

SECOND REGULAR SESSION

HOUSE BILL NO. 1987

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

3693H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 188.015, 188.026, 188.027, 188.035, 188.052, 188.056, 188.057, 188.058, 188.075, 188.375, 208.152, 208.153, 208.164, and 208.659, RSMo, and to enact in lieu thereof fourteen new sections relating to abortion, with penalty provisions.

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

Section A. Sections 188.015, 188.026, 188.027, 188.035, 188.052, 188.056, 188.057, 188.058, 188.075, 188.375, 208.152, 208.153, 208.164, and 208.659, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 188.015, 188.026, 188.027, 188.035, 188.052, 188.075, 188.202, 188.207, 188.375, 188.900, 208.152, 208.153, 208.164, and 208.659, 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 unborn child;

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

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.

14 (6) **"Fetal heartbeat", cardiac activity or the steady and repetitive rhythmic**
15 **contraction of the fetal heartbeat within the gestational sac;**

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

18 (8) **"Gestational sac", the structure comprising the extraembryonic membranes**
19 **that envelop the unborn child and that is typically visible by ultrasound after the fourth**
20 **week of pregnancy;**

21 ~~(7)~~ (9) "Medical emergency", a condition which, based on reasonable medical
22 judgment, so complicates the medical condition of a pregnant woman as to necessitate the
23 immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a
24 delay will create a serious risk of substantial and irreversible physical impairment of a major
25 bodily function of the pregnant woman;

26 ~~(8)~~ (10) "Physician", any person licensed to practice medicine in this state by the
27 state board of registration for the healing arts;

28 (11) **"Pregnancy", the human female reproductive condition that:**

29 (a) **Begins with fertilization;**

30 (b) **Occurs when the woman is carrying the developing human offspring; and**

31 (c) **Is calculated from the first day of the woman's last menstrual period;**

32 (12) **"Pregnant woman" or "pregnant women", includes any individual who is**
33 **pregnant, regardless of any gender identity that the pregnant person attempts to assert**
34 **or claim;**

35 ~~(9)~~ (13) "Reasonable medical judgment", a medical judgment that would be made
36 by a reasonably prudent physician, knowledgeable about the case and the treatment
37 possibilities with respect to the medical conditions involved;

38 ~~(10)~~ (14) "Unborn child", the offspring of human beings from the moment of
39 conception until birth and at every stage of its biological development, including the human
40 conceptus, zygote, morula, blastocyst, embryo, and fetus;

41 ~~(11)~~ (15) "Viability" or "viable", that stage of fetal development when the life of the
42 unborn child may be continued indefinitely outside the womb by natural or artificial life-
43 supportive systems;

44 ~~(12)~~ (16) "Viable pregnancy" or "viable intrauterine pregnancy", in the first
45 trimester of pregnancy, an intrauterine pregnancy that can potentially result in a liveborn
46 baby;

47 (17) **"Woman" or "women", includes any person whose biological sex is female,**
48 **including any person with XX chromosomes and any person with a uterus, regardless of**
49 **any gender identity that the person attempts to assert or claim.**

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

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

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

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

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

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

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

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

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

42 (8) Confirmation of a pregnancy can be indicated through the detection of the unborn
43 child's heartbeat, while the absence of a heartbeat can be an indicator of the death of the
44 unborn child if the child has reached the point of development when a heartbeat should be
45 detectable;

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

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

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

65 (12) While the overall risk of miscarriage after clinical recognition of pregnancy is
66 twelve to fifteen percent, the incidence decreases significantly if cardiac activity in the unborn
67 child has been confirmed. The detection of a heartbeat in an unborn child is a reliable
68 indicator of a viable pregnancy and that the unborn child will likely survive to birth,
69 especially if presenting for a prenatal visit at eight weeks gestational age or later. For
70 asymptomatic women attending a first prenatal visit between six and eleven weeks gestational
71 age where a heartbeat was confirmed through an ultrasound, the subsequent risk of
72 miscarriage is one and six-tenths percent. Although the risk is higher at six weeks gestational
73 age at nine and four-tenths percent, it declines rapidly to one and five-tenths percent at eight
74 weeks gestational age, and less than one percent at nine weeks gestational age or later;

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

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

84 (15) By the fifth week of gestation, the development of the brain of the unborn child
85 is underway. Brain waves have been measured and recorded as early as the eighth week of
86 gestational age in children who were removed during an ectopic pregnancy or hysterectomy.
87 Fetal magnetic resonance imaging (MRI) of an unborn child's brain is used during the second
88 and third trimesters of pregnancy and brain activity has been observed using MRI;

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

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

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

102 (19) Substance P, a peptide that functions as a neurotransmitter, especially in the
103 transmission of pain, is present in the dorsal horn of the spinal cord of the unborn child at
104 eight to ten weeks gestational age. Enkephalins, peptides that play a role in
105 neurotransmission and pain modulation, are present in the dorsal horn at twelve to
106 fourteen weeks gestational age;

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

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

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

117 (23) A leading textbook on prenatal development of the human brain states, "It may
118 be concluded that, although nociperception (the actual perception of pain) awaits the
119 appearance of consciousness, nociception (the experience of pain) is present some time before
120 birth. In the absence of disproof, it is merely prudent to assume that pain can be experienced
121 even early in prenatal life (Dr. J. Wisser, Zürich): the fetus should be given the benefit of the
122 doubt". Ronan O'Rahilly & Fabiola Müller. *The Embryonic Human Brain: An Atlas of*
123 *Developmental Stages* (3d ed. [~~2005~~] 2006);

124 (24) By fourteen or fifteen weeks gestational age or later, the predominant abortion
125 method in Missouri is dilation and evacuation (D&E). The D&E abortion method includes
126 the dismemberment, disarticulation, and exsanguination of the unborn child, causing the
127 unborn child's death;

128 (25) The Supreme Court acknowledged in *Gonzales v. Carhart*, 550 U.S. 124, 160
129 (2007), that "the standard D&E is in some respects as brutal, if not more, than the intact
130 D&E" partial birth abortion method banned by Congress and upheld as facially constitutional
131 by the Supreme Court, even though the federal ban was applicable both before and after
132 viability and had no exception for the health of the mother;

133 (26) Missouri's ban on the partial birth abortion method, section 565.300, is in effect
134 because of *Gonzales v. Carhart* and the Supreme Court's subsequent decision in *Nixon v.*
135 *Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc.*, 550 U.S.
136 901 (2007), to vacate and remand to the appellate court the prior invalidation of section
137 565.300. Since section 565.300, like Congress' ban on partial birth abortion, is applicable
138 both before and after viability, there is ample precedent for the general assembly to
139 constitutionally prohibit the brutal D&E abortion method at fourteen weeks gestational age or
140 later, even before the unborn child is viable, with a medical emergency exception;

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

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

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

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

156 (b) An animal, it would be unlawful under state law because it would not be a humane
157 method, humane euthanasia, or humane killing of certain animals under chapters 273 and
158 578;

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

166 (31) The opinion of the world community, reflected in the laws of the United Nation's
167 193-member states and six other entities, is that in most countries, most abortions are
168 prohibited after twelve weeks gestational age or later;

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

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

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

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

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

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

184 (34) In addition to the short-term risks of an abortion, studies have found that the
185 long-term physical and psychological consequences of abortion for women include, but are
186 not limited to, an increased risk of preterm birth, low birthweight babies, and placenta previa
187 in subsequent pregnancies, as well as serious behavioral health issues. These risks increase as
188 abortions are performed or induced at later gestational ages. These consequences of an
189 abortion have a detrimental effect not only on women, their children, and their families, but
190 also on an already burdened health care system, taxpayers, and the workforce;

191 (35) A large percentage of women who have an abortion performed or induced upon
192 them in Missouri each year are at less than eight weeks gestational age, a large majority are at
193 less than fourteen weeks gestational age, a larger majority are at less than eighteen weeks
194 gestational age, and an even larger majority are at less than twenty weeks gestational age. A
195 prohibition on performing or inducing an abortion at eight weeks gestational age or later, with
196 a medical emergency exception, does not amount to a substantial obstacle to a large fraction
197 of women for whom the prohibition is relevant, which is pregnant women in Missouri who
198 are seeking an abortion while not experiencing a medical emergency. The burden that a
199 prohibition on performing or inducing an abortion at eight, fourteen, eighteen, or twenty
200 weeks gestational age or later, with a medical emergency exception, might impose on
201 abortion access[⁷] is outweighed by the benefits conferred upon the following:

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

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

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

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

209 (36) In *Webster*, the Supreme Court noted, in upholding a Missouri statute, "that there
210 may be a 4-week error in estimating gestational age". *Webster*, 492 U.S. at 516. Thus, an
211 unborn child thought to be eight weeks gestational age might in fact be twelve weeks
212 gestational age, when an abortion poses a greater risk to the woman and the unborn child is
213 considerably more developed. An unborn child at fourteen weeks gestational age might be
214 eighteen weeks gestational age and an unborn child at eighteen weeks gestational age might
215 be twenty-two weeks gestational age, when an abortion poses a greater risk to the woman, the
216 unborn child is considerably more developed, the abortion method likely to be employed is
217 more brutal, and the risk of pain experienced by the unborn child is greater. An unborn child
218 at twenty weeks gestational age might be twenty-four weeks gestational age, when an
219 abortion poses a greater risk to the woman, the unborn child is considerably more developed,

220 the abortion method likely to be employed is more brutal, the risk of pain experienced by the
221 unborn child is greater, and the unborn child may be viable.

222 3. The state of Missouri is bound by Article VI, Clause 2 of the Constitution of the
223 United States that "all treaties made, or which shall be made, under the authority of the United
224 States, shall be the supreme law of the land". One such treaty is the International Covenant
225 on Civil and Political Rights, entered into force on March 23, 1976, and adopted by the
226 United States on September 8, 1992. In ratifying the Covenant, the United States declared
227 that while the provisions of Articles 1 through 27 of the Covenant are not self-executing, the
228 United States' understanding is that state governments share responsibility with the federal
229 government in implementing the Covenant.

