

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 all of said section and line the following:

3
4 "188.015. As used in this chapter, the following terms mean:

5 (1) "Abortion":

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

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

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

14 (3) "Abortion-inducing drugs", mifepristone, misoprostol, and any drug or medication that is
15 used to terminate the life of an unborn child. The term does not include birth-control devices or oral
16 contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. The
17 term also does not include drugs or medications that are possessed or distributed for a purpose that
18 does not include the termination of a pregnancy;

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

20 ~~[(4)]~~ (5) "Department", the department of health and senior services;

21 ~~[(5)]~~ (6) "Down Syndrome", the same meaning as defined in section 191.923;

22 ~~[(6)]~~ (7) "Gestational age", length of pregnancy as measured from the first day of the
23 woman's last menstrual period;

24 ~~[(7)]~~ (8) "Medical emergency", a condition which, based on reasonable medical judgment,
25 so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion
26 of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious
27 risk of substantial and irreversible physical impairment of a major bodily function of the pregnant
28 woman;

29 ~~[(8)]~~ (9) "Physician", any person licensed to practice medicine in this state by the state
30 board of registration for the healing arts;

31 ~~[(9)]~~ (10) "Reasonable medical judgment", a medical judgment that would be made by a
32 reasonably prudent physician, knowledgeable about the case and the treatment possibilities with
33 respect to the medical conditions involved;

34 ~~[(10)]~~ (11) "Unborn child", the offspring of human beings from the moment of conception
35 until birth and at every stage of its biological development, including the human conceptus, zygote,
36 morula, blastocyst, embryo, and fetus;

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1 ~~[(11)]~~ (12) "Viability" or "viable", that stage of fetal development when the life of the
 2 unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive
 3 systems;

4 ~~[(12)]~~ (13) "Viable pregnancy" or "viable intrauterine pregnancy", in the first trimester of
 5 pregnancy, an intrauterine pregnancy that can potentially result in a liveborn baby[-];

6 188.805. 1. It is the policy of the state of Missouri to protect its unborn citizens from
 7 individuals and organizations that aid or abet the killing of unborn children, and to protect the
 8 unborn from those who seek to kill or otherwise harm them, to the maximum extent permissible
 9 under the Constitution and federal law.

10 2. Except as provided by subsection 3 of this section, it shall be unlawful for any person to
 11 perform or induce, or to attempt to perform or induce, an abortion on a resident or citizen of
 12 Missouri, or to aid or abet, or attempt to aid or abet, an abortion performed or induced on a resident
 13 or citizen of Missouri, regardless of where the abortion is or will be performed. The prohibition in
 14 this subsection includes, but is not limited to:

15 (1) Offering or knowingly providing transportation to or from an abortion provider;

16 (2) Giving instructions over the telephone, the internet, or any other medium of
 17 communication regarding self-administered abortion or means of obtaining elective abortions;

18 (3) Hosting or maintaining a website, or providing internet service that allows Missouri
 19 residents to access any website, that encourages or facilitates efforts to obtain elective abortions;

20 (4) Offering or providing money with the knowledge that it will be used to pay for, offset, or
 21 reimburse the costs of an abortion or the costs associated with procuring an abortion;

22 (5) Providing or arranging for insurance coverage of an abortion;

23 (6) Offering or providing "abortion doula" services;

24 (7) Providing referrals to an abortion provider;

25 (8) Coercing or pressuring a pregnant woman to have an abortion; and

26 (9) Engaging in any conduct that would make one an accomplice to abortion under sections
 27 562.036 and 562.041.

