

# SENATE BILL NO. 1135

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

4056S.01I

KRISTINA MARTIN, Secretary

## AN ACT

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

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

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3 repealed and two new sections enacted in lieu thereof, to be  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

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

3 (1) "Abortion":

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

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

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

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

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

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

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

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

25 [(7)] (6) "Medical emergency", a condition which,  
26 based on reasonable medical judgment, so complicates the  
27 medical condition of a pregnant woman as to necessitate the  
28 immediate abortion of her pregnancy to avert the death of  
29 the pregnant woman or for which a delay will create a  
30 serious risk of substantial and irreversible physical  
31 impairment of a major bodily function of the pregnant woman;

32 [(8)] (7) "Physician", any person licensed to practice  
33 medicine in this state by the state board of registration  
34 for the healing arts;

35 [(9)] (8) "Reasonable medical judgment", a medical  
36 judgment that would be made by a reasonably prudent  
37 physician, knowledgeable about the case and the treatment  
38 possibilities with respect to the medical conditions  
39 involved;

40 [(10)] (9) "Unborn child", the offspring of human  
41 beings from the moment of conception until birth and at  
42 every stage of its biological development, including the  
43 human conceptus, zygote, morula, blastocyst, embryo, and  
44 fetus;

45 [(11)] (10) "Viability" or "viable", that stage of  
46 fetal development when the life of the unborn child may be

47 continued indefinitely outside the womb by natural or  
48 artificial life-supportive systems;

49 [(12)] (11) "Viable pregnancy" or "viable intrauterine  
50 pregnancy", in the first trimester of pregnancy, an  
51 intrauterine pregnancy that can potentially result in a  
52 liveborn baby.

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

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

17 (1) The date of the abortion;

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

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

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

27 submitted to the department within forty-five days from the  
28 date of the post-abortion care.

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

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

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

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

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

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

33 (1) The United States Supreme Court has  
34 overruled, in whole or in part, *Roe v. Wade*, 410  
35 U.S. 113 (1973), restoring or granting to the  
state of Missouri the authority to regulate

36 abortion to the extent set forth in this  
37 section, and that as a result, it is reasonably  
38 probable that this section would be upheld by  
39 the court as constitutional;

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

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

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

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

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

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

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

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

42 from conception to death.'" *Rodgers v. Danforth*,  
43 486 S.W.2d 258, 259 (1972);

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

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

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

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

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

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

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

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

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

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

152 (14) The placenta begins developing during  
153 the early first trimester of pregnancy and  
154 performs a respiratory function by making oxygen  
155 supply to and carbon dioxide removal from the

156 unborn child possible later in the first  
157 trimester and throughout the second and third  
158 trimesters of pregnancy;

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

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

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

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

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

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

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



213 (22) Physicians provide anesthesia during  
214 in utero treatment of unborn children as early  
215 as sixteen weeks gestational age for certain  
216 procedures, including those to correct fetal  
217 urinary tract obstruction. Anesthesia is  
218 administered by ultrasound-guided injection into  
219 the arm or leg of the unborn child;

220 (23) A leading textbook on prenatal  
221 development of the human brain states, "It may  
222 be concluded that, although nociperception (the  
223 actual perception of pain) awaits the appearance  
224 of consciousness, nociception (the experience of  
225 pain) is present some time before birth. In the  
226 absence of disproof, it is merely prudent to  
227 assume that pain can be experienced even early  
228 in prenatal life (Dr. J. Wisser, Zürich): the  
229 fetus should be given the benefit of the  
230 doubt". Ronan O'Rahilly & Fabiola Müller. The  
231 Embryonic Human Brain: An Atlas of  
232 Developmental Stages (3d ed. 2005);

233 (24) By fourteen or fifteen weeks  
234 gestational age or later, the predominant  
235 abortion method in Missouri is dilation and  
236 evacuation (D&E). The D&E abortion method  
237 includes the dismemberment, disarticulation, and  
238 exsanguination of the unborn child, causing the  
239 unborn child's death;

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

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

266 (27) In *Roper v. Simmons*, 543 U.S. 551  
267 (2005), the Supreme Court determined that  
268 "evolving standards of decency" dictated that a  
269 Missouri statute allowing the death penalty for

270 a conviction of murder in the first degree for a  
271 person under eighteen years of age when the  
272 crime was committed was unconstitutional under  
273 the Eighth and Fourteenth Amendments to the  
274 United States Constitution because it violated  
275 the prohibition against "cruel and unusual  
276 punishments";

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

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

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

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

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

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

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

321 (33) Abortion procedures performed later  
322 in pregnancy have a higher medical risk for  
323 women. Compared to an abortion at eight weeks  
324 gestational age or earlier, the relative risk  
325 increases exponentially at later gestational  
326 ages. The relative risk of death for a pregnant

327 woman who had an abortion performed or induced  
328 upon her at:

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

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

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

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

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

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

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

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

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

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

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

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

433 4. Article 6, Paragraph 1, U.N.T.S. at  
434 174, of the International Covenant on Civil and  
435 Political Rights states, "Every human being has  
436 the inherent right to life. This right shall be  
437 protected by law. No one shall be arbitrarily  
438 deprived of his life". The state of Missouri  
439 takes seriously its obligation to comply with

440 the Covenant and to implement this paragraph as  
441 it relates to the inherent right to life of  
442 unborn human beings, protecting the rights of  
443 unborn human beings by law, and ensuring that  
444 such unborn human beings are not arbitrarily  
445 deprived of life. The state of Missouri hereby  
446 implements Article 6, Paragraph 1 of the  
447 Covenant by the regulation of abortion in this  
448 state.

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

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

454 (2) Encouraging childbirth over abortion;

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

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

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

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

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

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

491 (8) Avoiding burdens on the health care  
492 system, taxpayers, and the workforce because of  
493 increased preterm births, low birthweight  
494 babies, compromised pregnancies, extended  
495 postpartum recoveries, and behavioral health  
496 problems caused by the long-term effects of

497 abortions performed or induced later in the  
498 pregnancy.]

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

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

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

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

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

35 (5) Performing or inducing an abortion  
36 because of the sex of the unborn child is  
37 repugnant to the values of equality of females  
38 and males and the same opportunities for girls  
39 and boys, and furthers a false mindset of female  
40 inferiority;

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

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

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

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

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

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

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

30 4. If any one or more provisions,  
31 subsections, sentences, clauses, phrases, or  
32 words of this section or the application thereof  
33 to any person, circumstance, or period of  
34 gestational age is found to be unenforceable,  
35 unconstitutional, or invalid by a court of  
36 competent jurisdiction, the same is hereby  
37 declared to be severable and the balance of the  
38 section shall remain effective notwithstanding  
39 such unenforceability, unconstitutionality, or  
40 invalidity. The general assembly hereby  
declares that it would have passed this section,

41 and each provision, subsection, sentence,  
42 clause, phrase, or word thereof, irrespective of  
43 the fact that any one or more provisions,  
44 subsections, sentences, clauses, phrases, or  
45 words of the section, or the application of the  
46 section to any person, circumstance, or period  
47 of gestational age, would be declared  
48 unenforceable, unconstitutional, or invalid.]

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

64 medical care for a child born as a result of the  
65 abortion.

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

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

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

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