

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for House Bill No. 1677, Page 3, Section 103.200, Line 63,  
2 by inserting after said section and line the following:

3  
4 "188.400. As used in this chapter, the following terms mean:

5 (1) "Abortion-inducing drugs", mifepristone, misoprostol, and any drug or medication  
6 that is used to terminate the life of an unborn child. The term does not include birth-control devices  
7 or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency  
8 contraception. The term also does not include drugs or medications that are possessed or distributed  
9 for a purpose that does not include the termination of a pregnancy, such as misoprostol that is  
10 possessed or distributed for the purpose of treating stomach ulcers.

11 (2) "Interactive computer service", any information service, system, or access software  
12 provider that provides or enables computer access by multiple users to a computer server, including  
13 specifically a service or system that provides access to the Internet and such systems operated or  
14 services offered by libraries or educational institutions.

15 188.410. 1. Notwithstanding any other law, any person who manufactures, distributes,  
16 transports, delivers, or provides abortion-inducing drugs, or who aids or abets the manufacture,  
17 distribution, transportation, delivery, or provision of abortion-inducing drugs, shall be strictly,  
18 absolutely, and jointly and severally liable for wrongful death of any pregnant woman or unborn  
19 child who dies from the use of abortion-inducing drugs, and for any personal injuries suffered by  
20 any pregnant woman or unborn child from the use of abortion-inducing drugs, except as provided by  
21 subsection 2, provided that no lawsuit may be brought under this section against a provider or user  
22 of an interactive computer service if such a lawsuit would be preempted by 47 U.S.C. Section  
23 230(c).

24 2. A defendant may assert an affirmative defense to liability under this section if:

25 (1) The abortion-inducing drugs were prescribed or provided by a licensed physician in  
26 response to a life-threatening physical condition aggravated by, caused by, or arising from a  
27 pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of  
28 substantial impairment of a major bodily function unless an abortion is performed;

29 (2) The defendant is being sued for speech or conduct protected by the First Amendment of  
30 the United States Constitution, as made applicable to the states through the Supreme Court of the  
31 United States' interpretations of the Fourteenth Amendment of the United States Constitution, or by  
32 Article 1, Section 8 of the Missouri Constitution;

33 (3) The defendant:

34 (a) Was unaware that it was engaged in the conduct described in subsection 1; and

35 (b) Took every reasonable precaution to ensure that he or she would not manufacture,  
36 distribute, transport, deliver, provide, or aid or abet the manufacture, distribution, transportation,

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1 delivery, or provision of abortion-inducing drugs;

2 (4) The defendant:

3 (a) Has standing to assert the rights of a woman or group of women seeking an abortion  
4 under the tests for third-party standing established by the Supreme Court of the United States; and

5 (b) Demonstrates that the imposition of civil liability on the defendant will result in an  
6 undue burden on a woman or group of women seeking an abortion; or

7 (5) The defendant is being sued for conduct that the state of Missouri is constitutionally  
8 forbidden to subject to liability under the Due Process Clause of the Fourteenth Amendment, the  
9 Dormant Commerce Clause, or any other provision of the federal or state constitutions.

10  
11 The defendant has the burden of proving an affirmative defense under this section by a  
12 preponderance of the evidence.

13 3. The affirmative defense under subdivision (4) of subsection 2 is not available if the  
14 Supreme Court of the United States overrules *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned*  
15 *Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of  
16 action is based occurred before the Supreme Court overruled either of those decisions.

17 4. Notwithstanding any other law, if a plaintiff who brings suit under this section is unable  
18 to identify the specific manufacturer of the drug that caused the death or injury, then liability shall  
19 be apportioned among all manufacturers of abortion-inducing drugs in proportion to each  
20 manufacturer's share of the market for abortion-inducing drugs, in accordance with *Sindell v. Abbott*  
21 *Laboratories*, 607 P.2d 924 (Cal. 1980).

22 5. Notwithstanding any other law, a person may bring an action under this section not later  
23 than the sixth anniversary of the date the cause of action accrues.

