

FIRST REGULAR SESSION

HOUSE BILL NO. 618

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLL.

1518H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 188.017, 188.028, 188.030, 188.056, 188.057, 188.058, and 188.075, RSMo, and to enact in lieu thereof seven 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 188.017, 188.028, 188.030, 188.056, 188.057, 188.058, and
2 188.075, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 188.017, 188.028, 188.030, 188.056, 188.057, 188.058, and 188.075, to read as
4 follows:

188.017. 1. This section shall be known and may be cited as the "Right to Life of the
2 Unborn Child Act".

3 2. Notwithstanding any other provision of law to the contrary, no abortion shall be
4 performed or induced upon a woman, except in cases of medical emergency **or in cases**
5 **where a woman's pregnancy resulted from rape or incest**. Any person who knowingly
6 performs or induces an abortion of an unborn child in violation of this subsection shall be
7 guilty of a class B felony, as well as subject to suspension or revocation of his or her
8 professional license by his or her professional licensing board. A woman upon whom an
9 abortion is performed or induced in violation of this subsection shall not be prosecuted for a
10 conspiracy to violate the provisions of this subsection.

11 3. It shall be an affirmative defense for any person alleged to have violated the
12 provisions of subsection 2 of this section that:

13 **(1)** The person performed or induced an abortion because of a medical emergency; **or**

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **(2) The person performed or induced an abortion on a woman who prior to the**
15 **performance of the abortion reported an act of rape or incest to a law enforcement**
16 **agency and provided a copy of such report to the person performing the abortion or if**
17 **the woman is a minor or subject to a guardianship, prior to the performance of the**
18 **abortion the woman or her parent or guardian reported the act of rape or incest to a law**
19 **enforcement agency or child protective services and such report was provided to the**
20 **person performing the abortion.**

21

22 The defendant shall have the burden of persuasion that the defense is more probably true than
23 not.

24 4. The enactment of this section shall only become effective upon notification to the
25 revisor of statutes by an opinion by the attorney general of Missouri, a proclamation by the
26 governor of Missouri, or the adoption of a concurrent resolution by the Missouri general
27 assembly that:

28 (1) The United States Supreme Court has overruled, in whole or in part, Roe v. Wade,
29 410 U.S. 113 (1973), restoring or granting to the state of Missouri the authority to regulate
30 abortion to the extent set forth in this section, and that as a result, it is reasonably probable
31 that this section would be upheld by the court as constitutional;

32 (2) An amendment to the Constitution of the United States has been adopted that has
33 the effect of restoring or granting to the state of Missouri the authority to regulate abortion to
34 the extent set forth in this section; or

35 (3) The United States Congress has enacted a law that has the effect of restoring or
36 granting to the state of Missouri the authority to regulate abortion to the extent set forth in this
37 section.

188.028. 1. Except in the case of a medical emergency **or in the case where a**
2 **woman's pregnancy resulted from rape or incest**, no person shall knowingly perform or
3 induce an abortion upon a pregnant woman under the age of eighteen years unless:

4 (1) The attending physician has secured the informed written consent of the minor
5 and one parent or guardian, and the consenting parent or guardian of the minor has notified
6 any other custodial parent in writing prior to the securing of the informed written consent of
7 the minor and one parent or guardian. For purposes of this subdivision, "custodial parent"
8 shall only mean a parent of a minor who has been awarded joint legal custody or joint
9 physical custody of such minor by a court of competent jurisdiction. Notice shall not be
10 required for any parent:

11 (a) Who has been found guilty of any offense in violation of chapter 565, relating to
12 offenses against the person; chapter 566, relating to sexual offenses; chapter 567, relating to

13 prostitution; chapter 568, relating to offenses against the family; or chapter 573, related to
14 pornography and related offenses, if a child was a victim;

15 (b) Who has been found guilty of any offense in any other state or foreign country, or
16 under federal, tribal, or military jurisdiction if a child was a victim, which would be a
17 violation of chapters 565, 566, 567, 568, or 573 if committed in this state;

18 (c) Who is listed on the sexual offender registry under sections 589.400 to 589.425;

19 (d) Against whom an order of protection has been issued, including a foreign order of
20 protection given full faith and credit in this state under section 455.067;

21 (e) Whose custodial, parental, or guardianship rights have been terminated by a court
22 of competent jurisdiction; or

23 (f) Whose whereabouts are unknown after reasonable inquiry, who is a fugitive from
24 justice, who is habitually in an intoxicated or drugged condition, or who has been declared
25 mentally incompetent or incapacitated by a court of competent jurisdiction;

26 (2) The minor is emancipated and the attending physician has received the informed
27 written consent of the minor;

28 (3) The minor has been granted the right to self-consent to the abortion by court order
29 pursuant to subsection 2 of this section, and the attending physician has received the informed
30 written consent of the minor; or

31 (4) The minor has been granted consent to the abortion by court order, and the court
32 has given its informed written consent in accordance with subsection 2 of this section, and the
33 minor is having the abortion willingly, in compliance with subsection 3 of this section.