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

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

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

241 (2) Encouraging childbirth over abortion;

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

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

245 (5) Preserving the integrity of the medical profession and regulating and restricting
246 practices that might cause the medical profession or society as a whole to become insensitive,
247 even disdainful, to life. This includes regulating and restricting abortion methods that are not
248 only brutal and painful, but if allowed to continue, will further coarsen society to the
249 humanity of not only unborn children, but all vulnerable and innocent human life, making it
250 increasingly difficult to protect such life;

251 (6) Ending the incongruities in state law by permitting some unborn children to be
252 killed by abortion, while requiring that unborn children be protected in nonabortion
253 circumstances through, including, but not limited to, homicide, assault, self-defense, and
254 defense of another statutes; laws guaranteeing prenatal health care, emergency care, and
255 testing; state-sponsored health insurance for unborn children; the prohibition of restraints in
256 correctional institutions to protect pregnant offenders and their unborn children; and

257 protecting the interests of unborn children by the appointment of conservators, guardians, and
258 representatives;

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

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

188.027. 1. Except in cases of medical emergency, no abortion shall be performed or
2 induced on a woman without her voluntary and informed consent, given freely and without
3 coercion. Consent to an abortion is voluntary and informed and given freely and without
4 coercion if, and only if, at least seventy-two hours prior to the abortion:

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

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

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

11 a. A description of the proposed abortion method;

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

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

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

21 (d) A statement that the physician performing or inducing the abortion is available for
22 any questions concerning the abortion, together with the telephone number that the physician
23 may be later reached to answer any questions that the woman may have;

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

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

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

32 (2) The physician who is to perform or induce the abortion or a qualified professional
33 has presented the woman, in person, printed materials provided by the department, which
34 describe the probable anatomical and physiological characteristics of the unborn child at two-
35 week gestational increments from conception to full term, including color photographs or
36 images of the developing unborn child at two-week gestational increments. Such descriptions
37 shall include information about brain and heart functions, the presence of external members
38 and internal organs during the applicable stages of development and information on when the
39 unborn child is viable. The printed materials shall prominently display the following
40 statement: "The life of each human being begins at conception. Abortion will terminate the
41 life of a separate, unique, living human being.";

42 (3) The physician who is to perform or induce the abortion, a qualified professional,
43 or the referring physician has presented the woman, in person, printed materials provided by
44 the department, which describe the various surgical and drug-induced methods of abortion
45 relevant to the stage of pregnancy, as well as the immediate and long-term medical risks
46 commonly associated with each abortion method including, but not limited to, infection,
47 hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability
48 to carry a subsequent child to term, and the possible adverse psychological effects associated
49 with an abortion;

50 (4) The physician who is to perform or induce the abortion or a qualified professional
51 shall provide the woman with the opportunity to view at least seventy-two hours prior to the
52 abortion an active ultrasound of the unborn child [~~and hear the heartbeat of the unborn child if~~
53 ~~the heartbeat is audible~~]. The woman shall be provided with a geographically indexed list
54 maintained by the department of health care providers, facilities, and clinics that perform
55 ultrasounds, including those that offer ultrasound services free of charge. Such materials
56 shall provide contact information for each provider, facility, or clinic including telephone
57 numbers and, if available, website addresses. Should the woman decide to obtain an
58 ultrasound from a provider, facility, or clinic other than the abortion facility, the woman shall
59 be offered a reasonable time to obtain the ultrasound examination before the date and time set
60 for performing or inducing an abortion. The person conducting the ultrasound shall ensure
61 that the active ultrasound image is of a quality consistent with standard medical practice in the
62 community, contains the dimensions of the unborn child, and accurately portrays the presence
63 of external members and internal organs, if present or viewable, of the unborn child. [~~The~~
64 ~~auscultation of fetal heart tone must also be of a quality consistent with standard medical~~
65 ~~practice in the community.~~] If the woman chooses to view the ultrasound [~~or hear the~~
66 ~~heartbeat or both~~] at the abortion facility, the viewing [~~or hearing or both~~] shall be provided to

67 her at the abortion facility at least seventy-two hours prior to the abortion being performed or
68 induced;

69 (5) The printed materials provided by the department shall include information on the
70 possibility of an abortion causing pain in the unborn child. This information shall include, but
71 need not be limited to, the following:

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

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

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

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

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

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

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

92 (a) Identify on a geographical basis public and private agencies available to assist a
93 woman in carrying her unborn child to term, and to assist her in caring for her dependent child
94 or placing her child for adoption, including agencies commonly known and generally referred
95 to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption
96 agencies. Such materials shall provide a comprehensive list by geographical area of the
97 agencies, a description of the services they offer, and the telephone numbers and addresses of
98 the agencies; provided that such materials shall not include any programs, services,
99 organizations, or affiliates of organizations that perform or induce, or assist in the performing
100 or inducing of, abortions or that refer for abortions;

101 (b) Explain the Missouri alternatives to abortion services program under section
102 188.325, and any other programs and services available to pregnant women and mothers of
103 newborn children offered by public or private agencies which assist a woman in carrying her

104 unborn child to term and assist her in caring for her dependent child or placing her child for
105 adoption, including but not limited to prenatal care; maternal health care; newborn or infant
106 care; mental health services; professional counseling services; housing programs; utility
107 assistance; transportation services; food, clothing, and supplies related to pregnancy;
108 parenting skills; educational programs; job training and placement services; drug and alcohol
109 testing and treatment; and adoption assistance;

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

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

119 (7) The physician who is to perform or induce the abortion or a qualified professional
120 has presented the woman, in person, printed materials provided by the department explaining
121 that the father of the unborn child is liable to assist in the support of the child, even in
122 instances where he has offered to pay for the abortion. Such materials shall include
123 information on the legal duties and support obligations of the father of a child, including, but
124 not limited to, child support payments, and the fact that paternity may be established by the
125 father's name on a birth certificate or statement of paternity, or by court action. Such printed
126 materials shall also state that more information concerning paternity establishment and child
127 support services and enforcement may be obtained by calling the family support division
128 within the Missouri department of social services; and

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

133 2. All information required to be provided to a woman considering abortion by
134 subsection 1 of this section shall be presented to the woman individually, in the physical
135 presence of the woman and in a private room, to protect her privacy, to maintain the
136 confidentiality of her decision, to ensure that the information focuses on her individual
137 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure that
138 she is not a victim of coerced abortion. Should a woman be unable to read materials provided
139 to her, they shall be read to her. Should a woman need an interpreter to understand the
140 information presented in the written materials, an interpreter shall be provided to her. Should

141 a woman ask questions concerning any of the information or materials, answers shall be
142 provided in a language she can understand.

143 3. No abortion shall be performed or induced unless and until the woman upon whom
144 the abortion is to be performed or induced certifies in writing on a checklist form provided by
145 the department that she has been presented all the information required in subsection 1 of this
146 section, that she has been provided the opportunity to view an active ultrasound image of the
147 unborn child ~~[and hear the heartbeat of the unborn child if it is audible,]~~ and that she further
148 certifies that she gives her voluntary and informed consent, freely and without coercion, to the
149 abortion procedure.

150 4. No physician shall perform or induce an abortion unless and until the physician has
151 obtained from the woman her voluntary and informed consent given freely and without
152 coercion. If the physician has reason to believe that the woman is being coerced into having
153 an abortion, the physician or qualified professional shall inform the woman that services are
154 available for her and shall provide her with private access to a telephone and information
155 about such services, including but not limited to the following:

- 156 (1) Rape crisis centers, as defined in section 455.003;
157 (2) Shelters for victims of domestic violence, as defined in section 455.200; and
158 (3) Orders of protection, pursuant to chapter 455.

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

- 161 (1) The immediate and long-term medical risks to the woman associated with the
162 proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear
163 or uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent
164 child to term, and possible adverse psychological effects associated with the abortion; and
165 (2) The immediate and long-term medical risks to the woman, in light of the
166 anesthesia and medication that is to be administered, the unborn child's gestational age, and
167 the woman's medical history and medical conditions.

168 6. No physician shall perform or induce an abortion unless and until the physician has
169 received and signed a copy of the form prescribed in subsection 3 of this section. The
170 physician shall retain a copy of the form in the patient's medical record.

171 7. In the event of a medical emergency, the physician who performed or induced the
172 abortion shall clearly certify in writing the nature and circumstances of the medical
173 emergency. This certification shall be signed by the physician who performed or induced the
174 abortion, and shall be maintained under section 188.060.

175 8. No person or entity shall require, obtain, or accept payment for an abortion from or
176 on behalf of a patient until at least seventy-two hours have passed since the time that the
177 information required by subsection 1 of this section has been provided to the patient. Nothing

178 in this subsection shall prohibit a person or entity from notifying the patient that payment for
179 the abortion will be required after the seventy-two-hour period has expired if she voluntarily
180 chooses to have the abortion.

181 9. The term "qualified professional" as used in this section shall refer to a physician,
182 physician assistant, registered nurse, licensed practical nurse, psychologist, licensed
183 professional counselor, or licensed social worker, licensed or registered under chapter 334,
184 335, or 337, acting under the supervision of the physician performing or inducing the
185 abortion, and acting within the course and scope of his or her authority provided by law. The
186 provisions of this section shall not be construed to in any way expand the authority otherwise
187 provided by law relating to the licensure, registration, or scope of practice of any such
188 qualified professional.

189 10. By November 30, 2010, the department shall produce the written materials and
190 forms described in this section. Any written materials produced shall be printed in a typeface
191 large enough to be clearly legible. All information shall be presented in an objective,
192 unbiased manner designed to convey only accurate scientific and medical information. The
193 department shall furnish the written materials and forms at no cost and in sufficient quantity
194 to any person who performs or induces abortions, or to any hospital or facility that provides
195 abortions. The department shall make all information required by subsection 1 of this section
196 available to the public through its department website. The department shall maintain a toll-
197 free, twenty-four-hour hotline telephone number where a caller can obtain information on a
198 regional basis concerning the agencies and services described in subsection 1 of this section.
199 No identifying information regarding persons who use the website shall be collected or
200 maintained. The department shall monitor the website on a regular basis to prevent tampering
201 and correct any operational deficiencies.

202 11. In order to preserve the compelling interest of the state to ensure that the choice to
203 consent to an abortion is voluntary and informed, and given freely and without coercion, the
204 department shall use the procedures for adoption of emergency rules under section 536.025 in
205 order to promulgate all necessary rules, forms, and other necessary material to implement this
206 section by November 30, 2010.

207 12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-
208 hour waiting period for an abortion are ever temporarily or permanently restrained or
209 enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours;
210 provided, however, that if such temporary or permanent restraining order or injunction is
211 stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall
212 be seventy-two hours.

