or an express company which pays an
9 annual tax on its gross receipts in this state pursuant to
10 chapter 153, or an individual subject to the state income tax
11 imposed by the provisions of chapter 143, or any charitable
12 organization which is exempt from federal income tax and whose
13 Missouri unrelated business taxable income, if any, would be
14 subject to the state income tax imposed under chapter 143.

15 2. (1) Beginning on March 29, 2013, any contribution to a
16 pregnancy resource center made on or after January 1, 2013, shall
17 be eligible for tax credits as provided by this section.

18 (2) For all tax years beginning on or after January 1,
19 2007, and ending on or before December 31, 2020, a taxpayer shall
20 be allowed to claim a tax credit against the taxpayer's state tax
21 liability in an amount equal to fifty percent of the amount such
22 taxpayer contributed to a pregnancy resource center. For all tax
23 years beginning on or after January 1, 2021, a taxpayer shall be
24 allowed to claim a tax credit against the taxpayer's state tax
25 liability in an amount equal to seventy percent of the amount
26 such taxpayer contributed to a pregnancy resource center.

27 3. The amount of the tax credit claimed shall not exceed
28 the amount of the taxpayer's state tax liability for the tax year

1 for which the credit is claimed, and such taxpayer shall not be
2 allowed to claim a tax credit in excess of fifty thousand dollars
3 per tax year. However, any tax credit that cannot be claimed in
4 the tax year the contribution was made may be carried over only
5 to the next succeeding tax year. No tax credit issued under this
6 section shall be assigned, transferred, or sold.

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

13 5. The director shall determine, at least annually, which
14 facilities in this state may be classified as pregnancy resource
15 centers. The director may require of a facility seeking to be
16 classified as a pregnancy resource center whatever information
17 which is reasonably necessary to make such a determination. The
18 director shall classify a facility as a pregnancy resource center
19 if such facility meets the definition set forth in subsection 1
20 of this section.

21 6. The director shall establish a procedure by which a
22 taxpayer can determine if a facility has been classified as a
23 pregnancy resource center. Pregnancy resource centers shall be
24 permitted to decline a contribution from a taxpayer. The
25 cumulative amount of tax credits which may be claimed by all the
26 taxpayers contributing to pregnancy resource centers in any one
27 fiscal year shall not exceed two million dollars for all fiscal
28 years ending on or before June 30, 2014, and two million five

1 hundred thousand dollars for all fiscal years beginning on or
2 after July 1, 2014, and ending on or before June 30, 2019, and
3 three million five hundred thousand dollars for all fiscal years
4 beginning on or after July 1, 2019, and ending on or before June
5 30, 2021. For all fiscal years beginning on or after July 1,
6 2021, there shall be no limit imposed on the cumulative amount of
7 tax credits that may be claimed by all taxpayers contributing to
8 pregnancy resource centers under the provisions of this section.
9 Tax credits shall be issued in the order contributions are
10 received. If the amount of tax credits redeemed in a fiscal year
11 is less than the cumulative amount authorized under this
12 subsection, the difference shall be carried over to a subsequent
13 fiscal year or years and shall be added to the cumulative amount
14 of tax credits that may be authorized in that fiscal year or
15 years.

16 7. For all fiscal years ending on or before June 30, 2021,
17 the director shall establish a procedure by which, from the
18 beginning of the fiscal year until some point in time later in
19 the fiscal year to be determined by the director, the cumulative
20 amount of tax credits are equally apportioned among all
21 facilities classified as pregnancy resource centers. If a
22 pregnancy resource center fails to use all, or some percentage to
23 be determined by the director, of its apportioned tax credits
24 during this predetermined period of time, the director may
25 reapportion these unused tax credits to those pregnancy resource
26 centers that have used all, or some percentage to be determined
27 by the director, of their apportioned tax credits during this
28 predetermined period of time. The director may establish more

1 than one period of time and reapportion more than once during
2 each fiscal year. To the maximum extent possible, the director
3 shall establish the procedure described in this subsection in
4 such a manner as to ensure that taxpayers can claim all the tax
5 credits possible up to the cumulative amount of tax credits
6 available for the fiscal year.

7 8. Each pregnancy resource center shall provide information
8 to the director concerning the identity of each taxpayer making a
9 contribution to the pregnancy resource center who is claiming a
10 tax credit pursuant to this section and the amount of the
11 contribution. The director shall provide the information to the
12 director of revenue. The director shall be subject to the
13 confidentiality and penalty provisions of section 32.057 relating
14 to the disclosure of tax information.