24 6. Notwithstanding any other law, the following are not a defense to an action brought under  
25 this section:

26 (1) Ignorance or mistake of law;

27 (2) A defendant's belief that the requirements or provisions of this chapter are  
28 unconstitutional or were unconstitutional;

29 (3) A defendant's reliance on any court decision that has been overruled on appeal or by a  
30 subsequent court, even if that court decision had not been overruled when the cause of action  
31 accrued;

32 (4) A defendant's reliance on any state or federal court decision that is not binding on the  
33 court in which the action has been brought;

34 (5) Non-mutual issue preclusion or non-mutual claim preclusion;

35 (6) The consent of the unborn child's mother to the abortion;

36 (7) Contributory or comparative negligence; and

37 (8) Assumption of risk.

38 7. Any waiver, and any attempted or purported waiver, of the right to sue under this section  
39 shall be void as against public policy, and shall not be enforceable in any court.

40 8. Notwithstanding any other law, a civil action under this section may not be brought:

41 (1) Against the woman who used abortion-inducing drugs to abort or attempt to abort her  
42 unborn child;

43 (2) Against any person that acted at the behest of federal agencies, contractors, or  
44 employees that are carrying out duties under federal law, if the imposition of liability would violate  
45 the doctrines of preemption or intergovernmental immunity; or

46 (3) By any person who impregnated the woman who used abortion-inducing drugs through  
47 an act of rape, sexual assault, or incest.

48 9. Notwithstanding any other law, including section 506.500, the courts of this state shall  
49 have personal jurisdiction over any defendant sued under this section to the maximum extent

1 permitted by the Fourteenth Amendment to the United States Constitution.

2 10. Notwithstanding any other law, the law of Missouri shall apply to any abortion  
 3 performed, induced, or attempted upon a resident or citizen of Missouri, regardless of where that  
 4 abortion or attempted abortion occurs, and to any civil action brought under this section, to the  
 5 maximum extent permitted by the Constitution of the United States.

6 188.420. 1. Notwithstanding any other law, including section 508.010, a civil action  
 7 brought under section 188.410 shall be brought in:

8 (1) The county in which all or a substantial part of the events or omissions giving rise to the  
 9 claim occurred;

10 (2) The county of residence for any one of the natural person defendants at the time the  
 11 cause  
 12 of action accrued;

13 (3) The county of the principal office in this state of any one of the defendants that is not a  
 14 natural person; or

15 (4) The county of residence for the claimant if the claimant is a natural person residing in  
 16 this state.

17 2. If a civil action is brought under section 188.410 in any one of the venues described by  
 18 subsection 1 of this section, the action may not be transferred to a different venue without the  
 19 written consent of all parties.

20 188.430. 1. Notwithstanding any other law, the state shall have sovereign immunity, each of  
 21 its political subdivisions shall have governmental immunity, and each officer and employee of this  
 22 state or a political subdivision shall have official immunity, as well as sovereign or governmental  
 23 immunity, as applicable, in any action, claim, counterclaim, or any type of legal or equitable action  
 24 that challenges the validity of any provision or application of this chapter, on constitutional grounds  
 25 or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or  
 26 employee of this state or a political subdivision from enforcing any provision or application of this  
 27 chapter, unless that immunity has been abrogated or preempted by federal law in a manner  
 28 consistent with the Constitution of the United States.

29 2. Notwithstanding any other law, no provision of state law may be construed to waive or  
 30 abrogate an immunity described in subsection 1 of this section unless it expressly waives or  
 31 abrogates immunity with specific reference to this section.

32 3. Notwithstanding any other law, no attorney representing the state, its political  
 33 subdivisions, or any officer or employee of this state or a political subdivision is authorized or  
 34 permitted to waive an immunity described in subsection 1 of this section or take any action that  
 35 would result in a waiver of that immunity.

36 4. Notwithstanding any other law, no court of this state shall have jurisdiction to  
 37 consider any action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent the  
 38 state, its political subdivisions, any officer or employee of this state or a political subdivision, or any  
 39 person from enforcing any provision or application of this chapter, or from filing a civil action under  
 40 this chapter.

41 5. Nothing in this section or chapter shall be construed to prevent a litigant from asserting  
 42 the invalidity or unconstitutionality of any provision or application of this chapter or Missouri law  
 43 as a defense to any action, claim, or counterclaim brought against that litigant."; and

44  
 45 Further amend said bill by amending the title, enacting clause, and intersectional references  
 46 accordingly.