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188.035, 188.052, 188.056, 188.057, 188.058, 188.075, 188.375, 208.152, 208.153, 208.164, and 208.659, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 188.015, 188.026, 188.027, 188.035, 188.052, 188.075, 188.202, 188.207, 188.375,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.
"Fetal heartbeat", cardiac activity or the steady and repetitive rhythmic contraction of the fetal heartbeat within the gestational sac;

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

"Gestational sac", the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy;

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

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

"Pregnancy", the human female reproductive condition that:

(a) Begins with fertilization;

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

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

"Pregnant woman" or "pregnant women", includes any individual who is pregnant, regardless of any gender identity that the pregnant person attempts to assert or claim;

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

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

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

"Viable pregnancy" or "viable intrauterine pregnancy", in the first trimester of pregnancy, an intrauterine pregnancy that can potentially result in a liveborn baby;

"Woman" or "women", includes any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of 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;
(7) Depending on the ultrasound equipment being used, the unborn child's heartbeat can be visually detected as early as six to eight weeks gestational age. By about twelve weeks gestational age, the unborn child's heartbeat can consistently be made audible through the use of a handheld Doppler fetal heart rate device;

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

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

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

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

(12) While the overall risk of miscarriage after clinical recognition of pregnancy is twelve to fifteen percent, the incidence decreases significantly if cardiac activity in the unborn child has been confirmed. The detection of a heartbeat in an unborn child is a reliable indicator of a viable pregnancy and that the unborn child will likely survive to birth, especially if presenting for a prenatal visit at eight weeks gestational age or later. For asymptomatic women attending a first prenatal visit between six and eleven weeks gestational age where a heartbeat was confirmed through an ultrasound, the subsequent risk of miscarriage is one and six-tenths percent. Although the risk is higher at six weeks gestational age at nine and four-tenths percent, it declines rapidly to one and five-tenths percent at eight weeks gestational age, and less than one percent at nine weeks gestational age or later;
The presence of a heartbeat in an unborn child represents a more definable point of ascertaining survivability than the ambiguous concept of viability that has been adopted by the Supreme Court, especially since if a heartbeat is detected at eight weeks gestational age, there is likely to be a viable pregnancy and there is a high probability that the unborn child will survive to birth; the placenta begins developing during the early first trimester of pregnancy and performs a respiratory function by making oxygen supply to and carbon dioxide removal from the unborn child possible later in the first trimester and throughout the second and third trimesters of pregnancy; by the fifth week of gestation, the development of the brain of the unborn child is underway. Brain waves have been measured and recorded as early as the eighth week of gestational age in children who were removed during an ectopic pregnancy or hysterectomy. Fetal magnetic resonance imaging (MRI) of an unborn child's brain is used during the second and third trimesters of pregnancy and brain activity has been observed using MRI; Missouri law identifies the presence of circulation, respiration, and brain function as indicia of life under section 194.005, as the presence of circulation, respiration, and brain function indicates that such person is not legally dead, but is legally alive; unborn children at eight weeks gestational age show spontaneous movements, such as a twitching of the trunk and developing limbs. It has been reported that unborn children at this stage show reflex responses to touch. The perioral area is the first part of the unborn child's body to respond to touch at about eight weeks gestational age and by fourteen weeks gestational age most of the unborn child's body is responsive to touch; peripheral cutaneous sensory receptors, the receptors that feel pain, develop early in the unborn child. They appear in the perioral cutaneous area at around seven to eight weeks gestational age, in the palmar regions at ten to ten and a half weeks gestational age, the abdominal wall at fifteen weeks gestational age, and over all of the unborn child's body at sixteen weeks gestational age; Substance P, a peptide that functions as a neurotransmitter, especially in the transmission of pain, is present in the dorsal horn of the spinal cord of the unborn child at eight to ten weeks gestational age. Enkephalins, peptides that play a role in neurotransmission and pain modulation, are present in the dorsal horn at twelve to fourteen weeks gestational age; when intrauterine needling is performed on an unborn child at sixteen weeks gestational age or later, the reaction to this invasive stimulus is blood flow redistribution to the brain. Increased blood flow to the brain is the same type of stress response seen in a born child and an adult;
(21) By sixteen weeks gestational age, pain transmission from a peripheral receptor to the cortex is possible in the unborn child;