15 9. [Under section 23.253 of the Missouri sunset act:

16 (1) The provisions of the program authorized under this
17 section shall automatically sunset on December thirty-first six
18 years after August 28, 2018, unless reauthorized by an act of the
19 general assembly;

20 (2) If such program is reauthorized, the program authorized
21 under this section shall automatically sunset on December
22 thirty-first six years after the effective date of the
23 reauthorization of this section;

24 (3) This section shall terminate on September first of the
25 calendar year immediately following the calendar year in which a
26 program authorized under this section is sunset; and

27 (4) The provisions of this subsection shall not be
28 construed to limit or in any way impair the department's ability

1 to issue tax credits authorized on or before the date the program
2 authorized under this section expires or a taxpayer's ability to
3 redeem such tax credits.] The provisions of section 23.253 shall
4 not apply to this section.

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

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

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

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

20 188.015. As used in this chapter, the following terms mean:

21 (1) "Abortion":

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

26 (b) The intentional termination of the pregnancy of a
27 mother by using or prescribing any instrument, device, medicine,
28 drug, or other means or substance with an intention other than to

1 increase the probability of a live birth or to remove a dead [or
2 dying] unborn child;

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

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

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

10 (5) "Down Syndrome", the same meaning as defined in section
11 191.923;

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

14 [(6)] (7) "Medical emergency", a condition which, based on
15 reasonable medical judgment, so complicates the medical condition
16 of a pregnant woman as to necessitate the immediate abortion of
17 her pregnancy to avert the death of the pregnant woman or for
18 which a delay will create a serious risk of substantial and
19 irreversible physical impairment of a major bodily function of
20 the pregnant woman;

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

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

28 [(9)] (10) "Unborn child", the offspring of human beings

1 from the moment of conception until birth and at every stage of
2 its biological development, including the human conceptus,
3 zygote, morula, blastocyst, embryo, and fetus;

4 [(10)] (11) "Viability" or "viable", that stage of fetal
5 development when the life of the unborn child may be continued
6 indefinitely outside the womb by natural or artificial life-
7 supportive systems;

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

11 188.017. 1. This section shall be known and may be cited
12 as the "Right to Life of the Unborn Child Act".

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

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

28 188.018. If any one or more provisions, sections,

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

15 188.026. 1. This section and sections 188.056, 188.057,
16 and 188.058 shall be known and may be cited as the "Missouri
17 Stands for the Unborn Act".

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

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

27 (2) The fact that the life of an individual human being
28 begins at conception has long been recognized in Missouri law:

1 "[T]he child is, in truth, alive from the moment of conception".
2 State v. Emerich, 13 Mo. App. 492, 495 (1883), affirmed, 87 Mo.
3 110 (1885). Under section 1.205, the general assembly has
4 recognized that the life of each human being begins at conception
5 and that unborn children have protectable interests in life,
6 health, and well-being;

7 (3) The first prohibition of abortion in Missouri was
8 enacted in 1825. Since then, the repeal and reenactment of
9 prohibitions of abortion have made distinctions with respect to
10 penalties for performing or inducing abortion on the basis of
11 "quickenig"; however, the unborn child was still protected from
12 conception onward;

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

21 (5) In Webster v. Reproductive Health Services, 492 U.S.
22 490 (1989), the Supreme Court, while considering the "preamble"
23 that set forth "findings" in section 1.205, stated: "We think
24 the extent to which the preamble's language might be used to
25 interpret other state statutes or regulations is something that
26 only the courts of Missouri can definitively decide. State law
27 has offered protections to unborn children in tort and probate
28 law". Id. at 506. Since Webster, Missouri courts have construed

1 section 1.205 and have consistently found that an unborn child is
2 a person for purposes of Missouri's homicide and assault laws
3 when the unborn child's mother was killed or assaulted by another
4 person. Section 1.205 has even been found applicable to the
5 manslaughter of an unborn child who was eight weeks gestational
6 age or earlier. State v. Harrison, 390 S.W.3d 927 (Mo. Ct. App.
7 2013);

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

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

19 (8) Confirmation of a pregnancy can be indicated through
20 the detection of the unborn child's heartbeat, while the absence
21 of a heartbeat can be an indicator of the death of the unborn
22 child if the child has reached the point of development when a
23 heartbeat should be detectable;

24 (9) Heart rate monitoring during pregnancy and labor is
25 utilized to measure the heart rate and rhythm of the unborn
26 child, at an average rate between one hundred ten and one hundred
27 sixty beats per minute, and helps determine the health of the
28 unborn child;