188.035. [~~Whoever, with intent to do so, shall take the life of a child aborted alive, shall be guilty of murder of the second degree.~~] 1. This section shall be known and may be cited as the "Born-Alive Abortion Survivors Protection Act".

2. A child born alive during or after an abortion or an attempted abortion shall have all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, including any other liveborn child.

3. Any health care provider licensed, registered, or certified in this state who is present at the time a child is born alive during or after an abortion or attempted abortion shall:

(1) Exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age; and

(2) Ensure that the child born alive is immediately transported and admitted to a hospital following the exercise of skill, care, and diligence required under subdivision (1) of this subsection.

4. In addition to any criminal or administrative liability that may be incurred, a person shall be civilly liable when he or she:

(1) Knowingly, recklessly, or negligently causes the death of a child who is born alive during or after an abortion or an attempted abortion;

(2) Knowingly fails to comply with any of the provisions of subsection 3 of this section if the person is a health care provider subject to such provisions;

(3) Knowingly performs or induces, or attempts to perform or induce, an unlawful abortion upon another person;

(4) Knowingly aids or abets another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion;

(5) Knowingly, recklessly, or negligently supplies or makes available any instrument, device, medicine, drug, or any other means or substance for another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion; or

(6) Knowingly incites, solicits, or otherwise uses speech or writing as an integral part of conduct in violation of a valid criminal statute to influence another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion.

5. If injury or death arises out of or results from any circumstance under subsection 4 of this section to any of the following persons, including:

37 **(1) A person upon whom the unlawful abortion or attempted unlawful abortion**
38 **was performed or induced;**

39 **(2) A person who underwent a self-induced abortion or attempted self-induced**
40 **abortion or who procured an unlawful abortion or attempted unlawful abortion;**

41 **(3) A child who was born alive during or after an abortion or attempted**
42 **abortion; or**

43 **(4) An unborn child,**

44

45 **a cause of action for personal injury, bodily injury, or wrongful death may be brought.**
46 **In a cause of action for wrongful death, the spouse, partner, parents, siblings, and**
47 **children of the deceased person, child, or unborn child shall be entitled to bring the**
48 **action. Damages for injury or death may be recovered for including, but not limited to,**
49 **any damages described in chapters 537 and 538 which are applicable; loss of future**
50 **fertility; loss of love and companionship of the spouse, partner, parent, child, unborn**
51 **child, or sibling; and for injury to or destruction of the spouse, partner, parent, child,**
52 **unborn child, or sibling relationship in such amount as, under all the circumstances of**
53 **the case, may be just. The court shall also award a prevailing plaintiff reasonable**
54 **attorney's fees and litigation costs including, but not limited to, expert witness fees and**
55 **expenses as part of the costs. A defendant shall not plead or prove as a defense that the**
56 **plaintiff assumed the risk of undergoing, or consented to undergo, a self-induced**
57 **abortion or attempted self-induced abortion or that the plaintiff assumed the risk of**
58 **procuring, or consented to procure, an unlawful abortion or attempted unlawful**
59 **abortion. The fact that a plaintiff consented to undergo a self-induced abortion or**
60 **attempted self-induced abortion or to procure an unlawful abortion or attempted**
61 **unlawful abortion shall not, in and of itself, be considered evidence of contributory or**
62 **comparative negligence. Any exculpatory agreement between or among parties that is**
63 **related to undergoing a self-induced abortion or attempted self-induced abortion or to**
64 **procuring an unlawful abortion or attempted unlawful abortion shall be against public**
65 **policy and shall be void.**

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

8 **reports shall also include the time, date, method, and results of the heartbeat test**
9 **performed prior to the abortion under section 188.900.**

10 2. An individual complication report for any post-abortion care performed upon a
11 woman shall be completed by the physician providing such post-abortion care. This report
12 shall include:

13 (1) The date of the abortion;

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

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

17 3. All abortion reports shall be signed by the attending physician who performed or
18 induced the abortion and submitted to the department within forty-five days from the date of
19 the abortion. All complication reports shall be signed by the physician providing the post-
20 abortion care and submitted to the department within forty-five days from the date of the post-
21 abortion care.

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

24 5. The department shall be responsible for collecting all abortion reports and
25 complication reports and collating and evaluating all data gathered therefrom and shall
26 annually publish a statistical report based on such data from abortions performed or induced
27 in the previous calendar year.

188.075. 1. Any person who [~~contrary to the provisions of sections 188.010 to~~
2 ~~188.085 knowingly performs, induces, or aids in the performance or inducing of any abortion~~
3 ~~or~~] knowingly fails to perform any action required by sections 188.010 to 188.085 shall be
4 guilty of a class A misdemeanor, unless a different penalty is provided for in state law, and,
5 upon conviction, shall be punished as provided by law.

6 2. It shall be an affirmative defense for any person alleged to have violated any
7 provision of this chapter that the person performed an action or did not perform an action
8 because of a medical emergency. This affirmative defense shall be available in criminal,
9 civil, and administrative actions or proceedings. The defendant shall have the burden of
10 persuasion that the defense is more probably true than not.

11 3. **Except as provided under section 188.900**, the attorney general shall have
12 concurrent original jurisdiction throughout the state, along with each prosecuting attorney and
13 circuit attorney within their respective jurisdictions, to commence actions for a violation of
14 any provision of this chapter, for a violation of any state law on the use of public funds for an
15 abortion, or for a violation of any state law which regulates an abortion facility or a person
16 who performs or induces an abortion. The attorney general, or prosecuting attorney or circuit
17 attorney within their respective jurisdictions, may seek injunctive or other relief against any

18 person who, or entity which, is in violation of any provision of this chapter, misuses public
19 funds for an abortion, or violates any state law which regulates an abortion facility or a person
20 who performs or induces an abortion.

**188.202. 1. No federal act, law, executive order, administrative order, rule, or
2 regulation shall infringe on the rights of the people of Missouri to:**

3 **(1) Protect state sovereignty and state taxpayers by restricting public funds,
4 public facilities, and public employees from being used to perform, induce, or assist in
5 an abortion, except as provided for in state statutes;**

6 **(2) Encourage childbirth over abortion in the use of the state's public funds,
7 public facilities, and public employees;**

8 **(3) Defend the religious beliefs or moral convictions of any person who, or entity
9 that, does not want to be forced to directly or indirectly fund or participate in abortion;**

10 **(4) Prevent the state or its political subdivisions from being coerced, compelled,
11 or commandeered by the federal government to enact, administer, or enforce a federal
12 regulatory program that directly or indirectly funds abortion; and**

13 **(5) Prohibit the federal government from commanding or conscripting public
14 officials of the state or its political subdivisions to enforce a federal regulatory program
15 that directly or indirectly funds abortion.**

16 **2. In any action to enforce the provisions of sections 188.200 to 188.215 by a
17 taxpayer under the provisions of section 188.220, a court of competent jurisdiction may
18 order injunctive or other equitable relief, recovery of damages or other legal remedies,
19 or both, as well as payment of reasonable attorney's fees, costs, and expenses of the
20 taxpayer. The relief and remedies set forth shall not be deemed exclusive and shall be in
21 addition to any other relief or remedies permitted by law.**

22 **3. In addition to a cause of action brought by a taxpayer under section 188.220,
23 the attorney general is also authorized to bring a cause of action to enforce the
24 provisions of sections 188.200 to 188.215.**

**188.207. It shall be unlawful for any public funds to be expended to any abortion
2 facility or to any affiliate or associate of such abortion facility.**

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

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

5 3. Notwithstanding any other provision of law to the contrary, no abortion shall be
6 performed or induced upon a woman carrying a late-term pain-capable unborn child, except
7 in cases of medical emergency. Any person who knowingly performs or induces an abortion
8 of a late-term pain-capable unborn child in violation of this subsection shall be guilty of a

9 class B felony, as well as subject to suspension or revocation of his or her professional license
10 by his or her professional licensing board. A woman upon whom an abortion is performed or
11 induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the
12 provisions of this subsection.

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

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

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

31 ~~[7.]~~ 6. When in cases of medical emergency a physician performs or induces an
32 abortion upon a woman during her third trimester carrying a late-term pain-capable unborn
33 child, there shall be in attendance a physician other than the physician performing or inducing
34 the abortion who shall take control of and provide immediate medical care for a child born as
35 a result of the abortion.

36 ~~[8.]~~ 7. Any physician who knowingly violates any of the provisions of subsection 6 or
37 7 of this section shall be guilty of a class D felony, as well as subject to suspension or
38 revocation of his or her professional license by his or her professional licensing board. A
39 woman upon whom an abortion is performed or induced in violation of subsection 6 or 7 of
40 this section shall not be prosecuted for a conspiracy to violate the provisions of those
41 subsections.

42 ~~[9.]~~ 8. If any one or more provisions, subsections, sentences, clauses, phrases, or
43 words of this section or the application thereof to any person, circumstance, or period of
44 gestational age is found to be unenforceable, unconstitutional, or invalid by a court of
45 competent jurisdiction, the same is hereby declared to be severable and the balance of the

46 section shall remain effective notwithstanding such unenforceability, unconstitutionality, or
47 invalidity. The general assembly hereby declares that it would have passed this section, and
48 each provision, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact
49 that any one or more provisions, subsections, sentences, clauses, phrases, or words of the
50 section, or the application of the section to any person, circumstance, or period of gestational
51 age, would be declared unenforceable, unconstitutional, or invalid.