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

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

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

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

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

(27) In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court determined that "evolving standards of decency" dictated that a Missouri statute allowing the death penalty for a conviction of murder in the first degree for a person under eighteen years of age when the crime was committed was unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution because it violated the prohibition against "cruel and unusual punishments";
(28) In Bucklew v. Precythe, 139 S. Ct. 1112, 1123 (2019), the Supreme Court noted that "[d]isgusting' practices" like disemboweling and quartering "readily qualified as 'cruel and unusual', as a reader at the time of the Eighth Amendment's adoption would have understood those words";

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

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

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

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

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

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

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

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

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

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

(d) Twenty-one weeks gestational age or later is more than seventy-five times higher than an abortion at eight weeks gestational age or earlier;
(34) In addition to the short-term risks of an abortion, studies have found that the long-term physical and psychological consequences of abortion for women include, but are not limited to, an increased risk of preterm birth, low birthweight babies, and placenta previa in subsequent pregnancies, as well as serious behavioral health issues. These risks increase as abortions are performed or induced at later gestational ages. These consequences of an abortion have a detrimental effect not only on women, their children, and their families, but also on an already burdened health care system, taxpayers, and the workforce;

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

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

(b) Unborn children at later stages of development;

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

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

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

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

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

5. The state of Missouri has interests that include, but are not limited to:
(1) Protecting unborn children throughout pregnancy and preserving and promoting
their lives from conception to birth;
(2) Encouraging childbirth over abortion;
(3) Ensuring respect for all human life from conception to natural death;
(4) Safeguarding an unborn child from the serious harm of pain by an abortion
method that would cause the unborn child to experience pain while she or he is being killed;
(5) Preserving the integrity of the medical profession and regulating and restricting
practices that might cause the medical profession or society as a whole to become insensitive,
even disdainful, to life. This includes regulating and restricting abortion methods that are not
only brutal and painful, but if allowed to continue, will further coarsen society to the
humanity of not only unborn children, but all vulnerable and innocent human life, making it
increasingly difficult to protect such life;
(6) Ending the incongruities in state law by permitting some unborn children to be
killed by abortion, while requiring that unborn children be protected in nonabortion
circumstances through, including, but not limited to, homicide, assault, self-defense, and
defense of another statutes; laws guaranteeing prenatal health care, emergency care, and
testing; state-sponsored health insurance for unborn children; the prohibition of restraints in
correctional institutions to protect pregnant offenders and their unborn children; and
protecting the interests of unborn children by the appointment of conservators, guardians, and representatives;

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

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

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

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

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

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

a. A description of the proposed abortion method;

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

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

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

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

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

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

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

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

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

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

(a) Unborn children as early as eight weeks gestational age start to show spontaneous
movements and unborn children at this stage in pregnancy show reflex responses to touch;
(b) In the unborn child, the area around his or her mouth and lips is the first part of the
unborn child's body to respond to touch and by fourteen weeks gestational age most of the
unborn child's body is responsive to touch;
(c) Pain receptors on the unborn child's skin develop around his or her mouth at
around seven to eight weeks gestational age, around the palms of his or her hands at ten to ten
and a half weeks, on the abdominal wall at fifteen weeks, and over all of his or her body at
sixteen weeks gestational age;
(d) Beginning at sixteen weeks gestational age and later, it is possible for pain to be
transmitted from receptors to the cortex of the unborn child's brain, where thinking and
perceiving occur;
(e) When a physician performs a life-saving surgery, he or she provides anesthesia to
unborn children as young as sixteen weeks gestational age in order to alleviate the unborn
child's pain; and
(f) A description of the actual steps in the abortion procedure to be performed or
induced and at which steps the abortion procedure could be painful to the unborn child;