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

14 (11) In Planned Parenthood of Central Missouri v. Danforth,
15 428 U.S. 52 (1976), the Supreme Court noted that "we recognized
16 in Roe that viability was a matter of medical judgment, skill,
17 and technical ability, and we preserved the flexibility of the
18 term". Id. at 64. Due to advances in medical technology and
19 diagnoses, present-day physicians and scientists now describe the
20 viability of an unborn child in an additional manner, by
21 determining whether there is a viable pregnancy or viable
22 intrauterine pregnancy during the first trimester of pregnancy;

23 (12) While the overall risk of miscarriage after clinical
24 recognition of pregnancy is twelve to fifteen percent, the
25 incidence decreases significantly if cardiac activity in the
26 unborn child has been confirmed. The detection of a heartbeat in
27 an unborn child is a reliable indicator of a viable pregnancy and
28 that the unborn child will likely survive to birth, especially if

1 presenting for a prenatal visit at eight weeks gestational age or
2 later. For asymptomatic women attending a first prenatal visit
3 between six and eleven weeks gestational age where a heartbeat
4 was confirmed through an ultrasound, the subsequent risk of
5 miscarriage is one and six-tenths percent. Although the risk is
6 higher at six weeks gestational age at nine and four-tenths
7 percent, it declines rapidly to one and five-tenths percent at
8 eight weeks gestational age, and less than one percent at nine
9 weeks gestational age or later;

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

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

22 (15) By the fifth week of gestation, the development of the
23 brain of the unborn child is underway. Brain waves have been
24 measured and recorded as early as the eighth week of gestational
25 age in children who were removed during an ectopic pregnancy or
26 hysterectomy. Fetal magnetic resonance imaging (MRI) of an
27 unborn child's brain is used during the second and third
28 trimesters of pregnancy and brain activity has been observed

1 using MRI;

2 (16) Missouri law identifies the presence of circulation,
3 respiration, and brain function as indicia of life under section
4 194.005, as the presence of circulation, respiration, and brain
5 function indicates that such person is not legally dead, but is
6 legally alive;

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

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

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

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

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

9 (22) Physicians provide anesthesia during in utero
10 treatment of unborn children as early as sixteen weeks
11 gestational age for certain procedures, including those to
12 correct fetal urinary tract obstruction. Anesthesia is
13 administered by ultrasound-guided injection into the arm or leg
14 of the unborn child;

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

25 (24) By fourteen or fifteen weeks gestational age or later,
26 the predominant abortion method in Missouri is dilation and
27 evacuation (D & E). The D & E abortion method includes the
28 dismemberment, disarticulation, and exsanguination of the unborn

1 child, causing the unborn child's death;

2 (25) The Supreme Court acknowledged in Gonzales v. Carhart,
3 550 U.S. 124, 160 (2007), that "the standard D & E is in some
4 respects as brutal, if not more, than the intact D & E" partial
5 birth abortion method banned by Congress and upheld as facially
6 constitutional by the Supreme Court, even though the federal ban
7 was applicable both before and after viability and had no
8 exception for the health of the mother;

9 (26) Missouri's ban on the partial birth abortion method,
10 section 565.300, is in effect because of Gonzales v. Carhart and
11 the Supreme Court's subsequent decision in Nixon v. Reproductive
12 Health Services of Planned Parenthood of the St. Louis Region,
13 Inc., 550 U.S. 901 (2007), to vacate and remand to the appellate
14 court the prior invalidation of section 565.300. Since section
15 565.300, like Congress' ban on partial birth abortion, is
16 applicable both before and after viability, there is ample
17 precedent for the general assembly to constitutionally prohibit
18 the brutal D & E abortion method at fourteen weeks gestational
19 age or later, even before the unborn child is viable, with a
20 medical emergency exception;

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

1 (28) In Bucklew v. Precythe, 139 S. Ct. 1112, 1123 (2019),
2 the Supreme Court noted that "'[d]isgusting' practices" like
3 disemboweling and quartering "readily qualified as 'cruel and
4 unusual', as a reader at the time of the Eighth Amendment's
5 adoption would have understood those words";

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

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

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

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

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

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

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

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

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

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

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

23 (34) In addition to the short-term risks of an abortion,
24 studies have found that the long-term physical and psychological
25 consequences of abortion for women include, but are not limited
26 to, an increased risk of preterm birth, low birthweight babies,
27 and placenta previa in subsequent pregnancies, as well as serious
28 behavioral health issues. These risks increase as abortions are