28 3. Subsection 2 of this section does not prohibit:

29 (1) Abortions performed or induced in response to a life-threatening physical condition
 30 aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the
 31 woman in danger of death or a serious risk of substantial impairment of a major bodily function
 32 unless an abortion is performed, or any conduct that aids or abets or attempts to aid or abet such
 33 abortions;

34 (2) Speech or conduct protected by the First Amendment of the United States Constitution,
 35 as made applicable to the states through the Supreme Court of the United States' interpretations of
 36 the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the
 37 Missouri Constitution;

38 (3) Conduct that the state of Missouri is forbidden to regulate under federal law or the
 39 Constitution of the United States;

40 (4) Conduct taken by a pregnant woman who aborts or seeks to abort her unborn child; or

41 (5) Conduct taken at the behest of federal agencies, contractors, or employees that are
 42 carrying out duties under federal law, if a prohibition on that conduct would violate the doctrines of
 43 preemption or intergovernmental immunity.

44 4. Notwithstanding any other law, the requirements of this section shall be enforced
 45 exclusively through the private civil actions described in section 188.820. No direct or indirect
 46 enforcement of this section may be taken or threatened by the state, a political subdivision, a district
 47 or county attorney, or any officer or employee of this state or a political subdivision against any
 48 person or entity, by any means whatsoever, and no violation of this section may be used to justify or
 49 trigger the enforcement of any other law or any type of adverse consequence under any other law,

1 except as provided in section 188.820.

2 188.810. 1. Abortion-inducing drugs are declared to be contraband in Missouri.

3 2. Except as provided by subsection 3 of this section, it shall be unlawful for any person to:

4 (1) Possess or distribute abortion-inducing drugs in Missouri;

5 (2) Mail, transport, or deliver abortion-inducing drugs in any manner to any person or
6 location in Missouri;

7 (3) Provide information on how to obtain abortion-inducing drugs; or

8 (4) Host or maintain a website, or provide internet service that allows Missouri residents to
9 access any website, that encourages or facilitates efforts to obtain abortion-inducing drugs.

10 3. Subsection 2 of this section does not prohibit:

11 (1) Speech or conduct protected by the First Amendment of the United States Constitution,
12 as made applicable to the states through the Supreme Court of the United States' interpretations of
13 the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the
14 Missouri Constitution;

15 (2) Conduct that the state of Missouri is forbidden to regulate under federal law or the
16 Constitution of the United States;

17 (3) Conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;

18 (4) The possession or distribution of abortion-inducing drugs for a purpose that does not
19 include termination of a pregnancy;

20 (5) The possession of abortion-inducing drugs resulting from an effort to entrap individuals
21 or entities that violate this section; or

22 (6) Conduct taken at the behest of federal agencies, contractors, or employees that are
23 carrying out duties under federal law, if a prohibition on that conduct would violate the doctrines of
24 preemption or intergovernmental immunity.

25 4. Notwithstanding any other law, the requirements of this section shall be enforced
26 exclusively through the private civil actions described in section 188.820. No direct or indirect
27 enforcement of this section may be taken or threatened by the state, a political subdivision, a district
28 or county attorney, or any officer or employee of this state or a political subdivision against any
29 person or entity, by any means whatsoever, and no violation of this section may be used to justify or
30 trigger the enforcement of any other law or any type of adverse consequence under any other law,
31 except as provided in section 188.820.

32 188.815. 1. Notwithstanding any other law, any person who manufactures, distributes,
33 transports, provides, or aids or abets the manufacture, distribution, transportation, or provision of
34 abortion-inducing drugs, including any person who hosts or maintains a website or provides internet
35 service that allows individuals to access any website that encourages or facilitates efforts to obtain
36 abortion-inducing drugs, shall be strictly, absolutely, and jointly and severally liable for the
37 wrongful death of any unborn child or pregnant woman who dies from the use of abortion-inducing
38 drugs, and for any personal injuries suffered by any unborn child or pregnant woman from the use of
39 abortion-inducing drugs.

40 2. It is an affirmative defense if a person sued under this section:

41 (1) Was unaware that he or she was engaged in the conduct described in subsection 1 of this
42 section; and

43 (2) Took every reasonable precaution to ensure that he or she would not manufacture,
44 distribute, transport, provide, or aid or abet the manufacture, distribution, transportation, or
45 provision of abortion-inducing drugs.