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

(a) Identify on a geographical basis public and private agencies available to assist a
woman in carrying her unborn child to term, and to assist her in caring for her dependent child
or placing her child for adoption, including agencies commonly known and generally referred
to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption
agencies. Such materials shall provide a comprehensive list by geographical area of the
agencies, a description of the services they offer, and the telephone numbers and addresses of
the agencies; provided that such materials shall not include any programs, services,
organizations, or affiliates of organizations that perform or induce, or assist in the performing
or inducing of, abortions or that refer for abortions;
(b) Explain the Missouri alternatives to abortion services program under section
188.325, and any other programs and services available to pregnant women and mothers of
newborn children offered by public or private agencies which assist a woman in carrying her
unborn child to term and assist her in caring for her dependent child or placing her child for
adoption, including but not limited to prenatal care; maternal health care; newborn or infant
care; mental health services; professional counseling services; housing programs; utility
assistance; transportation services; food, clothing, and supplies related to pregnancy;
parenting skills; educational programs; job training and placement services; drug and alcohol
testing and treatment; and adoption assistance;

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

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

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

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

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

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

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

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

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

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

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

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

8. No person or entity shall require, obtain, or accept payment for an abortion from or
on behalf of a patient until at least seventy-two hours have passed since the time that the
information required by subsection 1 of this section has been provided to the patient. Nothing
in this subsection shall prohibit a person or entity from notifying the patient that payment for
the abortion will be required after the seventy-two-hour period has expired if she voluntarily
chooses to have the abortion.

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

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

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

12. If the provisions in subsections 1 and 8 of this section requiring a seventy-two-
hour waiting period for an abortion are ever temporarily or permanently restrained or
enjoined by judicial order, then the waiting period for an abortion shall be twenty-four hours;
provided, however, that if such temporary or permanent restraining order or injunction is
stayed or dissolved, or otherwise ceases to have effect, the waiting period for an abortion shall
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:
(1) A person upon whom the unlawful abortion or attempted unlawful abortion was performed or induced;

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

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

(4) An unborn child,

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

188.052. 1. An individual abortion report for each abortion performed or induced upon a woman shall be completed by the physician who performed or induced the abortion. Abortion reports shall include, but not be limited to, a certification that the physician does not have any knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in the unborn child and a certification that the physician does not have any knowledge that the woman sought the abortion solely because of the sex or race of the unborn child. Abortion
reports shall also include the time, date, method, and results of the heartbeat test performed prior to the abortion under section 188.900.

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

(1) The date of the abortion;
(2) The name and address of the abortion facility or hospital where the abortion was performed or induced;
(3) The nature of the abortion complication diagnosed or treated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188.207. It shall be unlawful for any public funds to be expended to any abortion 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-Capable Unborn Child Protection Act".

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

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

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

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

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

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

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

188.900. 1. The Missouri general assembly finds, according to contemporary medical research, that:
   (1) Fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;
   (2) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heartbeat is formed in the gestational sac;
   (3) The state of Missouri has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and
   (4) To make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

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

3. Except as provided under subsection 6 of this section, a physician shall not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat. In making such determination, the physician shall use a test that is:
   (1) Consistent with the physician's good faith and reasonable understanding of standard medical practice; and
   (2) Appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

4. A physician making a determination under subsection 3 of this section shall record in the pregnant woman's medical record:
   (1) The estimated gestational age of the unborn child;
   (2) The method used to estimate the gestational age; and
   (3) The test used for detecting a fetal heartbeat, including the date, time, and results of the test.
5. Except as provided under subsection 6 of this section, a physician shall not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child or failed to perform a test to detect a fetal heartbeat. A physician does not violate this subsection if the physician performed a test for a fetal heartbeat and did not detect a fetal heartbeat. This subsection does not affect:

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

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

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

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

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

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

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

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

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

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

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

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

9. (1) Notwithstanding the provisions of any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in subsection 10 of this section. No direct or indirect enforcement of this section shall be
taken or threatened by this state, a political subdivision, a prosecuting attorney, or an
executive or administrative officer or employee of this state or of a political subdivision
against any person, and no violation of this section shall be used to justify or trigger the
enforcement of any other law, except as provided in subsection 10 of this section.

