AN ACT

To repeal sections 188.015 and 188.030, RSMo, and to enact in lieu thereof two new sections relating to the protection of women’s health care, with existing penalty provisions.

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

Section A. Sections 188.015 and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows:

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

1. "Abortion":
   a. The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's womb; or
   b. The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.
(2) "Abortion facility", a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital;

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

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

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

(6) "Medical emergency", a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

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

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

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

(10) "Viability" or "viable", that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

188.030. 1. Except in the case of a medical emergency, no abortion of a viable unborn child shall be performed or induced unless the abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman [avert the pregnant woman’s death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. For
purposes of this section, "major bodily function" includes, but is not limited to, functions of the
immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory,
circulatory, endocrine, and reproductive functions.

2. Except in the case of a medical emergency:
   (1) Prior to performing or inducing an abortion upon a woman, the physician shall
determine the gestational age of the unborn child in a manner consistent with accepted obstetrical
and neonatal practices and standards. In making such determination, the physician shall make
such inquiries of the pregnant woman and perform or cause to be performed such medical
examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about
the medical facts and conditions of both the woman and the unborn child involved, would
consider necessary to perform and consider in making an accurate diagnosis with respect to
gestational age;

   (2) If the physician determines that the gestational age of the unborn child is twenty
weeks or more, prior to performing or inducing an abortion upon the woman, the physician shall
determine if the unborn child is viable by using and exercising that degree of care, skill, and
proficiency commonly exercised by a skillful, careful, and prudent physician. In making this
determination of viability, the physician shall perform or cause to be performed such medical
examinations and tests as are necessary to make a finding of the gestational age, weight, and lung
maturity of the unborn child and shall enter such findings and determination of viability in the
medical record of the woman;

   (3) If the physician determines that the gestational age of the unborn child is twenty
weeks or more, and further determines that the unborn child is not viable and performs or
induces an abortion upon the woman, the physician shall report such findings and determinations
and the reasons for such determinations to the health care facility in which the abortion is
performed and to the state board of registration for the healing arts, and shall enter such findings
and determinations in the medical records of the woman and in the individual abortion report
submitted to the department under section 188.052;

   (4) (a) If the physician determines that the unborn child is viable, the physician shall not
perform or induce an abortion upon the woman unless the abortion is necessary to preserve the
life of the pregnant woman or that a continuation of the pregnancy will create a serious risk of
substantial and irreversible physical impairment of a major bodily function of the woman.

   (b) Before a physician may proceed with performing or inducing an abortion upon a
woman when it has been determined that the unborn child is viable, the physician shall first
certify in writing the medical threat posed to the life of the pregnant woman, or the medical
reasons that continuation of the pregnancy would cause a serious risk of substantial and
irreversible physical impairment of a major bodily function of the pregnant woman. Upon
completion of the abortion, the physician shall report the reasons and determinations for the 
abortion of a viable unborn child to the health care facility in which the abortion is performed 
and to the state board of registration for the healing arts, and shall enter such findings and 
determinations in the medical record of the woman and in the individual abortion report 
submitted to the department under section 188.052.

(c) Before a physician may proceed with performing or inducing an abortion upon a 
woman when it has been determined that the unborn child is viable, the physician who is to 
perform the abortion shall obtain the agreement of a second physician with knowledge of 
accepted obstetrical and neonatal practices and standards who shall concur that the abortion is 
necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy 
would cause a serious risk of substantial and irreversible physical impairment of a major bodily 
function of the pregnant woman. This second physician shall also report such reasons and 
determinations to the health care facility in which the abortion is to be performed and to the state 
board of registration for the healing arts, and shall enter such findings and determinations in the 
medical record of the woman and the individual abortion report submitted to the department 
under section 188.052. The second physician shall not have any legal or financial affiliation or 
relationship with the physician performing or inducing the abortion, except that such prohibition 
shall not apply to physicians whose legal or financial affiliation or relationship is a result of 
being employed by or having staff privileges at the same hospital as the term "hospital" is 
defined in section 197.020.