**188.900. 1. The Missouri general assembly finds, according to contemporary
2 medical research, that:**

3 **(1) Fetal heartbeat has become a key medical predictor that an unborn child will
4 reach live birth;**

5 **(2) Cardiac activity begins at a biologically identifiable moment in time,
6 normally when the fetal heartbeat is formed in the gestational sac;**

7 **(3) The state of Missouri has compelling interests from the outset of a woman's
8 pregnancy in protecting the health of the woman and the life of the unborn child; and**

9 **(4) To make an informed choice about whether to continue her pregnancy, the
10 pregnant woman has a compelling interest in knowing the likelihood of her unborn child
11 surviving to full-term birth based on the presence of cardiac activity.**

12 **2. For the purposes of determining the presence of a fetal heartbeat under this
13 section, "standard medical practice" includes employing the appropriate means of
14 detecting the heartbeat based on the estimated gestational age of the unborn child and
15 the condition of the woman and her pregnancy.**

16 **3. Except as provided under subsection 6 of this section, a physician shall not
17 knowingly perform or induce an abortion on a pregnant woman unless the physician
18 has determined, in accordance with this section, whether the woman's unborn child has
19 a detectable fetal heartbeat. In making such determination, the physician shall use a
20 test that is:**

21 **(1) Consistent with the physician's good faith and reasonable understanding of
22 standard medical practice; and**

23 **(2) Appropriate for the estimated gestational age of the unborn child and the
24 condition of the pregnant woman and her pregnancy.**

25 **4. A physician making a determination under subsection 3 of this section shall
26 record in the pregnant woman's medical record:**

27 **(1) The estimated gestational age of the unborn child;**

28 **(2) The method used to estimate the gestational age; and**

29 **(3) The test used for detecting a fetal heartbeat, including the date, time, and
30 results of the test.**

31 **5. Except as provided under subsection 6 of this section, a physician shall not**
32 **knowingly perform or induce an abortion on a pregnant woman if the physician**
33 **detected a fetal heartbeat for the unborn child or failed to perform a test to detect a fetal**
34 **heartbeat. A physician does not violate this subsection if the physician performed a test**
35 **for a fetal heartbeat and did not detect a fetal heartbeat. This subsection does not**
36 **affect:**

37 **(1) The provisions of this chapter that restrict or regulate an abortion by a**
38 **particular method or during a particular stage of pregnancy; or**

39 **(2) Any other provision of state law that regulates or prohibits abortion.**

40 **6. Subsections 1 to 5 of this section do not apply if a physician believes a medical**
41 **emergency exists that prevents compliance with this section. A physician who performs**
42 **or induces an abortion when the physician believes a medical emergency exists shall**
43 **make written notations in the pregnant woman's medical record of:**

44 **(1) The physician's belief that a medical emergency necessitated the abortion;**
45 **and**

46 **(2) The medical conditions of the pregnant woman that prevented compliance**
47 **with subsections 1 to 5 of this section.**

48

49 **A physician performing or inducing an abortion under this subsection shall maintain in**
50 **the physician's practice records a copy of the notations made under subdivisions (1) and**
51 **(2) of this subsection.**

52 **7. The requirements of this section shall not apply to an abortion performed at**
53 **the behest of federal agencies, contractors, or employees that are carrying out duties**
54 **under federal law if the enforcement of those requirements would violate the doctrines**
55 **of preemption or intergovernmental immunity.**

56 **8. The provisions of this section shall not be construed to:**

57 **(1) Authorize the initiation of a cause of action against or the prosecution of a**
58 **woman on whom an abortion is performed or induced or attempted to be performed or**
59 **induced in violation of this section;**

60 **(2) Wholly or partly repeal, either expressly or by implication, any other statute**
61 **that requires or prohibits abortion;**

62 **(3) Restrict a political subdivision from regulating or prohibiting abortion in a**
63 **manner that is at least as stringent as the laws of this state; or**

64 **(4) Create or recognize a right to abortion before a fetal heartbeat is detected.**

65 **9. (1) Notwithstanding the provisions of any other law, the requirements of this**
66 **section shall be enforced exclusively through the private civil actions described in**
67 **subsection 10 of this section. No direct or indirect enforcement of this section shall be**

68 taken or threatened by this state, a political subdivision, a prosecuting attorney, or an
69 executive or administrative officer or employee of this state or of a political subdivision
70 against any person, and no violation of this section shall be used to justify or trigger the
71 enforcement of any other law, except as provided in subsection 10 of this section.

72 (2) Subdivision (1) of this subsection shall not be construed to:

73 (a) Legalize the conduct prohibited by this section;

74 (b) Limit in any way or affect the availability of a remedy established under
75 subsection 10 of this section; or

76 (c) Limit the enforceability of any other laws that regulate or prohibit abortion.

77 (3) Neither the state nor a political subdivision, prosecuting attorney, or an
78 executive or administrative officer or employee of the state or of a political subdivision
79 shall act in concert or participate with anyone who brings suit under subsection 10 of
80 this section.

81 10. (1) Any person, except for the state, a political subdivision of the state, or an
82 officer or employee of a state or local governmental entity in this state, may bring a civil
83 action against any person who:

84 (a) Performs or induces an abortion in violation of this chapter;

85 (b) Knowingly engages in conduct that aids or abets the performance or
86 inducement of an abortion, including paying for or reimbursing the costs of an abortion
87 through insurance or otherwise, if the abortion is performed or induced in violation of
88 this chapter, regardless of whether the person knew or should have known that the
89 abortion would be performed or induced in violation of this chapter; or

90 (c) Intends to engage in the conduct described under paragraph (a) or (b) of this
91 subdivision.

92 (2) If a claimant prevails in an action brought under this subsection, the court
93 shall award:

94 (a) Injunctive relief sufficient to prevent the defendant from violating this
95 chapter or engaging in acts that aid or abet violations of this chapter;

96 (b) Statutory damages in an amount of not less than ten thousand dollars for
97 each abortion that the defendant performed or induced in violation of this chapter and
98 for each abortion performed or induced in violation of this chapter that the defendant
99 aided or abetted;

100 (c) Nominal and compensatory damages if the plaintiff has suffered harm from
101 the defendant's conduct including, but not limited to, loss of consortium and emotional
102 distress; and

103 (d) Costs and attorney's fees.

104 **(3) Notwithstanding subdivision (2) of this subsection, a court shall not award**
105 **relief under this subsection in response to a violation of paragraph (a) or (b) of**
106 **subdivision (1) of this subsection if the defendant demonstrates that the defendant**
107 **previously paid the full amount of statutory damages under paragraph (b) of**
108 **subdivision (2) of this subsection in a previous action for that particular abortion**
109 **performed or induced in violation of this chapter, or for the particular conduct that**
110 **aided or abetted an abortion performed or induced in violation of this chapter.**

111 **(4) Notwithstanding any other provision of law, a person shall bring an action**
112 **under this section within six years of the date the cause of action accrues.**

113 **(5) Notwithstanding any other provision of law, the following are not a defense to**
114 **an action brought under this subsection:**

115 **(a) Ignorance or mistake of law;**

116 **(b) A defendant's belief that the requirements of this chapter are**
117 **unconstitutional or were unconstitutional;**

118 **(c) A defendant's reliance on any court decision that has been overruled on**
119 **appeal or by a subsequent court, even if that court decision had not been overruled at**
120 **the time the defendant engaged in conduct that violates this chapter;**

121 **(d) A defendant's reliance on any state or federal court decision that is not**
122 **binding on the court in which the action has been brought;**

123 **(e) Nonmutual issue preclusion or nonmutual claim preclusion;**

124 **(f) The consent of the unborn child's mother to the abortion; or**

125 **(g) Any claim that the enforcement of this subsection or the imposition of civil**
126 **liability against the defendant will violate the constitutional rights of third parties,**
127 **except as provided under subsection 11 of this section.**

128 **(6) It is an affirmative defense to an action brought under this subsection if:**

129 **(a) A defendant against whom an action is brought under paragraph (b) of**
130 **subdivision (1) of this subsection reasonably believed, after conducting a reasonable**
131 **investigation, that the physician performing or inducing the abortion had complied or**
132 **would comply with this chapter; or**

133 **(b) A defendant against whom an action is brought under paragraph (c) of**
134 **subdivision (1) of this subsection reasonably believed, after conducting a reasonable**
135 **investigation, that the physician performing or inducing the abortion would comply**
136 **with this chapter.**

137

138 **The defendant has the burden of proving an affirmative defense under paragraph (a) or**
139 **(b) of this subdivision by a preponderance of the evidence.**

140 (7) This subsection shall not be construed to impose liability on any speech or
141 conduct protected by the First Amendment of the Constitution of the United States, as
142 made applicable to the states through the United States Supreme Court's interpretation
143 of the Fourteenth Amendment of the Constitution of the United States, or by Article I,
144 Section 8 of the Constitution of Missouri.

145 (8) Neither the state nor a political subdivision, prosecuting attorney, or an
146 executive or administrative officer or employee of the state or of a political subdivision
147 shall act in concert or participate with anyone who brings suit under subsection 10 of
148 this section or intervene in an action brought under this section. This subsection does
149 not prohibit a person or entity described under this subsection from filing an amicus
150 curiae brief in an action as long as that person or entity does not act in concert or
151 participation with the plaintiff or plaintiffs who bring an action under this section.

152 (9) Notwithstanding any other provision of law, a court shall not award costs or
153 attorney's fees under the Missouri Rules of Civil Procedure or any other law to a
154 defendant in an action brought under this subsection unless it is determined that the
155 plaintiff's claim was frivolous, malicious, or brought in bad faith.

156 (10) A court shall not find that an action brought under this subsection is
157 frivolous, malicious, or brought in bad faith under subdivision (9) of this subsection if
158 the plaintiff:

159 (a) Reasonably believed that the defendant performed or induced an abortion in
160 violation of any requirement or provision of this chapter, engaged in conduct that aided
161 or abetted the performance or inducement of such an abortion, or intended to engage in
162 any such conduct, regardless of whether a previous court decision declared a
163 requirement or provision of this chapter unconstitutional; or

164 (b) Brings suit seeking to overrule on appeal any previous court decision ruling
165 that a requirement or provision of this chapter is unconstitutional.

166 (11) Notwithstanding any other provision of law, the provisions of sections 1.302
167 and 537.528 shall have no application to any civil action brought under this section.

168 (12) Notwithstanding any other provision of law, a civil action under this
169 subsection shall not be brought by a person who impregnated the abortion patient
170 through an act of rape, sexual assault, or incest.

171 (13) Notwithstanding any other provision of law, a civil action under this section
172 shall not be brought against a person who performed or aided or abetted an abortion at
173 the behest of federal agencies, contractors, or employees that are carrying out duties
174 under federal law, if a prohibition on that abortion would violate the doctrines of
175 preemption or intergovernmental immunity.