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

(a) Legalize the conduct prohibited by this section;

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

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

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

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

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

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

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

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

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

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

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

(d) Costs and attorney's fees.
(3) Notwithstanding subdivision (2) of this subsection, a court shall not award relief under this subsection in response to a violation of paragraph (a) or (b) of subdivision (1) of this subsection if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under paragraph (b) of subdivision (2) of this subsection in a previous action for that particular abortion performed or induced in violation of this chapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this chapter.

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

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

(a) Ignorance or mistake of law;

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

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

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

(e) Nonmutual issue preclusion or nonmutual claim preclusion;

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

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

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

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

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

The defendant has the burden of proving an affirmative defense under paragraph (a) or (b) of this subdivision by a preponderance of the evidence.
This subsection shall not be construed to impose liability on any speech or conduct protected by the First Amendment of the Constitution of the United States, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the Constitution of the United States, or by Article I, Section 8 of the Constitution of Missouri.

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

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

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

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

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

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

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

Notwithstanding any other provision of law, a civil action under this section shall not be brought against a person who performed or aided or abetted an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity.
(14) Notwithstanding any other provision of law, a civil action under this section shall not be brought against a common carrier who transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child.

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

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

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

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

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

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

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

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

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

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

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

(d) The county of residence for the claimant if the claimant is a natural person residing in this state.
(2) If a civil action is brought under subsection 10 of this section in any one of the venues described under subdivision (1) of this subsection, the action shall not be transferred to a different venue without the written consent of all parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) If any state or federal court disregards the severability requirements of subdivisions (1), (2), (3), (4), and (5) of this subsection, and declares or finds any provision of this chapter facially unconstitutional when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances
without violating federal law, the federal or state constitution, or imposing an undue
burden on women seeking abortions, that provision shall be interpreted, as a matter of
state law, as if the general assembly had enacted a provision limited to the persons,
group of persons, or circumstances for which the provision's applications will not violate
federal law, the federal or state constitution, or impose an undue burden on women
seeking abortions, and every court shall adopt this saving construction of that provision
until the court ruling that pronounced the provision facially unconstitutional is vacated
or overruled.

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

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

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

(3) Laboratory and X-ray services;

(4) Nursing home services for participants, except to persons with more than five
hundred thousand dollars equity in their home or except for persons in an institution for
mental diseases who are under the age of sixty-five years, when residing in a hospital licensed
by the department of health and senior services or a nursing home licensed by the department
of health and senior services or appropriate licensing authority of other states or government-
owned and -operated institutions which are determined to conform to standards equivalent to
licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. Section 301,
et seq.), as amended, for nursing facilities. The MO HealthNet division may recognize through its payment methodology for nursing facilities those nursing facilities which serve a high volume of MO HealthNet patients. The MO HealthNet division when determining the amount of the benefit payments to be made on behalf of persons under the age of twenty-one in a nursing facility may consider nursing facilities furnishing care to persons under the age of twenty-one as a classification separate from other nursing facilities;

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

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

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

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

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

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

(11) Home health care services;

(12) Family planning as defined by federal rules and regulations; provided that, no funds shall be expended to any abortion facility, as defined in section 188.015, or to any
affiliate or associate of such abortion facility; and further provided, however, that such
family planning services shall not include abortions or any abortifacient drug or device that is
used for the purpose of inducing an abortion unless such abortions are certified in writing by a
physician to the MO HealthNet agency that, in the physician's professional judgment, the life
of the mother would be endangered if the fetus were carried to term;