46 3. Notwithstanding any other law, if a plaintiff who brings suit under this section is unable
47 to identify the specific manufacturer of the drug that caused the death or injury, liability shall be
48 apportioned among all manufacturers of abortion-inducing drugs in proportion to each
49 manufacturer's share of the market for abortion-inducing drugs, in accordance with *Sindell v. Abbott*

1 Laboratories, 607 P.2d 924 (Cal. 1980).

2 4. Notwithstanding any other law, a person may bring an action under this section not later
3 than six years after the date the cause of action accrues.

4 5. Notwithstanding any other law, the following are not defenses to an action brought under
5 this section:

6 (1) Ignorance or mistake of law;

7 (2) A defendant's belief that the requirements or provisions of this section are
8 unconstitutional or were unconstitutional;

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

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

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

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

16 (7) Contributory or comparative negligence;

17 (8) Assumption of risk; and

18 (9) Any claim that the enforcement of this section or the imposition of civil liability against
19 the defendant will violate the constitutional rights of third parties, except as provided by section
20 188.830.

21 6. Any waiver of the right to sue under this section shall be void as against public policy,
22 and shall not be enforceable in any court.

23 7. This section shall not be construed to impose liability on speech or conduct protected by
24 the First Amendment of the United States Constitution, as made applicable to the states through the
25 Supreme Court of the United States' interpretation of the Fourteenth Amendment of the United
26 States Constitution, or by Article 1, Section 8 of the Missouri Constitution.

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

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

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

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

35 9. Notwithstanding any other law, including section 506.500, the courts of this state shall
36 have personal jurisdiction over any defendant sued under this section to the maximum extent
37 permitted by the Fourteenth Amendment to the United States Constitution.

38 188.820. 1. Any person, other than the state, its political subdivisions, or any officer or
39 employee of a state or local governmental entity in this state, may bring a civil action against any
40 person or entity that:

41 (1) Violates any provision of sections 188.805 and 188.810; or

42 (2) Intends to violate any provision of sections 188.805 and 188.810.

43 2. If a claimant prevails in an action brought under this section, the court shall award:

44 (1) Injunctive relief sufficient to prevent the defendant from violating sections 188.805 and
45 188.810;

46 (2) Nominal and compensatory damages if the plaintiff has suffered injury or harm from the
47 defendant's conduct, including, but not limited to, loss of consortium and emotional distress;

48 (3) Statutory damages in an amount of not less than ten thousand dollars; and

49 (4) Costs and attorney's fees.

1 3. Notwithstanding subsection 2 of this section, a court shall not award relief under
 2 subdivision (3) or (4) of subsection 2 of this section in response to a violation of subdivision 1 of
 3 subsection 1 of this section if the defendant demonstrates that the defendant previously paid or has
 4 been ordered to pay the full amount of statutory damages under subdivision (3) of subsection 2 of
 5 this section in a previous action for that particular violation of section 188.805 or 188.810.

6 4. Notwithstanding any other law, a person may bring an action under this section not later
 7 than six years after the date the cause of action accrues.

8 5. Notwithstanding any other law, the following are not defenses to an action brought under
 9 this section:

10 (1) Ignorance or mistake of law;

11 (2) A defendant's belief that the requirements or provisions of this section are
 12 unconstitutional or were unconstitutional;

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

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

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

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

20 (7) Contributory or comparative negligence;

21 (8) Assumption of risk; or

22 (9) Any claim that the enforcement of this section or the imposition of civil liability against
 23 the defendant will violate the constitutional rights of third parties, except as provided by section
 24 188.830.

25 6. It is an affirmative defense if a person sued under this section:

26 (1) Was unaware that it was engaged in conduct described in Sections 188.805 and 188.810;
 27 and

28 (2) Took every reasonable precaution to ensure that it would not violate sections 188.805
 29 and 188.810.

30 The defendant has the burden of proving an affirmative defense under this subsection by a
 31 preponderance of the evidence.

32 7. This section shall not be construed to impose liability on any speech or conduct protected
 33 by the First Amendment of the United States Constitution, as made applicable to the states through
 34 the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States
 35 Constitution, or by Article 1, Section 8 of the Missouri Constitution.