176 **(14) Notwithstanding any other provision of law, a civil action under this section**
177 **shall not be brought against a common carrier who transports a pregnant woman to an**
178 **abortion provider, if the common carrier is unaware that the woman intends to abort**
179 **her unborn child.**

180 **11. (1) A defendant against whom an action is brought under subsection 10 of**
181 **this section may assert an affirmative defense to liability if:**

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

185 **(b) The imposition of civil liability on the defendant will result in an undue**
186 **burden on such abortion-seeking woman or group of abortion-seeking women.**

187

188 **The defendant has the burden of proving an affirmative defense under this subsection**
189 **by a preponderance of evidence.**

190 **(2) The affirmative defense under subdivision (1) of this subsection is not**
191 **available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973)**
192 **or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct**
193 **on which the cause of action is based occurred before the Supreme Court overruled**
194 **either of those decisions.**

195 **(3) Nothing in this section or chapter shall in any way limit or preclude a**
196 **defendant from asserting the defendant's personal constitutional rights as a defense to**
197 **liability, and a court shall not award relief if the conduct for which the defendant has**
198 **been sued was an exercise of state or federal constitutional rights that personally belong**
199 **to the defendant.**

200 **(4) Nothing in this section or chapter shall limit or preclude a defendant from**
201 **asserting the unconstitutionality of any provision of Missouri law as a defense to liability**
202 **under subsection 10 of this section.**

203 **12. (1) Notwithstanding any other provision of law, a civil action brought under**
204 **subsection 10 of this section shall be brought in:**

205 **(a) The county in which all or a substantial part of the events or omissions giving**
206 **rise to the claim occurred;**

207 **(b) The county of residence for any one of the natural person defendants at the**
208 **time the cause of action accrued;**

209 **(c) The county of the principal office in this state of any one of the defendants**
210 **that is not a natural person; or**

211 **(d) The county of residence for the claimant if the claimant is a natural person**
212 **residing in this state.**

213 **(2) If a civil action is brought under subsection 10 of this section in any one of the**
214 **venues described under subdivision (1) of this subsection, the action shall not be**
215 **transferred to a different venue without the written consent of all parties.**

216 **13. (1) Notwithstanding any other provision of law, the state shall have**
217 **sovereign immunity, each of its political subdivisions shall have governmental immunity,**
218 **and each officer and employee of the state or a political subdivision shall have official**
219 **immunity in any action, claim, or counterclaim or any type of legal or equitable action**
220 **that challenges the validity of any provision or application of this chapter, on**
221 **constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its**
222 **political subdivisions, or any officer or employee of this state or a political subdivision**
223 **from enforcing any provision or application of this chapter, unless that immunity has**
224 **been abrogated or preempted by federal law in a manner consistent with the**
225 **Constitution of the United States.**

226 **(2) Notwithstanding any other provision of law, no provision of state law shall be**
227 **construed to waive or abrogate an immunity described under subdivision (1) of this**
228 **subsection unless it expressly waives or abrogates immunity by specifically referencing**
229 **this section.**

230 **(3) Notwithstanding any other provision of law, no attorney representing the**
231 **state, its political subdivisions, or any officer or employee of this state or a political**
232 **subdivision is authorized or permitted to waive an immunity described in subdivision**
233 **(1) of this subsection or take any action that would result in a waiver of such immunity.**

234 **(4) Notwithstanding any other provision of law, no court of this state shall have**
235 **jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or**
236 **injunctive relief to prevent the state, its political subdivisions, any officer or employee of**
237 **this state or a political subdivision, or any person from enforcing any provision or**
238 **application of this chapter, or from filing a civil action under subsection 10 of this**
239 **section.**

240 **(5) Nothing in this subsection or chapter shall be construed to prevent a litigant**
241 **from asserting the invalidity or unconstitutionality of any provision or application of**
242 **Missouri law as a defense to any action, claim, or counterclaim brought against that**
243 **litigant.**

244 **14. (1) It is the intent of the general assembly that every provision, section,**
245 **subsection, sentence, clause, phrase, and word in this chapter, and every application of**
246 **the provisions in this chapter, is severable from each other.**

247 **(2) If any application of any provision in this chapter to any person, group of**
248 **persons, or circumstances is found by a court to be invalid, preempted, unconstitutional,**
249 **or to impose an undue burden, the remaining applications of that provision to all other**

250 persons and circumstances shall be severed and preserved, and shall remain in effect.
251 All constitutionally valid applications of the provisions of law contained in this chapter
252 shall be severed from any applications that a court finds to be invalid, preempted,
253 unconstitutional, or to impose an undue burden on women seeking abortions, and the
254 valid applications shall remain in force because it is the general assembly's intent and
255 priority that every valid application be allowed to stand alone. Even if a reviewing court
256 finds a provision of this chapter to impose an undue burden in a large or substantial
257 fraction of relevant cases, the applications that do not present an undue burden shall be
258 severed from the remaining applications and shall remain in force and shall be treated
259 as if the general assembly had enacted a statute limited to the persons, group of persons,
260 or circumstances for which the statute's application does not present an undue burden.

261 (3) The general assembly further declares that it would have enacted this
262 chapter, and each provision, section, subsection, sentence, clause, phrase, and all
263 constitutional applications of this chapter, irrespective of the fact that any provision,
264 section, subsection, sentence, clause, phrase, or word or applications of this chapter
265 were to be declared invalid, preempted, unconstitutional, or to impose an undue burden.

266 (4) If any provision of this chapter is found by any court to be unconstitutionally
267 vague, the applications of that provision that do not present constitutional vagueness
268 problems shall be severed and remain in force, consistent with the severability
269 requirements of subdivisions (1), (2), and (3) of this subsection.

270 (5) No court shall decline to enforce the severability requirements of this
271 subsection on the ground that severance would rewrite the statute or involve the court in
272 legislative or lawmaking activity. A court that declines to enforce or enjoins a state
273 official from enforcing a statutory provision does not rewrite a statute, as the statute
274 continues to contain the same words as before the court's decision. A judicial injunction
275 or declaration of unconstitutionality:

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

280 (b) Is not a formal amendment of the language in a statute; and

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

283 (6) If any state or federal court disregards the severability requirements of
284 subdivisions (1), (2), (3), (4), and (5) of this subsection, and declares or finds any
285 provision of this chapter facially unconstitutional when there are discrete applications of
286 that provision that can be enforced against a person, group of persons, or circumstances

287 **without violating federal law, the federal or state constitution, or imposing an undue**
288 **burden on women seeking abortions, that provision shall be interpreted, as a matter of**
289 **state law, as if the general assembly had enacted a provision limited to the persons,**
290 **group of persons, or circumstances for which the provision's applications will not violate**
291 **federal law, the federal or state constitution, or impose an undue burden on women**
292 **seeking abortions, and every court shall adopt this saving construction of that provision**
293 **until the court ruling that pronounced the provision facially unconstitutional is vacated**
294 **or overruled.**

208.152. 1. MO HealthNet payments shall be made on behalf of those eligible needy
2 persons as described in section 208.151 who are unable to provide for it in whole or in part,
3 with any payments to be made on the basis of the reasonable cost of the care or reasonable
4 charge for the services as defined and determined by the MO HealthNet division, unless
5 otherwise hereinafter provided, for the following:

6 (1) Inpatient hospital services, except to persons in an institution for mental diseases
7 who are under the age of sixty-five years and over the age of twenty-one years; provided that
8 the MO HealthNet division shall provide through rule and regulation an exception process for
9 coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth
10 percentile professional activities study (PAS) or the MO HealthNet children's diagnosis
11 length-of-stay schedule; and provided further that the MO HealthNet division shall take into
12 account through its payment system for hospital services the situation of hospitals which
13 serve a disproportionate number of low-income patients;

14 (2) All outpatient hospital services, payments therefor to be in amounts which
15 represent no more than eighty percent of the lesser of reasonable costs or customary charges
16 for such services, determined in accordance with the principles set forth in Title XVIII A and
17 B, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. Section
18 301, et seq.), but the MO HealthNet division may evaluate outpatient hospital services
19 rendered under this section and deny payment for services which are determined by the MO
20 HealthNet division not to be medically necessary, in accordance with federal law and
21 regulations;

22 (3) Laboratory and X-ray services;

23 (4) Nursing home services for participants, except to persons with more than five
24 hundred thousand dollars equity in their home or except for persons in an institution for
25 mental diseases who are under the age of sixty-five years, when residing in a hospital licensed
26 by the department of health and senior services or a nursing home licensed by the department
27 of health and senior services or appropriate licensing authority of other states or government-
28 owned and -operated institutions which are determined to conform to standards equivalent to
29 licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. Section 301,

30 et seq.), as amended, for nursing facilities. The MO HealthNet division may recognize
31 through its payment methodology for nursing facilities those nursing facilities which serve a
32 high volume of MO HealthNet patients. The MO HealthNet division when determining the
33 amount of the benefit payments to be made on behalf of persons under the age of twenty-one
34 in a nursing facility may consider nursing facilities furnishing care to persons under the age of
35 twenty-one as a classification separate from other nursing facilities;

36 (5) Nursing home costs for participants receiving benefit payments under subdivision
37 (4) of this subsection for those days, which shall not exceed twelve per any period of six
38 consecutive months, during which the participant is on a temporary leave of absence from the
39 hospital or nursing home, provided that no such participant shall be allowed a temporary
40 leave of absence unless it is specifically provided for in his **or her** plan of care. As used in
41 this subdivision, the term "temporary leave of absence" shall include all periods of time
42 during which a participant is away from the hospital or nursing home overnight because he **or**
43 **she** is visiting a friend or relative;

44 (6) Physicians' services, whether furnished in the office, home, hospital, nursing
45 home, or elsewhere; **provided that, no funds shall be expended to any abortion facility, as**
46 **defined in section 188.015, or to any affiliate or associate of such abortion facility;**

47 (7) Subject to appropriation, up to twenty visits per year for services limited to
48 examinations, diagnoses, adjustments, and manipulations and treatments of malpositioned
49 articulations and structures of the body provided by licensed chiropractic physicians
50 practicing within their scope of practice. Nothing in this subdivision shall be interpreted to
51 otherwise expand MO HealthNet services;

52 (8) Drugs and medicines when prescribed by a licensed physician, dentist, podiatrist,
53 or an advanced practice registered nurse; except that no payment for drugs and medicines
54 prescribed on and after January 1, 2006, by a licensed physician, dentist, podiatrist, or an
55 advanced practice registered nurse may be made on behalf of any person who qualifies for
56 prescription drug coverage under the provisions of P.L. 108-173;

57 (9) Emergency ambulance services and, effective January 1, 1990, medically
58 necessary transportation to scheduled, physician-prescribed nonelective treatments;