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

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

(15) Personal care services which are medically oriented tasks having to do with a
person's physical requirements, as opposed to housekeeping requirements, which enable a
person to be treated by his or her physician on an outpatient rather than on an inpatient or
residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal
care services shall be rendered by an individual not a member of the participant's family who
is qualified to provide such services where the services are prescribed by a physician in
accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible
to receive personal care services shall be those persons who would otherwise require
placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable
for personal care services shall not exceed for any one participant one hundred percent of the
average statewide charge for care and treatment in an intermediate care facility for a
comparable period of time. Such services, when delivered in a residential care facility or
assisted living facility licensed under chapter 198 shall be authorized on a tier level based on
the services the resident requires and the frequency of the services. A resident of such facility
who qualifies for assistance under section 208.030 shall, at a minimum, if prescribed by a
physician, qualify for the tier level with the fewest services. The rate paid to providers for
each tier of service shall be set subject to appropriations. Subject to appropriations, each
resident of such facility who qualifies for assistance under section 208.030 and meets the
level of care required in this section shall, at a minimum, if prescribed by a physician, be
authorized up to one hour of personal care services per day. Authorized units of personal care
services shall not be reduced or tier level lowered unless an order approving such reduction or
lowering is obtained from the resident's personal physician. Such authorized units of personal
care services or tier level shall be transferred with such resident if he or she transfers to
another such facility. Such provision shall terminate upon receipt of relevant waivers from
the federal Department of Health and Human Services. If the Centers for Medicare and
Medicaid Services determines that such provision does not comply with the state plan, this
provision shall be null and void. The MO HealthNet division shall notify the revisor of
statutes as to whether the relevant waivers are approved or a determination of noncompliance
is made;

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

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

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

(c) Rehabilitative mental health and alcohol and drug abuse services including home
and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative
interventions rendered to individuals in an individual or group setting by a mental health
or alcohol and drug abuse professional in accordance with a plan of treatment appropriately
established, implemented, monitored, and revised under the auspices of a therapeutic team as
a part of client services management. As used in this section, mental health professional and
alcohol and drug abuse professional shall be defined by the department of mental health
pursuant to duly promulgated rules. With respect to services established by this subdivision,
the department of social services, MO HealthNet division, shall enter into an agreement with
the department of mental health. Matching funds for outpatient mental health services, clinic
mental health services, and rehabilitation services for mental health and alcohol and drug
abuse shall be certified by the department of mental health to the MO HealthNet division.
The agreement shall establish a mechanism for the joint implementation of the provisions of
this subdivision. In addition, the agreement shall establish a mechanism by which rates for
services may be jointly developed;

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

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

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

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

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

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

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

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

(d) The provisions of this subdivision shall not apply unless the nursing home
receives notice from the participant or the participant's responsible party that the participant
intends to return to the nursing home following the hospital stay. If the nursing home receives
such notification and all other provisions of this subsection have been satisfied, the nursing
home shall provide notice to the participant or the participant's responsible party prior to
release of the reserved bed;
(20) Prescribed medically necessary durable medical equipment. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards shall be used to verify medical need;

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

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

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

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

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

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

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

(25) The MO HealthNet division shall, by January 1, 2008, and annually thereafter, report the status of MO HealthNet provider reimbursement rates as compared to one hundred percent of the Medicare reimbursement rates and compared to the average dental
reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet
division shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve
parity with Medicare reimbursement rates and for third-party payor average dental
reimbursement rates. Such plan shall be subject to appropriation and the division shall
include in its annual budget request to the governor the necessary funding needed to complete
the four-year plan developed under this subdivision.

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

(1) Dental services;
(2) Services of podiatrists as defined in section 330.010;
(3) Optometric services as described in section 336.010;
(4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing
aids, and wheelchairs;
(5) Hospice care. As used in this subdivision, the term "hospice care" means a
coordinated program of active professional medical attention within a home, outpatient and
inpatient care which treats the terminally ill patient and family as a unit, employing a
medically directed interdisciplinary team. The program provides relief of severe pain or other
physical symptoms and supportive care to meet the special needs arising out of physical,
psychological, spiritual, social, and economic stresses which are experienced during the final
stages of illness, and during dying and bereavement and meets the Medicare requirements for
participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement
paid by the MO HealthNet division to the hospice provider for room and board furnished by a
nursing home to an eligible hospice patient shall not be less than ninety-five percent of the
rate of reimbursement which would have been paid for facility services in that nursing home
facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239
(Omnibus Budget Reconciliation Act of 1989);
(6) Comprehensive day rehabilitation services beginning early posttrauma as part of a
coordinated system of care for individuals with disabling impairments. Rehabilitation
services must be based on an individualized, goal-oriented, comprehensive and coordinated
treatment plan developed, implemented, and monitored through an interdisciplinary
assessment designed to restore an individual to optimal level of physical, cognitive, and
behavioral function. The MO HealthNet division shall establish by administrative rule the
definition and criteria for designation of a comprehensive day rehabilitation service facility,
benefit limitations and payment mechanism. Any rule or portion of a rule, as that term is
defined in section 536.010, that is created under the authority delegated in this subdivision
shall become effective only if it complies with and is subject to all of the provisions of
chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
nonseverable and if any of the powers vested with the general assembly pursuant to chapter
536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
held unconstitutional, then the grant of rulemaking authority and any rule proposed or
adopted after August 28, 2005, shall be invalid and void.