36 8. Notwithstanding any other law, neither the state, any of its political subdivisions, any
 37 district or county attorney, nor any officer or employee of this state or a political subdivision shall:

38 (1) Act in concert or participation with anyone who brings suit under this section;

39 (2) Establish or attempt to establish any type of agency or fiduciary relationship with a
 40 plaintiff who brings suit under this section;

41 (3) Make any attempt to control or influence a plaintiff's decision to bring suit under this
 42 section or the plaintiff's conduct of the litigation; or

43 (4) Intervene in any action brought under this section.

44
 45 This subsection does not prohibit a person or entity described in this subsection from filing an
 46 amicus curiae brief in the action, so long as that person or entity does not act in concert or
 47 participation with the plaintiff or plaintiffs who sue under this section or violate any provision of
 48 this subsection.

49 9. Notwithstanding any other law, a court shall not award costs or attorney's fees to a litigant

1 who is sued under this section.

2 10. Notwithstanding any other law, a civil action under this section shall not be subject to
3 any provision in section 1.302.

4 11. Notwithstanding any other law, a civil action under this section shall not be brought:

5 (1) Against a woman upon whom an abortion was performed or induced or attempted to be
6 performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks
7 to abort her unborn child in violation of this chapter;

8 (2) Against any person or entity that performs, aids or abets, or attempts to perform or aid or
9 abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out
10 duties under federal law, if a prohibition on such abortion would violate the doctrines of preemption
11 or intergovernmental immunity;

12 (3) Against any common carrier that transports a pregnant woman to an abortion provider, if
13 the common carrier is unaware that the woman intends to abort her unborn child; or

14 (4) By any person who impregnated a woman seeking an abortion through an act of rape,
15 sexual assault, or incest.

16 12. Notwithstanding any other law, including section 506.500, the courts of this state shall
17 have personal jurisdiction over any defendant sued under this section to the maximum extent
18 permitted by the Fourteenth Amendment to the United States Constitution.

19 188.830. 1. A defendant against whom an action is brought under section 188.815 or
20 188.820 may assert an affirmative defense to liability under this section if:

21 (1) The defendant has standing to assert the rights of a woman or group of women seeking
22 an abortion under the tests for third-party standing established by the Supreme Court of the United
23 States; and

24 (2) The imposition of civil liability on the defendant will result in an undue burden on a
25 woman or group of women seeking an abortion.

26 The defendant has the burden of proving an affirmative defense under this section by a
27 preponderance of the evidence.

28 2. The affirmative defense under subsection 1 of this section is not available if the Supreme
29 Court of the United States overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v.*
30 *Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based
31 under section 188.815 or section 188.820 occurred before the Supreme Court overruled either
32 decision.

33 3. Nothing in this section or chapter shall limit or preclude a defendant from asserting the
34 defendant's personal constitutional rights as a defense to liability under section 188.815 or 188.820,
35 and a court shall not award relief under section 188.815 or section 188.820 if the conduct for which
36 the defendant has been sued was an exercise of state or federal constitutional rights that personally
37 belong to the defendant.

38 4. Nothing in this section or chapter shall limit or preclude a defendant from asserting the
39 unconstitutionality of any provision of this chapter or Missouri law as a defense to liability under
40 section 188.815 or section 188.820.

41 188.835. 1. Notwithstanding any other law, including section 508.010, a civil action
42 brought under section 188.815 or section 188.820 shall be brought in:

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

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

47 (3) The county of the principal office in this state of any one of the defendants that is not a
48 natural person; or
49

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

3 2. If a civil action is brought under section 188.815 or section 188.820 in any one of the
4 venues described in subsection 1 of this section, the action shall not be transferred to a different
5 venue without the written consent of all parties.