1 performed or induced at later gestational ages. These
2 consequences of an abortion have a detrimental effect not only on
3 women, their children, and their families, but also on an already
4 burdened health care system, taxpayers, and the workforce;

5 (35) A large percentage of women who have an abortion
6 performed or induced upon them in Missouri each year are at less
7 than eight weeks gestational age, a large majority are at less
8 than fourteen weeks gestational age, a larger majority are at
9 less than eighteen weeks gestational age, and an even larger
10 majority are at less than twenty weeks gestational age. A
11 prohibition on performing or inducing an abortion at eight weeks
12 gestational age or later, with a medical emergency exception,
13 does not amount to a substantial obstacle to a large fraction of
14 women for whom the prohibition is relevant, which is pregnant
15 women in Missouri who are seeking an abortion while not
16 experiencing a medical emergency. The burden that a prohibition
17 on performing or inducing an abortion at eight, fourteen,
18 eighteen, or twenty weeks gestational age or later, with a
19 medical emergency exception, might impose on abortion access, is
20 outweighed by the benefits conferred upon the following:

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

23 (b) Unborn children at later stages of development;

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

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

1 (36) In Webster, the Supreme Court noted, in upholding a
2 Missouri statute, "that there may be a 4-week error in estimating
3 gestational age". Webster, 492 U.S. at 516. Thus, an unborn
4 child thought to be eight weeks gestational age might in fact be
5 twelve weeks gestational age, when an abortion poses a greater
6 risk to the woman and the unborn child is considerably more
7 developed. An unborn child at fourteen weeks gestational age
8 might be eighteen weeks gestational age and an unborn child at
9 eighteen weeks gestational age might be twenty-two weeks
10 gestational age, when an abortion poses a greater risk to the
11 woman, the unborn child is considerably more developed, the
12 abortion method likely to be employed is more brutal, and the
13 risk of pain experienced by the unborn child is greater. An
14 unborn child at twenty weeks gestational age might be twenty-four
15 weeks gestational age, when an abortion poses a greater risk to
16 the woman, the unborn child is considerably more developed, the
17 abortion method likely to be employed is more brutal, the risk of
18 pain experienced by the unborn child is greater, and the unborn
19 child may be viable.

20 3. The state of Missouri is bound by Article VI, Clause 2
21 of the Constitution of the United States that "all treaties made,
22 or which shall be made, under the authority of the United States,
23 shall be the supreme law of the land". One such treaty is the
24 International Covenant on Civil and Political Rights, entered
25 into force on March 23, 1976, and adopted by the United States on
26 September 8, 1992. In ratifying the Covenant, the United States
27 declared that while the provisions of Articles 1 through 27 of
28 the Covenant are not self-executing, the United States'

1 understanding is that state governments share responsibility with
2 the federal government in implementing the Covenant.

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

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

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

19 (2) Encouraging childbirth over abortion;

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

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

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

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

6 (6) Ending the incongruities in state law by permitting
7 some unborn children to be killed by abortion, while requiring
8 that unborn children be protected in non-abortion circumstances
9 through, including, but not limited to, homicide, assault, self-
10 defense, and defense of another statutes; laws guaranteeing
11 prenatal health care, emergency care, and testing; state-
12 sponsored health insurance for unborn children; the prohibition
13 of restraints in correctional institutions to protect pregnant
14 offenders and their unborn children; and protecting the interests
15 of unborn children by the appointment of conservators, guardians,
16 and representatives;

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

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

25 188.027. 1. Except in [the case] cases of medical
26 emergency, no abortion shall be performed or induced on a woman
27 without her voluntary and informed consent, given freely and
28 without coercion. Consent to an abortion is voluntary and

1 informed and given freely and without coercion if, and only if,
2 at least seventy-two hours prior to the abortion:

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

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

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

12 a. A description of the proposed abortion method;

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

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

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

26 (d) A statement that the physician performing or inducing
27 the abortion is available for any questions concerning the
28 abortion, together with the telephone number that the physician

1 may be later reached to answer any questions that the woman may
2 have;

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

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

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

14 (2) The physician who is to perform or induce the abortion
15 or a qualified professional has presented the woman, in person,
16 printed materials provided by the department, which describe the
17 probable anatomical and physiological characteristics of the
18 unborn child at two-week gestational increments from conception
19 to full term, including color photographs or images of the
20 developing unborn child at two-week gestational increments. Such
21 descriptions shall include information about brain and heart
22 functions, the presence of external members and internal organs
23 during the applicable stages of development and information on
24 when the unborn child is viable. The printed materials shall
25 prominently display the following statement: "The life of each
26 human being begins at conception. Abortion will terminate the
27 life of a separate, unique, living human being.";