59 (10) Early and periodic screening and diagnosis of individuals who are under the age
60 of twenty-one to ascertain their physical or mental defects, and health care, treatment, and
61 other measures to correct or ameliorate defects and chronic conditions discovered thereby.
62 Such services shall be provided in accordance with the provisions of Section 6403 of P.L.
63 101-239 and federal regulations promulgated thereunder;

64 (11) Home health care services;

65 (12) Family planning as defined by federal rules and regulations; **provided that, no**
66 **funds shall be expended to any abortion facility, as defined in section 188.015, or to any**

67 **affiliate or associate of such abortion facility; and further** provided, however, that such
68 family planning services shall not include abortions or any abortifacient drug or device that is
69 used for the purpose of inducing an abortion unless such abortions are certified in writing by a
70 physician to the MO HealthNet agency that, in the physician's professional judgment, the life
71 of the mother would be endangered if the fetus were carried to term;

72 (13) Inpatient psychiatric hospital services for individuals under age twenty-one as
73 defined in Title XIX of the federal Social Security Act (42 U.S.C. Section 1396d, et seq.);

74 (14) Outpatient surgical procedures, including presurgical diagnostic services
75 performed in ambulatory surgical facilities which are licensed by the department of health
76 and senior services of the state of Missouri; except, that such outpatient surgical services shall
77 not include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-
78 97, 1965 amendments to the federal Social Security Act, as amended, if exclusion of such
79 persons is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal
80 Social Security Act, as amended;

81 (15) Personal care services which are medically oriented tasks having to do with a
82 person's physical requirements, as opposed to housekeeping requirements, which enable a
83 person to be treated by his or her physician on an outpatient rather than on an inpatient or
84 residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal
85 care services shall be rendered by an individual not a member of the participant's family who
86 is qualified to provide such services where the services are prescribed by a physician in
87 accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible
88 to receive personal care services shall be those persons who would otherwise require
89 placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable
90 for personal care services shall not exceed for any one participant one hundred percent of the
91 average statewide charge for care and treatment in an intermediate care facility for a
92 comparable period of time. Such services, when delivered in a residential care facility or
93 assisted living facility licensed under chapter 198 shall be authorized on a tier level based on
94 the services the resident requires and the frequency of the services. A resident of such facility
95 who qualifies for assistance under section 208.030 shall, at a minimum, if prescribed by a
96 physician, qualify for the tier level with the fewest services. The rate paid to providers for
97 each tier of service shall be set subject to appropriations. Subject to appropriations, each
98 resident of such facility who qualifies for assistance under section 208.030 and meets the
99 level of care required in this section shall, at a minimum, if prescribed by a physician, be
100 authorized up to one hour of personal care services per day. Authorized units of personal care
101 services shall not be reduced or tier level lowered unless an order approving such reduction or
102 lowering is obtained from the resident's personal physician. Such authorized units of personal
103 care services or tier level shall be transferred with such resident if he or she transfers to

104 another such facility. Such provision shall terminate upon receipt of relevant waivers from
105 the federal Department of Health and Human Services. If the Centers for Medicare and
106 Medicaid Services determines that such provision does not comply with the state plan, this
107 provision shall be null and void. The MO HealthNet division shall notify the revisor of
108 statutes as to whether the relevant waivers are approved or a determination of noncompliance
109 is made;

110 (16) Mental health services. The state plan for providing medical assistance under
111 Title XIX of the Social Security Act, 42 U.S.C. Section 301, as amended, shall include the
112 following mental health services when such services are provided by community mental
113 health facilities operated by the department of mental health or designated by the department
114 of mental health as a community mental health facility or as an alcohol and drug abuse facility
115 or as a child-serving agency within the comprehensive children's mental health service system
116 established in section 630.097. The department of mental health shall establish by
117 administrative rule the definition and criteria for designation as a community mental health
118 facility and for designation as an alcohol and drug abuse facility. Such mental health services
119 shall include:

120 (a) Outpatient mental health services including preventive, diagnostic, therapeutic,
121 rehabilitative, and palliative interventions rendered to individuals in an individual or group
122 setting by a mental health professional in accordance with a plan of treatment appropriately
123 established, implemented, monitored, and revised under the auspices of a therapeutic team as
124 a part of client services management;

125 (b) Clinic mental health services including preventive, diagnostic, therapeutic,
126 rehabilitative, and palliative interventions rendered to individuals in an individual or group
127 setting by a mental health professional in accordance with a plan of treatment appropriately
128 established, implemented, monitored, and revised under the auspices of a therapeutic team as
129 a part of client services management;

130 (c) Rehabilitative mental health and alcohol and drug abuse services including home
131 and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative
132 interventions rendered to individuals in an individual or group setting by a mental health
133 or alcohol and drug abuse professional in accordance with a plan of treatment appropriately
134 established, implemented, monitored, and revised under the auspices of a therapeutic team as
135 a part of client services management. As used in this section, mental health professional and
136 alcohol and drug abuse professional shall be defined by the department of mental health
137 pursuant to duly promulgated rules. With respect to services established by this subdivision,
138 the department of social services, MO HealthNet division, shall enter into an agreement with
139 the department of mental health. Matching funds for outpatient mental health services, clinic
140 mental health services, and rehabilitation services for mental health and alcohol and drug

141 abuse shall be certified by the department of mental health to the MO HealthNet division.
142 The agreement shall establish a mechanism for the joint implementation of the provisions of
143 this subdivision. In addition, the agreement shall establish a mechanism by which rates for
144 services may be jointly developed;

145 (17) Such additional services as defined by the MO HealthNet division to be
146 furnished under waivers of federal statutory requirements as provided for and authorized by
147 the federal Social Security Act (42 U.S.C. Section 301, et seq.) subject to appropriation by the
148 general assembly;

149 (18) The services of an advanced practice registered nurse with a collaborative
150 practice agreement to the extent that such services are provided in accordance with chapters
151 334 and 335, and regulations promulgated thereunder;

152 (19) Nursing home costs for participants receiving benefit payments under
153 subdivision (4) of this subsection to reserve a bed for the participant in the nursing home
154 during the time that the participant is absent due to admission to a hospital for services which
155 cannot be performed on an outpatient basis, subject to the provisions of this subdivision:

156 (a) The provisions of this subdivision shall apply only if:

157 a. The occupancy rate of the nursing home is at or above ninety-seven percent of MO
158 HealthNet certified licensed beds, according to the most recent quarterly census provided to
159 the department of health and senior services which was taken prior to when the participant is
160 admitted to the hospital; and

161 b. The patient is admitted to a hospital for a medical condition with an anticipated
162 stay of three days or less;

163 (b) The payment to be made under this subdivision shall be provided for a maximum
164 of three days per hospital stay;

165 (c) For each day that nursing home costs are paid on behalf of a participant under this
166 subdivision during any period of six consecutive months such participant shall, during the
167 same period of six consecutive months, be ineligible for payment of nursing home costs of
168 two otherwise available temporary leave of absence days provided under subdivision (5) of
169 this subsection; and

170 (d) The provisions of this subdivision shall not apply unless the nursing home
171 receives notice from the participant or the participant's responsible party that the participant
172 intends to return to the nursing home following the hospital stay. If the nursing home receives
173 such notification and all other provisions of this subsection have been satisfied, the nursing
174 home shall provide notice to the participant or the participant's responsible party prior to
175 release of the reserved bed;

176 (20) Prescribed medically necessary durable medical equipment. An electronic web-
177 based prior authorization system using best medical evidence and care and treatment
178 guidelines consistent with national standards shall be used to verify medical need;

179 (21) Hospice care. As used in this subdivision, the term "hospice care" means a
180 coordinated program of active professional medical attention within a home, outpatient and
181 inpatient care which treats the terminally ill patient and family as a unit, employing a
182 medically directed interdisciplinary team. The program provides relief of severe pain or other
183 physical symptoms and supportive care to meet the special needs arising out of physical,
184 psychological, spiritual, social, and economic stresses which are experienced during the final
185 stages of illness, and during dying and bereavement and meets the Medicare requirements for
186 participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement
187 paid by the MO HealthNet division to the hospice provider for room and board furnished by a
188 nursing home to an eligible hospice patient shall not be less than ninety-five percent of the
189 rate of reimbursement which would have been paid for facility services in that nursing home
190 facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239
191 (Omnibus Budget Reconciliation Act of 1989);

192 (22) Prescribed medically necessary dental services. Such services shall be subject to
193 appropriations. An electronic web-based prior authorization system using best medical
194 evidence and care and treatment guidelines consistent with national standards shall be used to
195 verify medical need;

196 (23) Prescribed medically necessary optometric services. Such services shall be
197 subject to appropriations. An electronic web-based prior authorization system using best
198 medical evidence and care and treatment guidelines consistent with national standards shall
199 be used to verify medical need;

200 (24) Blood clotting products-related services. For persons diagnosed with a bleeding
201 disorder, as defined in section 338.400, reliant on blood clotting products, as defined in
202 section 338.400, such services include:

203 (a) Home delivery of blood clotting products and ancillary infusion equipment and
204 supplies, including the emergency deliveries of the product when medically necessary;

205 (b) Medically necessary ancillary infusion equipment and supplies required to
206 administer the blood clotting products; and

207 (c) Assessments conducted in the participant's home by a pharmacist, nurse, or local
208 home health care agency trained in bleeding disorders when deemed necessary by the
209 participant's treating physician;

210 (25) The MO HealthNet division shall, by January 1, 2008, and annually thereafter,
211 report the status of MO HealthNet provider reimbursement rates as compared to one hundred
212 percent of the Medicare reimbursement rates and compared to the average dental

213 reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet
214 division shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve
215 parity with Medicare reimbursement rates and for third-party payor average dental
216 reimbursement rates. Such plan shall be subject to appropriation and the division shall
217 include in its annual budget request to the governor the necessary funding needed to complete
218 the four-year plan developed under this subdivision.