6 188.840. 1. Notwithstanding any other law, the state shall have sovereign immunity, each of
7 its political subdivisions shall have governmental immunity, and each officer and employee of this
8 state or a political subdivision shall have official immunity, as well as sovereign or governmental
9 immunity, as applicable, in any action, claim, counterclaim, or any type of legal or equitable action
10 that challenges the validity of any provision or application of this chapter, on constitutional grounds
11 or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or
12 employee of this state or a political subdivision from enforcing any provision or application of this
13 chapter, unless such immunity has been abrogated or preempted by federal law in a manner
14 consistent with the Constitution of the United States.

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

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

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

27 5. Nothing in this section or chapter shall be construed to prevent a litigant from asserting
28 the invalidity or unconstitutionality of any provision or application of this chapter or Missouri law
29 as a defense to any action, claim, or counterclaim brought against that litigant.

30 188.850. 1. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of
31 determining the severability of a state statute regulating abortion the Supreme Court of the United
32 States held that an explicit statement of legislative intent is controlling, it is the intent of the
33 legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter,
34 and every application of the provisions in this chapter to every person, group of persons, or
35 circumstances, are severable from each other.

36 2. If any application of any provision in this chapter to any person, group of persons, or
37 circumstances is found by a court to be invalid, preempted, unconstitutional, or to impose an undue
38 burden on any woman or group of women seeking an abortion, then the remaining applications of
39 such provision to all other persons and circumstances shall be severed and preserved and shall
40 remain in effect. All constitutionally valid applications of the provisions in this chapter, and every
41 application of those provisions that can be enforced without imposing an undue burden on women
42 seeking abortions, shall be severed from any applications that a court finds to be invalid,
43 preempted, unconstitutional, or to impose an undue burden on women seeking abortions, and the
44 valid applications shall remain in force, because it is the legislature's intent and priority that every
45 valid application be allowed to stand alone. Even if a reviewing court finds a provision of this
46 chapter to impose an undue burden in a large or substantial fraction of relevant cases, the
47 applications that do not present an undue burden shall be severed from the remaining applications
48 and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the
49 persons, group of persons, or circumstances for which the statute's application does not impose an

1 undue burden.

2 3. The legislature further declares that it would have enacted this chapter, and each
3 provision, section, subsection, sentence, clause, phrase, word, and all constitutional applications of
4 the provisions of this chapter, irrespective of the fact that any provision, section, subsection,
5 sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid,
6 preeempted, unconstitutional, or to impose an undue burden.

7 4. If any provision of this chapter is found by any court to be unconstitutionally vague, then
8 the applications of that provision that do not present constitutional vagueness problems shall be
9 severed and remain in force, consistent with the severability requirements of subsections 1, 2, and 3
10 of this section.

11 5. No court may decline to enforce the severability requirements of subsections 1, 2, 3, and
12 4 of this section on the ground that severance would rewrite the statute or involve the court in
13 legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from
14 enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same
15 words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

16 (1) Is nothing more than an edict prohibiting enforcement that may subsequently be vacated
17 by a later court if that court has a different understanding of the requirements of the Missouri
18 Constitution or United States Constitution;

19 (2) Is not a formal amendment of the language in a statute; and

20 (3) No more rewrites a statute than a decision by the executive not to enforce a duly enacted
21 statute in a limited and defined set of circumstances.

22 6. If any state or federal court disregards the severability requirements of subsections 1, 2, 3,
23 4, or 5 of this section, and declares or finds any provision of this chapter facially unconstitutional,
24 when there are discrete applications of that provision can be enforced against a person, group of
25 persons, or circumstances without violating federal law, the federal or state constitutions, or
26 imposing an undue burden on women seeking abortions, then that provision shall be interpreted, as a
27 matter of state law, as if the legislature had enacted a provision limited to the persons, group of
28 persons, or circumstances for which the provision's application will not violate federal law, the
29 federal or state constitutions, or impose an undue burden on women seeking abortions, and every
30 court shall adopt this saving construction of that provision until the court ruling that pronounced the
31 provision facially unconstitutional is vacated or overruled."; and

32
33 Further amend said bill by amending the title, enacting clause, and intersectional references
34 accordingly.