28 (3) The physician who is to perform or induce the abortion,

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

11 (4) The physician who is to perform or induce the abortion
12 or a qualified professional shall provide the woman with the
13 opportunity to view at least seventy-two hours prior to the
14 abortion an active ultrasound of the unborn child and hear the
15 heartbeat of the unborn child if the heartbeat is audible. The
16 woman shall be provided with a geographically indexed list
17 maintained by the department of health care providers,
18 facilities, and clinics that perform ultrasounds, including those
19 that offer ultrasound services free of charge. Such materials
20 shall provide contact information for each provider, facility, or
21 clinic including telephone numbers and, if available, website
22 addresses. Should the woman decide to obtain an ultrasound from
23 a provider, facility, or clinic other than the abortion facility,
24 the woman shall be offered a reasonable time to obtain the
25 ultrasound examination before the date and time set for
26 performing or inducing an abortion. The person conducting the
27 ultrasound shall ensure that the active ultrasound image is of a
28 quality consistent with standard medical practice in the

1 community, contains the dimensions of the unborn child, and
2 accurately portrays the presence of external members and internal
3 organs, if present or viewable, of the unborn child. The
4 auscultation of fetal heart tone must also be of a quality
5 consistent with standard medical practice in the community. If
6 the woman chooses to view the ultrasound or hear the heartbeat or
7 both at the abortion facility, the viewing or hearing or both
8 shall be provided to her at the abortion facility at least
9 seventy-two hours prior to the abortion being performed or
10 induced;

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

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

23 (b) A description of the actual steps in the abortion
24 procedure to be performed or induced, and at which steps the
25 abortion procedure could be painful to the unborn child;

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

1 response to pain;

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

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

7 (f) Anesthesia or an analgesic is available in order to
8 minimize or alleviate the pain to the unborn child] The printed
9 materials provided by the department shall include information on
10 the possibility of an abortion causing pain in the unborn child.
11 This information shall include, but need not be limited to, the
12 following:

13 (a) Unborn children as early at eight weeks gestational age
14 start to show spontaneous movements and unborn children at this
15 stage in pregnancy show reflex responses to touch;

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

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

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

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

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

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

13 (a) Identify on a geographical basis public and private
14 agencies available to assist a woman in carrying her unborn child
15 to term, and to assist her in caring for her dependent child or
16 placing her child for adoption, including agencies commonly known
17 and generally referred to as pregnancy resource centers, crisis
18 pregnancy centers, maternity homes, and adoption agencies. Such
19 materials shall provide a comprehensive list by geographical area
20 of the agencies, a description of the services they offer, and
21 the telephone numbers and addresses of the agencies; provided
22 that such materials shall not include any programs, services,
23 organizations, or affiliates of organizations that perform or
24 induce, or assist in the performing or inducing of, abortions or
25 that refer for abortions;

26 (b) Explain the Missouri alternatives to abortion services
27 program under section 188.325, and any other programs and
28 services available to pregnant women and mothers of newborn

1 children offered by public or private agencies which assist a
2 woman in carrying her unborn child to term and assist her in
3 caring for her dependent child or placing her child for adoption,
4 including but not limited to prenatal care; maternal health care;
5 newborn or infant care; mental health services; professional
6 counseling services; housing programs; utility assistance;
7 transportation services; food, clothing, and supplies related to
8 pregnancy; parenting skills; educational programs; job training
9 and placement services; drug and alcohol testing and treatment;
10 and adoption assistance;

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

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

24 (7) The physician who is to perform or induce the abortion
25 or a qualified professional has presented the woman, in person,
26 printed materials provided by the department explaining that the
27 father of the unborn child is liable to assist in the support of
28 the child, even in instances where he has offered to pay for the

1 abortion. Such materials shall include information on the legal
2 duties and support obligations of the father of a child,
3 including, but not limited to, child support payments, and the
4 fact that paternity may be established by the father's name on a
5 birth certificate or statement of paternity, or by court action.
6 Such printed materials shall also state that more information
7 concerning paternity establishment and child support services and
8 enforcement may be obtained by calling the family support
9 division within the Missouri department of social services; and

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

16 2. All information required to be provided to a woman
17 considering abortion by subsection 1 of this section shall be
18 presented to the woman individually, in the physical presence of
19 the woman and in a private room, to protect her privacy, to
20 maintain the confidentiality of her decision, to ensure that the
21 information focuses on her individual circumstances, to ensure
22 she has an adequate opportunity to ask questions, and to ensure
23 that she is not a victim of coerced abortion. Should a woman be
24 unable to read materials provided to her, they shall be read to
25 her. Should a woman need an interpreter to understand the
26 information presented in the written materials, an interpreter
27 shall be provided to her. Should a woman ask questions
28 concerning any of the information or materials, answers shall be

1 provided in a language she can understand.