219 2. Additional benefit payments for medical assistance shall be made on behalf of
220 those eligible needy children, pregnant women and blind persons with any payments to be
221 made on the basis of the reasonable cost of the care or reasonable charge for the services as
222 defined and determined by the MO HealthNet division, unless otherwise hereinafter provided,
223 for the following:

224 (1) Dental services;

225 (2) Services of podiatrists as defined in section 330.010;

226 (3) Optometric services as described in section 336.010;

227 (4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing
228 aids, and wheelchairs;

229 (5) Hospice care. As used in this subdivision, the term "hospice care" means a
230 coordinated program of active professional medical attention within a home, outpatient and
231 inpatient care which treats the terminally ill patient and family as a unit, employing a
232 medically directed interdisciplinary team. The program provides relief of severe pain or other
233 physical symptoms and supportive care to meet the special needs arising out of physical,
234 psychological, spiritual, social, and economic stresses which are experienced during the final
235 stages of illness, and during dying and bereavement and meets the Medicare requirements for
236 participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement
237 paid by the MO HealthNet division to the hospice provider for room and board furnished by a
238 nursing home to an eligible hospice patient shall not be less than ninety-five percent of the
239 rate of reimbursement which would have been paid for facility services in that nursing home
240 facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239
241 (Omnibus Budget Reconciliation Act of 1989);

242 (6) Comprehensive day rehabilitation services beginning early posttrauma as part of a
243 coordinated system of care for individuals with disabling impairments. Rehabilitation
244 services must be based on an individualized, goal-oriented, comprehensive and coordinated
245 treatment plan developed, implemented, and monitored through an interdisciplinary
246 assessment designed to restore an individual to optimal level of physical, cognitive, and
247 behavioral function. The MO HealthNet division shall establish by administrative rule the
248 definition and criteria for designation of a comprehensive day rehabilitation service facility,
249 benefit limitations and payment mechanism. Any rule or portion of a rule, as that term is

250 defined in section 536.010, that is created under the authority delegated in this subdivision
251 shall become effective only if it complies with and is subject to all of the provisions of
252 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
253 nonseverable and if any of the powers vested with the general assembly pursuant to chapter
254 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
255 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
256 adopted after August 28, 2005, shall be invalid and void.

257 3. The MO HealthNet division may require any participant receiving MO HealthNet
258 benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after
259 July 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all
260 covered services except for those services covered under subdivisions (15) and (16) of
261 subsection 1 of this section and sections 208.631 to 208.657 to the extent and in the manner
262 authorized by Title XIX of the federal Social Security Act (42 U.S.C. Section 1396, et seq.)
263 and regulations thereunder. When substitution of a generic drug is permitted by the prescriber
264 according to section 338.056, and a generic drug is substituted for a name-brand drug, the
265 MO HealthNet division may not lower or delete the requirement to make a co-payment
266 pursuant to regulations of Title XIX of the federal Social Security Act. A provider of goods
267 or services described under this section must collect from all participants the additional
268 payment that may be required by the MO HealthNet division under authority granted herein,
269 if the division exercises that authority, to remain eligible as a provider. Any payments made
270 by participants under this section shall be in addition to and not in lieu of payments made by
271 the state for goods or services described herein except the participant portion of the pharmacy
272 professional dispensing fee shall be in addition to and not in lieu of payments to pharmacists.
273 A provider may collect the co-payment at the time a service is provided or at a later date. A
274 provider shall not refuse to provide a service if a participant is unable to pay a required
275 payment. If it is the routine business practice of a provider to terminate future services to an
276 individual with an unclaimed debt, the provider may include uncollected co-payments under
277 this practice. Providers who elect not to undertake the provision of services based on a
278 history of bad debt shall give participants advance notice and a reasonable opportunity for
279 payment. A provider, representative, employee, independent contractor, or agent of a
280 pharmaceutical manufacturer shall not make co-payment for a participant. This subsection
281 shall not apply to other qualified children, pregnant women, or blind persons. If the Centers
282 for Medicare and Medicaid Services does not approve the MO HealthNet state plan
283 amendment submitted by the department of social services that would allow a provider to
284 deny future services to an individual with uncollected co-payments, the denial of services
285 shall not be allowed. The department of social services shall inform providers regarding the
286 acceptability of denying services as the result of unpaid co-payments.

287 4. The MO HealthNet division shall have the right to collect medication samples from
288 participants in order to maintain program integrity.

289 5. Reimbursement for obstetrical and pediatric services under subdivision (6) of
290 subsection 1 of this section shall be timely and sufficient to enlist enough health care
291 providers so that care and services are available under the state plan for MO HealthNet
292 benefits at least to the extent that such care and services are available to the general
293 population in the geographic area, as required under subparagraph (a)(30)(A) of 42 U.S.C.
294 Section 1396a and federal regulations promulgated thereunder.

295 6. Beginning July 1, 1990, reimbursement for services rendered in federally funded
296 health centers shall be in accordance with the provisions of subsection 6402(c) and Section
297 6404 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations
298 promulgated thereunder.

299 7. Beginning July 1, 1990, the department of social services shall provide notification
300 and referral of children below age five, and pregnant, breast-feeding, or postpartum women
301 who are determined to be eligible for MO HealthNet benefits under section 208.151 to the
302 special supplemental food programs for women, infants and children administered by the
303 department of health and senior services. Such notification and referral shall conform to the
304 requirements of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

305 8. Providers of long-term care services shall be reimbursed for their costs in
306 accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42
307 U.S.C. Section 1396a, as amended, and regulations promulgated thereunder.

308 9. Reimbursement rates to long-term care providers with respect to a total change in
309 ownership, at arm's length, for any facility previously licensed and certified for participation
310 in the MO HealthNet program shall not increase payments in excess of the increase that
311 would result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42
312 U.S.C. Section 1396a (a)(13)(C).

313 10. The MO HealthNet division may enroll qualified residential care facilities and
314 assisted living facilities, as defined in chapter 198, as MO HealthNet personal care providers.

315 11. Any income earned by individuals eligible for certified extended employment at a
316 sheltered workshop under chapter 178 shall not be considered as income for purposes of
317 determining eligibility under this section.

318 12. If the Missouri Medicaid audit and compliance unit changes any interpretation or
319 application of the requirements for reimbursement for MO HealthNet services from the
320 interpretation or application that has been applied previously by the state in any audit of a MO
321 HealthNet provider, the Missouri Medicaid audit and compliance unit shall notify all affected
322 MO HealthNet providers five business days before such change shall take effect. Failure of
323 the Missouri Medicaid audit and compliance unit to notify a provider of such change shall

324 entitle the provider to continue to receive and retain reimbursement until such notification is
325 provided and shall waive any liability of such provider for recoupment or other loss of any
326 payments previously made prior to the five business days after such notice has been sent.
327 Each provider shall provide the Missouri Medicaid audit and compliance unit a valid email
328 address and shall agree to receive communications electronically. The notification required
329 under this section shall be delivered in writing by the United States Postal Service or
330 electronic mail to each provider.

331 13. Nothing in this section shall be construed to abrogate or limit the department's
332 statutory requirement to promulgate rules under chapter 536.

333 14. Beginning July 1, 2016, and subject to appropriations, providers of behavioral,
334 social, and psychophysiological services for the prevention, treatment, or management of
335 physical health problems shall be reimbursed utilizing the behavior assessment and
336 intervention reimbursement codes 96150 to 96154 or their successor codes under the
337 Current Procedural Terminology (CPT) coding system. Providers eligible for such
338 reimbursement shall include psychologists.

208.153. 1. Pursuant to and not inconsistent with the provisions of sections 208.151
2 and 208.152, the MO HealthNet division shall by rule and regulation define the reasonable
3 costs, manner, extent, quantity, quality, charges and fees of MO HealthNet benefits herein
4 provided. The benefits available under these sections shall not replace those provided under
5 other federal or state law or under other contractual or legal entitlements of the persons
6 receiving them, and all persons shall be required to apply for and utilize all benefits available
7 to them and to pursue all causes of action to which they are entitled. ~~[Any person entitled to
8 MO HealthNet benefits may obtain it from any provider of services with which an agreement
9 is in effect under this section and which undertakes to provide the services, as authorized by
10 the MO HealthNet division.]~~ At the discretion of the director of the MO HealthNet division
11 and with the approval of the governor, the MO HealthNet division is authorized to provide
12 medical benefits for participants receiving public assistance by expending funds for the
13 payment of federal medical insurance premiums, coinsurance and deductibles pursuant to the
14 provisions of Title XVIII B and XIX, Public Law 89-97, 1965 amendments to the federal
15 Social Security Act (42 U.S.C. 301, et seq.), as amended.

16 2. MO HealthNet shall include benefit payments on behalf of qualified Medicare
17 beneficiaries as defined in 42 U.S.C. Section 1396d(p). The family support division shall by
18 rule and regulation establish which qualified Medicare beneficiaries are eligible. The MO
19 HealthNet division shall define the premiums, deductible and coinsurance provided for in 42
20 U.S.C. Section 1396d(p) to be provided on behalf of the qualified Medicare beneficiaries.

21 3. MO HealthNet shall include benefit payments for Medicare Part A cost sharing as
22 defined in clause (p)(3)(A)(i) of 42 U.S.C. 1396d on behalf of qualified disabled and working

23 individuals as defined in subsection (s) of Section 42 U.S.C. 1396d as required by subsection
24 (d) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989). The MO
25 HealthNet division may impose a premium for such benefit payments as authorized by
26 paragraph (d)(3) of Section 6408 of P.L. 101-239.

27 4. MO HealthNet shall include benefit payments for Medicare Part B cost sharing
28 described in 42 U.S.C. Section 1396(d)(p)(3)(A)(ii) for individuals described in subsection 2
29 of this section, but for the fact that their income exceeds the income level established by the
30 state under 42 U.S.C. Section 1396(d)(p)(2) but is less than one hundred and ten percent
31 beginning January 1, 1993, and less than one hundred and twenty percent beginning January
32 1, 1995, of the official poverty line for a family of the size involved.

33 5. For an individual eligible for MO HealthNet under Title XIX of the Social Security
34 Act, MO HealthNet shall include payment of enrollee premiums in a group health plan and all
35 deductibles, coinsurance and other cost-sharing for items and services otherwise covered
36 under the state Title XIX plan under Section 1906 of the federal Social Security Act and
37 regulations established under the authority of Section 1906, as may be amended. Enrollment
38 in a group health plan must be cost effective, as established by the Secretary of Health and
39 Human Services, before enrollment in the group health plan is required. If all members of a
40 family are not eligible for MO HealthNet and enrollment of the Title XIX eligible members in
41 a group health plan is not possible unless all family members are enrolled, all premiums for
42 noneligible members shall be treated as payment for MO HealthNet of eligible family
43 members. Payment for noneligible family members must be cost effective, taking into
44 account payment of all such premiums. Non-Title XIX eligible family members shall pay all
45 deductible, coinsurance and other cost-sharing obligations. Each individual as a condition of
46 eligibility for MO HealthNet benefits shall apply for enrollment in the group health plan.