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

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

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

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

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

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

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

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

12. If the Missouri Medicaid audit and compliance unit changes any interpretation or application of the requirements for reimbursement for MO HealthNet services from the interpretation or application that has been applied previously by the state in any audit of a MO HealthNet provider, the Missouri Medicaid audit and compliance unit shall notify all affected MO HealthNet providers five business days before such change shall take effect. Failure of the Missouri Medicaid audit and compliance unit to notify a provider of such change shall
entitle the provider to continue to receive and retain reimbursement until such notification is
provided and shall waive any liability of such provider for recoupment or other loss of any
payments previously made prior to the five business days after such notice has been sent.
Each provider shall provide the Missouri Medicaid audit and compliance unit a valid email
address and shall agree to receive communications electronically. The notification required
under this section shall be delivered in writing by the United States Postal Service or
electronic mail to each provider.

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

14. Beginning July 1, 2016, and subject to appropriations, providers of behavioral,
social, and psychophysiological services for the prevention, treatment, or management of
physical health problems shall be reimbursed utilizing the behavior assessment and
intervention reimbursement codes 96150 to 96154 or their successor codes under the
reimbursement shall include psychologists.

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

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

3. MO HealthNet shall include benefit payments for Medicare Part A cost sharing as
defined in clause (p)(3)(A)(i) of 42 U.S.C. 1396d on behalf of qualified disabled and working
individuals as defined in subsection (s) of Section 42 U.S.C. 1396d as required by subsection (d) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989). The MO HealthNet division may impose a premium for such benefit payments as authorized by paragraph (d)(3) of Section 6408 of P.L. 101-239.

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

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

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

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

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

(1) "Abuse", a documented pattern of inducing, furnishing, or otherwise causing a recipient to receive services or merchandise not otherwise required or requested by the recipient, attending physician or appropriate utilization review team; a documented pattern of performing and billing tests, examinations, patient visits, surgeries, drugs or merchandise that exceed limits or frequencies determined by the department for like practitioners for which
there is no demonstrable need, or for which the provider has created the need through ineffective services or merchandise previously rendered. The decision to impose any of the sanctions authorized in this section shall be made by the director of the department, following a determination of demonstrable need or accepted medical practice made in consultation with medical or other health care professionals, or qualified peer review teams;

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

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

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

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

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

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

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

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

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

2. The department or its divisions shall have the authority to suspend, revoke, or cancel any contract or provider agreement or refuse to enter into a new contract or provider
agreement with any provider where it is determined the provider has committed or allowed its
agents, servants, or employees to commit acts defined as abuse or fraud in this section.

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

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

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

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

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

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

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

8. The department or its designated division shall have the authority with respect to
any recipient of medical assistance benefits whose use has been restricted under subsection 7
of this section and who obtains or seeks to obtain medical assistance benefits from a provider
other than one of the providers for designated services to terminate medical assistance
benefits as defined by this chapter, where allowed by the provisions of the federal Social
Security Act.
9. The department or its designated division shall have the authority with respect to any provider who knowingly allows a recipient to violate subsection 7 of this section or who fails to report a known violation of subsection 7 of this section to the department of social services or its designated division to terminate or otherwise sanction such provider's status as a participant in the medical assistance program. Any person making such a report shall not be civilly liable when the report is made in good faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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