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

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

21 5.] No physician shall perform or induce an abortion unless
22 and until the physician has obtained from the woman her voluntary
23 and informed consent given freely and without coercion. If the
24 physician has reason to believe that the woman is being coerced
25 into having an abortion, the physician or qualified professional
26 shall inform the woman that services are available for her and
27 shall provide her with private access to a telephone and
28 information about such services, including but not limited to the

1 following:

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

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

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

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

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

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

19 [7.] 6. No physician shall perform or induce an abortion
20 unless and until the physician has received and signed a copy of
21 the form prescribed in subsection 3 of this section. The
22 physician shall retain a copy of the form in the patient's
23 medical record.

24 [8.] 7. In the event of a medical emergency [as provided by
25 section 188.039], the physician who performed or induced the
26 abortion shall clearly certify in writing the nature and
27 circumstances of the medical emergency. This certification shall
28 be signed by the physician who performed or induced the abortion,

1 and shall be maintained under section 188.060.

2 [9.] 8. No person or entity shall require, obtain, or
3 accept payment for an abortion from or on behalf of a patient
4 until at least seventy-two hours have passed since the time that
5 the information required by subsection 1 of this section has been
6 provided to the patient. Nothing in this subsection shall
7 prohibit a person or entity from notifying the patient that
8 payment for the abortion will be required after the
9 seventy-two-hour period has expired if she voluntarily chooses to
10 have the abortion.

11 [10.] 9. The term "qualified professional" as used in this
12 section shall refer to a physician, physician assistant,
13 registered nurse, licensed practical nurse, psychologist,
14 licensed professional counselor, or licensed social worker,
15 licensed or registered under chapter 334, 335, or 337, acting
16 under the supervision of the physician performing or inducing the
17 abortion, and acting within the course and scope of his or her
18 authority provided by law. The provisions of this section shall
19 not be construed to in any way expand the authority otherwise
20 provided by law relating to the licensure, registration, or scope
21 of practice of any such qualified professional.

22 [11.] 10. By November 30, 2010, the department shall
23 produce the written materials and forms described in this
24 section. Any written materials produced shall be printed in a
25 typeface large enough to be clearly legible. All information
26 shall be presented in an objective, unbiased manner designed to
27 convey only accurate scientific and medical information. The
28 department shall furnish the written materials and forms at no

1 cost and in sufficient quantity to any person who performs or
2 induces abortions, or to any hospital or facility that provides
3 abortions. The department shall make all information required by
4 subsection 1 of this section available to the public through its
5 department website. The department shall maintain a toll-free,
6 twenty-four-hour hotline telephone number where a caller can
7 obtain information on a regional basis concerning the agencies
8 and services described in subsection 1 of this section. No
9 identifying information regarding persons who use the website
10 shall be collected or maintained. The department shall monitor
11 the website on a regular basis to prevent tampering and correct
12 any operational deficiencies.

13 [12.] 11. In order to preserve the compelling interest of
14 the state to ensure that the choice to consent to an abortion is
15 voluntary and informed, and given freely and without coercion,
16 the department shall use the procedures for adoption of emergency
17 rules under section 536.025 in order to promulgate all necessary
18 rules, forms, and other necessary material to implement this
19 section by November 30, 2010.

20 [13.] 12. If the provisions in subsections 1 and [9] 8 of
21 this section requiring a seventy-two-hour waiting period for an
22 abortion are ever temporarily or permanently restrained or
23 enjoined by judicial order, then the waiting period for an
24 abortion shall be twenty-four hours; provided, however, that if
25 such temporary or permanent restraining order or injunction is
26 stayed or dissolved, or otherwise ceases to have effect, the
27 waiting period for an abortion shall be seventy-two hours.