47 6. Any Social Security cost-of-living increase at the beginning of any year shall be
48 disregarded until the federal poverty level for such year is implemented.

49 7. If a MO HealthNet participant has paid the requested spenddown in cash for any
50 month and subsequently pays an out-of-pocket valid medical expense for such month, such
51 expense shall be allowed as a deduction to future required spenddown for up to three months
52 from the date of such expense.

208.164. 1. As used in this section, unless the context clearly requires otherwise, the
2 following terms mean:

3 (1) "Abuse", a documented pattern of inducing, furnishing, or otherwise causing a
4 recipient to receive services or merchandise not otherwise required or requested by the
5 recipient, attending physician or appropriate utilization review team; a documented pattern of
6 performing and billing tests, examinations, patient visits, surgeries, drugs or merchandise that
7 exceed limits or frequencies determined by the department for like practitioners for which

8 there is no demonstrable need, or for which the provider has created the need through
9 ineffective services or merchandise previously rendered. The decision to impose any of the
10 sanctions authorized in this section shall be made by the director of the department, following
11 a determination of demonstrable need or accepted medical practice made in consultation with
12 medical or other health care professionals, or qualified peer review teams;

13 (2) "Department", the department of social services;

14 (3) "Excessive use", the act, by a person eligible for services under a contract or
15 provider agreement between the department of social services or its divisions and a provider,
16 of seeking and/or obtaining medical assistance benefits from a number of like providers and
17 in quantities which exceed the levels that are considered medically necessary by current
18 medical practices and standards for the eligible person's needs;

19 (4) "Fraud", a known false representation, including the concealment of a material
20 fact that provider knew or should have known through the usual conduct of his profession or
21 occupation, upon which the provider claims reimbursement under the terms and conditions of
22 a contract or provider agreement and the policies pertaining to such contract or provider
23 agreement of the department or its divisions in carrying out the providing of services, or
24 under any approved state plan authorized by the federal Social Security Act;

25 (5) "Health plan", a group of services provided to recipients of medical assistance
26 benefits by providers under a contract with the department;

27 (6) "Medical assistance benefits", those benefits authorized to be provided by sections
28 208.152 and 208.162;

29 (7) "Prior authorization", approval to a provider to perform a service or services for
30 an eligible person required by the department or its divisions in advance of the actual service
31 being provided or approved for a recipient to receive a service or services from a provider,
32 required by the department or its designated division in advance of the actual service or
33 services being received;

34 (8) "Provider", any person, partnership, corporation, not-for-profit corporation,
35 professional corporation, or other business entity that enters into a contract or provider
36 agreement with the department or its divisions for the purpose of providing services to
37 eligible persons, and obtaining from the department or its divisions reimbursement therefor;

38 (9) "Recipient", a person who is eligible to receive medical assistance benefits
39 allocated through the department;

40 (10) "Service", the specific function, act, successive acts, benefits, continuing
41 benefits, requested by an eligible person or provided by the provider under contract with the
42 department or its divisions.

43 2. The department or its divisions shall have the authority to suspend, revoke, or
44 cancel any contract or provider agreement or refuse to enter into a new contract or provider

45 agreement with any provider where it is determined the provider has committed or allowed its
46 agents, servants, or employees to commit acts defined as abuse or fraud in this section.

47 3. The department or its divisions shall have the authority to impose prior
48 authorization as defined in this section:

49 (1) When it has reasonable cause to believe a provider or recipient has knowingly
50 followed a course of conduct which is defined as abuse or fraud or excessive use by this
51 section; or

52 (2) When it determines by rule that prior authorization is reasonable for a specified
53 service or procedure.

54 4. If a provider or recipient reports to the department or its divisions the name or
55 names of providers or recipients who, based upon their personal knowledge has reasonable
56 cause to believe an act or acts are being committed which are defined as abuse, fraud or
57 excessive use by this section, such report shall be confidential and the reporter's name shall
58 not be divulged to anyone by the department or any of its divisions, except at a judicial
59 proceeding upon a proper protective order being entered by the court.

60 5. Payments for services under any contract or provider agreement between the
61 department or its divisions and a provider may be withheld by the department or its divisions
62 from the provider for acts or omissions defined as abuse or fraud by this section, until such
63 time as an agreement between the parties is reached or the dispute is adjudicated under the
64 laws of this state.

65 6. The department or its designated division shall have the authority to review all
66 cases and claim records for any recipient of public assistance benefits and to determine from
67 these records if the recipient has, as defined in this section, committed excessive use of such
68 services by seeking or obtaining services from a number of like providers of services and in
69 quantities which exceed the levels considered necessary by current medical or health care
70 professional practice standards and policies of the program.

71 7. The department or its designated division shall have the authority with respect to
72 recipients of medical assistance benefits who have committed excessive use to limit or restrict
73 the use of the recipient's Medicaid identification card to designated providers and for
74 designated services; the actual method by which such restrictions are imposed shall be at the
75 discretion of the department of social services or its designated division.

76 8. The department or its designated division shall have the authority with respect to
77 any recipient of medical assistance benefits whose use has been restricted under subsection 7
78 of this section and who obtains or seeks to obtain medical assistance benefits from a provider
79 other than one of the providers for designated services to terminate medical assistance
80 benefits as defined by this chapter, where allowed by the provisions of the federal Social
81 Security Act.

82 9. The department or its designated division shall have the authority with respect to
83 any provider who knowingly allows a recipient to violate subsection 7 of this section or who
84 fails to report a known violation of subsection 7 of this section to the department of social
85 services or its designated division to terminate or otherwise sanction such provider's status as
86 a participant in the medical assistance program. Any person making such a report shall not be
87 civilly liable when the report is made in good faith.

88 **10. In order to comply with the provisions of 42 U.S.C. Section 1320a-7(a)**
89 **relating to mandatory exclusion of certain individuals and entities from participation in**
90 **any federal health care program, and in furtherance of the state's authority under**
91 **federal law, as implemented by 42 CFR 1002.3(b), to exclude an individual or entity**
92 **from MO HealthNet for any reason or period authorized by state law, the department or**
93 **its divisions shall suspend, revoke, or cancel any contract or provider agreement or**
94 **refuse to enter into a new contract or provider agreement with any provider where it is**
95 **determined that such provider is not qualified to perform the service or services**
96 **required, as described in 42 U.S.C. Section 1396a(a)(23), because such provider, or such**
97 **provider's agent, servant, or employee acting under such provider's authority:**

98 (1) Has a conviction related to the delivery of any item or service under
99 Medicare or under any state health care program, as described in 42 U.S.C. Section
100 1320a-7(a)(1);

101 (2) Has a conviction related to the neglect or abuse of a patient in connection
102 with the delivery of any health care item or service, as described in 42 U.S.C. Section
103 1320a-7(a)(2);

104 (3) Has a felony conviction related to health care fraud, theft, embezzlement,
105 breach of fiduciary responsibility, or other financial misconduct, as described in 42
106 U.S.C. Section 1320a-7(a)(3);

107 (4) Has a felony conviction related to the unlawful manufacture, distribution,
108 prescription, or dispensation of a controlled substance, as described in 42 U.S.C. Section
109 1320a-7(a)(4);

110 (5) Has been found guilty of a pattern of intentional discrimination in the
111 delivery or nondelivery of any health care item or service based on the race, color, or
112 national origin of recipients, as described in 42 U.S.C. Section 2000d, or was founded by
113 a person who supported eugenics as the solution for racial, political, and social problems
114 and who advocated for the use of birth control for "the elimination of the unfit" and
115 stopping "the reproduction of the unfit"; or

116 (6) Is an abortion facility, as defined in section 188.015, or an affiliate or
117 associate of such abortion facility.

208.659. The MO HealthNet division shall revise the eligibility requirements for the
 2 uninsured women's health program, as established in 13 CSR Section 70- 4.090, to include
 3 women who are at least eighteen years of age and with a net family income of at or below one
 4 hundred eighty-five percent of the federal poverty level. In order to be eligible for such
 5 program, the applicant shall not have assets in excess of two hundred and fifty thousand
 6 dollars, nor shall the applicant have access to employer-sponsored health insurance. Such
 7 change in eligibility requirements shall not result in any change in services provided under the
 8 program. **No funds shall be expended to any abortion facility, as defined in section**
 9 **188.015, or to any affiliate or associate of such abortion facility.**

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

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

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

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

~~188.057. 1. Notwithstanding any other provision of law to the
 2 contrary, no abortion shall be performed or induced upon a woman at fourteen
 3 weeks gestational age or later, except in cases of medical emergency. Any
 4 person who knowingly performs or induces an abortion of an unborn child in
 5 violation of this subsection shall be guilty of a class B felony, as well as~~

6 subject to suspension or revocation of his or her professional license by his or
7 her professional licensing board. A woman upon whom an abortion is
8 performed or induced in violation of this subsection shall not be prosecuted for
9 a conspiracy to violate the provisions of this section.

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

15 3. Prosecution under this section shall bar prosecution under section
16 188.056, 188.058, or 188.375 if prosecution under such sections would violate
17 the provisions of Amendment V to the Constitution of the United States or
18 Article I, Section 19 of the Constitution of Missouri.

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

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

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

16 3. Prosecution under this section shall bar prosecution under section
17 188.056, 188.057, or 188.375 if prosecution under such sections would violate
18 the provisions of Amendment V to the Constitution of the United States or
19 Article I, Section 19 of the Constitution of Missouri.

20 4. If any one or more provisions, subsections, sentences, clauses,
21 phrases, or words of this section or the application thereof to any person,
22 circumstance, or period of gestational age is found to be unenforceable,
unconstitutional, or invalid by a court of competent jurisdiction, the same is

23 hereby declared to be severable and the balance of the section shall remain
24 effective notwithstanding such unenforceability, unconstitutionality, or
25 invalidity. The general assembly hereby declares that it would have passed
26 this section, and each provision, subsection, sentence, clause, phrase, or word
27 thereof, irrespective of the fact that any one or more provisions, subsections,
28 sentences, clauses, phrases, or words of the section, or the application of the
29 section to any person, circumstance, or period of gestational age, would be
30 declared unenforceable, unconstitutional, or invalid.]

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