(d) Any physician who performs or induces an abortion upon a woman when it has been 
determined that the unborn child is viable shall utilize the available method or technique of 
abortion most likely to preserve the life or health of the unborn child. In cases where the method 
or technique of abortion most likely to preserve the life or health of the unborn child would 
present a greater risk to the life or health of the woman than another legally permitted and 
available method or technique, the physician may utilize such other method or technique. In all 
cases where the physician performs an abortion upon a viable unborn child, the physician shall 
certify in writing the available method or techniques considered and the reasons for choosing the 
method or technique employed.

(e) No physician shall perform or induce an abortion upon a woman when it has been 
determined that the unborn child is viable unless there is in attendance a physician other than the 
physician performing or inducing the abortion who shall take control of and provide immediate 
medical care for a child born as a result of the abortion. During the performance of the abortion, 
the physician performing it, and subsequent to the abortion, the physician required to be in 
attendance, shall take all reasonable steps in keeping with good medical practice, consistent with 
the procedure used, to preserve the life or health of the viable unborn child; provided that it does
not pose an increased risk to the life of the woman or does not pose an increased risk of substantial and irreversible physical impairment of a major bodily function of the woman.

3. Any person who knowingly performs or induces an abortion of an unborn child in violation of the provisions of this section is guilty of a class C felony, and, upon a finding of guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and, notwithstanding the provisions of section 560.011, shall be fined not less than ten thousand nor more than fifty thousand dollars.

4. Any physician who pleads guilty to or is found guilty of performing or inducing an abortion of an unborn child in violation of this section shall be subject to suspension or revocation of his or her license to practice medicine in the state of Missouri by the state board of registration for the healing arts under the provisions of sections 334.100 and 334.103.

5. Any hospital licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.070.

6. (1) The department of health and senior services shall make or cause to be made such inspections and investigations as it deems necessary, but in no case fewer than four inspections of any abortion facility in a fiscal year. Information received by the department through file reports, inspection, or as otherwise authorized under this section shall not be disclosed publicly in such manner as to identify individual patients, except to another state agency for purposes of investigation of professional or business practices in an abortion facility, which state agency shall not disclose such individual patient information publicly.

   (2) Every abortion facility and any premises proposed to be conducted as an abortion facility shall be open at all reasonable times to an inspection authorized in writing by the director of the department. No notice need be given to any person prior to any inspection.

   (3) Whenever an inspection of any abortion facility discloses that the continued operation of such facility constitutes an immediate and serious risk of harm to the health or safety of the patients thereof, the inspector is authorized to immediately close such facility. Once the facility has been closed, the personnel employed there shall cease any activity related to the patients, unless continued treatment of any given patient is necessary to protect her physical health or life. A written order setting forth the grounds on which any action under this section is based shall be served on the licensee within twenty-four hours after such action is taken. Any director of an abortion facility that has been closed may, within ten days thereafter, by written notice, request that the director of the department conduct a hearing and a reinspection under the provisions of this section. If
a subsequent inspection discloses that the violations of this section or rules, regulations, or standards have been abated, the director of the department shall cancel the order of closing and permit patients to be treated therein. The remedies provided in this section are in addition to and not exclusive of any other remedy provided by law.

7. Any ambulatory surgical center licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.220.

[7.] 8. A woman upon whom an abortion is performed or induced in violation of this section shall not be prosecuted for a conspiracy to violate the provisions of this section.

[8.] 9. Nothing in this section shall be construed as creating or recognizing a right to abortion, nor is it the intention of this section to make lawful any abortion that is currently unlawful.

[9.] 10. It is the intent of the legislature that this section be severable as noted in section 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of this section be declared invalid under the Constitution of the United States or the Constitution of the State of Missouri, it is the intent of the legislature that the remaining provisions of this section remain in force and effect as far as capable of being carried into execution as intended by the legislature.

[10.] 11. The general assembly may, by concurrent resolution, appoint one or more of its members who sponsored or co-sponsored this act in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.