28 188.028. 1. Except in the case of a medical emergency, no

1 person shall knowingly perform or induce an abortion upon a
2 pregnant woman under the age of eighteen years unless:

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

12 (a) Who has been found guilty of any offense in violation
13 of chapter 565, relating to offenses against the person; chapter
14 566, relating to sexual offenses; chapter 567, relating to
15 prostitution; chapter 568, relating to offenses against the
16 family; or chapter 573, related to pornography and related
17 offenses, if a child was a victim;

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

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

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

28 (e) Whose custodial, parental, or guardianship rights have

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

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

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

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

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

22 (1) The minor or next friend shall make an application to
23 the juvenile court which shall assist the minor or next friend in
24 preparing the petition and notices required pursuant to this
25 section. The minor or the next friend of the minor shall
26 thereafter file a petition setting forth the initials of the
27 minor; the age of the minor; the names and addresses of each
28 parent, guardian, or, if the minor's parents are deceased and no

1 guardian has been appointed, any other person standing in loco
2 parentis of the minor; that the minor has been fully informed of
3 the risks and consequences of the abortion; that the minor is of
4 sound mind and has sufficient intellectual capacity to consent to
5 the abortion; that, if the court does not grant the minor
6 majority rights for the purpose of consent to the abortion, the
7 court should find that the abortion is in the best interest of
8 the minor and give judicial consent to the abortion; that the
9 court should appoint a guardian ad litem of the child; and if the
10 minor does not have private counsel, that the court should
11 appoint counsel. The petition shall be signed by the minor or
12 the next friend;

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

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

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

28 (b) Find the abortion to be in the best interests of the

1 minor and give judicial consent to the abortion, setting forth
2 the grounds for so finding; or

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

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

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

24 3. If a minor desires an abortion, then she shall be orally
25 informed of and, if possible, sign the written consent required
26 [by section 188.039] under this chapter in the same manner as an
27 adult person. No abortion shall be performed or induced on any
28 minor against her will, except that an abortion may be performed

1 or induced against the will of a minor pursuant to a court order
2 described in subdivision (4) of subsection 1 of this section that
3 the abortion is necessary to preserve the life of the minor.

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

22 188.038. 1. The general assembly of this state finds that:

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

28 (2) Ending any current bias or discrimination against

1 pregnant women, their partners, and their family members,
2 including their unborn children, is a legitimate purpose of
3 government in order to guarantee that those who "are endowed by
4 their Creator with certain unalienable Rights" can enjoy "Life,
5 Liberty and the pursuit of Happiness";

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

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

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

23 (6) Government has a legitimate interest in preventing the
24 abortion of unborn children with Down Syndrome because it is a
25 form of bias or disability discrimination and victimizes the
26 disabled unborn child at his or her most vulnerable stage.
27 Eliminating unborn children with Down Syndrome raises grave
28 concerns for the lives of those who do live with disabilities.

1 It sends a message of dwindling support for their unique
2 challenges, fosters a false sense that disability is something
3 that could have been avoidable, and is likely to increase the
4 stigma associated with disability.

5 2. No person shall perform or induce an abortion on a woman
6 if the person knows that the woman is seeking the abortion solely
7 because of a prenatal diagnosis, test, or screening indicating
8 Down Syndrome or the potential of Down Syndrome in an unborn
9 child.

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

13 4. Any physician or other person who performs or induces or
14 attempts to perform or induce an abortion prohibited by this
15 section shall be subject to all applicable civil penalties under
16 this chapter including, but not limited to, sections 188.065 and
17 188.085.

18 188.043. 1. No person shall perform or induce [a surgical
19 or medical] an abortion on another unless such person has [proof
20 of] medical malpractice insurance with coverage amounts of at
21 least [five hundred thousand dollars] one million dollars per
22 occurrence and three million dollars in the annual aggregate.

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

1 3. No abortion facility or hospital shall employ or engage
2 the services of a person to perform [one or more abortions] or
3 induce an abortion on another if the person does not have [proof
4 of] medical malpractice insurance pursuant to this section,
5 except that the abortion facility or hospital may provide medical
6 malpractice insurance for the services of persons employed or
7 engaged by such facility or hospital which is no less than the
8 coverage amounts set forth in this section.

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

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

26 2. For the purpose of this section, "tail insurance" means
27 insurance which covers the legal liability of the insured once a
28 medical malpractice insurance policy is cancelled, not renewed,

1 or terminated, and covers claims made after such cancellation or
2 termination for acts occurring during the period the prior
3 medical malpractice insurance was in effect.

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

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

17 188.052. 1. An individual abortion report for each
18 abortion performed or induced upon a woman shall be completed by
19 [her attending] the physician who performed or induced the
20 abortion. Abortion reports shall include, but not be limited to,
21 a certification that the physician does not have any knowledge
22 that the woman sought the abortion solely because of a prenatal
23 diagnosis, test, or screening indicating Down Syndrome or the
24 potential of Down Syndrome in the unborn child and a
25 certification that the physician does not have any knowledge that
26 the woman sought the abortion solely because of the sex or race
27 of the unborn child.

28 2. An individual complication report for any post-abortion

1 care performed upon a woman shall be completed by the physician
2 providing such post-abortion care. This report shall include:

3 (1) The date of the abortion;

4 (2) The name and address of the abortion facility or
5 hospital where the abortion was performed or induced;

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

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

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

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

25 188.056. 1. Notwithstanding any other provision of law to
26 the contrary, no abortion shall be performed or induced upon a
27 woman at eight weeks gestational age or later, except in cases of
28 medical emergency. Any person who knowingly performs or induces

1 an abortion of an unborn child in violation of this subsection
2 shall be guilty of a class B felony, as well as subject to
3 suspension or revocation of his or her professional license by
4 his or her professional licensing board. A woman upon whom an
5 abortion is performed or induced in violation of this subsection
6 shall not be prosecuted for a conspiracy to violate the
7 provisions of this section.

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

13 3. Prosecution under this section shall bar prosecution
14 under sections 188.057, 188.058, or 188.375 if prosecution under
15 such sections would violate the provisions of Amendment V to the
16 Constitution of the United States or article I, section 19 of the
17 Constitution of Missouri.

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

1 subsections, sentences, clauses, phrases, or words of the
2 section, or the application of the section to any person,
3 circumstance, or period of gestational age, would be declared
4 unenforceable, unconstitutional, or invalid.

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

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

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

26 4. If any one or more provisions, subsections, sentences,
27 clauses, phrases, or words of this section or the application
28 thereof to any person, circumstance, or period of gestational age

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

13 188.058. 1. Notwithstanding any other provision of law to
14 the contrary, no abortion shall be performed or induced upon a
15 woman at eighteen weeks gestational age or later, except in cases
16 of medical emergency. Any person who knowingly performs or
17 induces an abortion of an unborn child in violation of this
18 subsection shall be guilty of a class B felony, as well as
19 subject to suspension or revocation of his or her professional
20 license by his or her professional licensing board. A woman upon
21 whom an abortion is performed or induced in violation of this
22 section shall not be prosecuted for a conspiracy to violate the
23 provisions of this section.

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

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

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

21 188.375. 1. This section shall be known and may be cited
22 as the "Late-Term Pain-Capable Unborn Child Protection Act".

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

26 3. Notwithstanding any other provision of law to the
27 contrary, no abortion shall be performed or induced upon a woman
28 carrying a late-term pain-capable unborn child, except in cases

1 of medical emergency. Any person who knowingly performs or
2 induces an abortion of a late-term pain-capable unborn child in
3 violation of this subsection shall be guilty of a class B felony,
4 as well as subject to suspension or revocation of his or her
5 professional license by his or her professional licensing board.
6 A woman upon whom an abortion is performed or induced in
7 violation of this subsection shall not be prosecuted for a
8 conspiracy to violate the provisions of this subsection.

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

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

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

1 cases where the physician performs or induces an abortion upon a
2 woman during her third trimester carrying a late-term pain-
3 capable unborn child, the physician shall certify in writing the
4 available method or techniques considered and the reasons for
5 choosing the method or technique employed.

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

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

21 9. If any one or more provisions, subsections, sentences,
22 clauses, phrases, or words of this section or the application
23 thereof to any person, circumstance, or period of gestational age
24 is found to be unenforceable, unconstitutional, or invalid by a
25 court of competent jurisdiction, the same is hereby declared to
26 be severable and the balance of the section shall remain
27 effective notwithstanding such unenforceability,
28 unconstitutionality, or invalidity. The general assembly hereby

1 declares that it would have passed this section, and each
2 provision, subsection, sentence, clause, phrase, or word thereof,
3 irrespective of the fact that any one or more provisions,
4 subsections, sentences, clauses, phrases, or words of the
5 section, or the application of the section to any person,
6 circumstance, or period of gestational age, would be declared
7 unenforceable, unconstitutional, or invalid.

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

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

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

23 (3) The United States Congress has enacted a law that has
24 the effect of restoring or granting to the state of Missouri the
25 authority to regulate abortion to the extent set forth in section
26 188.017.

27 Section C. Because of the need to protect the health and
28 safety of women and their children, both unborn and born, the

1 repeal and reenactment of section 188.028 of this act is deemed
2 necessary for the immediate preservation of the public health,
3 welfare, peace and safety, and is hereby declared to be an
4 emergency act within the meaning of the constitution, and the
5 repeal and reenactment of section 188.028 of this act shall be in
6 full force and effect upon its passage and approval.