34 2. The right of a minor to self-consent to an abortion under subdivision (3) of
35 subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this
36 section may be granted by a court pursuant to the following procedures:

37 (1) The minor or next friend shall make an application to the juvenile court which
38 shall assist the minor or next friend in preparing the petition and notices required pursuant to
39 this section. The minor or the next friend of the minor shall thereafter file a petition setting
40 forth the initials of the minor; the age of the minor; the names and addresses of each parent,
41 guardian, or, if the minor's parents are deceased and no guardian has been appointed, any
42 other person standing in loco parentis of the minor; that the minor has been fully informed of
43 the risks and consequences of the abortion; that the minor is of sound mind and has sufficient
44 intellectual capacity to consent to the abortion; that, if the court does not grant the minor
45 majority rights for the purpose of consent to the abortion, the court should find that the
46 abortion is in the best interest of the minor and give judicial consent to the abortion; that the
47 court should appoint a guardian ad litem of the child; and if the minor does not have private
48 counsel, that the court should appoint counsel. The petition shall be signed by the minor or
49 the next friend;

50 (2) A hearing on the merits of the petition, to be held on the record, shall be held as
51 soon as possible within five days of the filing of the petition. If any party is unable to afford
52 counsel, the court shall appoint counsel at least twenty-four hours before the time of the
53 hearing. At the hearing, the court shall hear evidence relating to the emotional development,
54 maturity, intellect and understanding of the minor; the nature, possible consequences, and
55 alternatives to the abortion; and any other evidence that the court may find useful in
56 determining whether the minor should be granted majority rights for the purpose of
57 consenting to the abortion or whether the abortion is in the best interests of the minor;

58 (3) In the decree, the court shall for good cause:

59 (a) Grant the petition for majority rights for the purpose of consenting to the abortion;

60 (b) Find the abortion to be in the best interests of the minor and give judicial consent
61 to the abortion, setting forth the grounds for so finding; or

62 (c) Deny the petition, setting forth the grounds on which the petition is denied;

63 (4) If the petition is allowed, the informed consent of the minor, pursuant to a court
64 grant of majority rights, or the judicial consent, shall bar an action by the parents or guardian
65 of the minor on the grounds of battery of the minor by those performing or inducing the
66 abortion. The immunity granted shall only extend to the performance or induction of the
67 abortion in accordance herewith and any necessary accompanying services which are
68 performed in a competent manner. The costs of the action shall be borne by the parties;

69 (5) An appeal from an order issued under the provisions of this section may be taken
70 to the court of appeals of this state by the minor or by a parent or guardian of the minor. The
71 notice of intent to appeal shall be given within twenty-four hours from the date of issuance of
72 the order. The record on appeal shall be completed and the appeal shall be perfected within
73 five days from the filing of notice to appeal. Because time may be of the essence regarding
74 the performance or induction of the abortion, the supreme court of this state shall, by court
75 rule, provide for expedited appellate review of cases appealed under this section.

76 3. If a minor desires an abortion, then she shall be orally informed of and, if possible,
77 sign the written consent required under this chapter in the same manner as an adult person.
78 No abortion shall be performed or induced on any minor against her will, except that an
79 abortion may be performed or induced against the will of a minor pursuant to a court order
80 described in subdivision (4) of subsection 1 of this section that the abortion is necessary to
81 preserve the life of the minor.

188.030. 1. Except in the case of a medical emergency **or in the case where a**
2 **woman's pregnancy resulted from rape or incest**, no abortion of a viable unborn child shall
3 be performed or induced unless the abortion is necessary to preserve the life of the pregnant
4 woman whose life is endangered by a physical disorder, physical illness, or physical injury,
5 including a life-endangering physical condition caused by or arising from the pregnancy

6 itself, or when continuation of the pregnancy will create a serious risk of substantial and
7 irreversible physical impairment of a major bodily function of the pregnant woman. For
8 purposes of this section, "major bodily function" includes, but is not limited to, functions of
9 the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain,
10 respiratory, circulatory, endocrine, and reproductive functions.

11 2. Except in the case of a medical emergency **or in the case where a woman's**
12 **pregnancy resulted from rape or incest:**

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

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

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

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

41 (b) Before a physician may proceed with performing or inducing an abortion upon a
42 woman when it has been determined that the unborn child is viable, the physician shall first

43 certify in writing the medical threat posed to the life of the pregnant woman, or the medical
44 reasons that continuation of the pregnancy would cause a serious risk of substantial and
45 irreversible physical impairment of a major bodily function of the pregnant woman. Upon
46 completion of the abortion, the physician shall report the reasons and determinations for the
47 abortion of a viable unborn child to the health care facility in which the abortion is performed
48 and to the state board of registration for the healing arts, and shall enter such findings and
49 determinations in the medical record of the woman and in the individual abortion report
50 submitted to the department under section 188.052.

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

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

75 (e) No physician shall perform or induce an abortion upon a woman when it has been
76 determined that the unborn child is viable unless there is in attendance a physician other than
77 the physician performing or inducing the abortion who shall take control of and provide
78 immediate medical care for a child born as a result of the abortion. During the performance
79 of the abortion, the physician performing it, and subsequent to the abortion, the physician

80 required to be in attendance, shall take all reasonable steps in keeping with good medical
81 practice, consistent with the procedure used, to preserve the life or health of the viable unborn
82 child; provided that it does not pose an increased risk to the life of the woman or does not
83 pose an increased risk of substantial and irreversible physical impairment of a major bodily
84 function of the woman.

85 3. Any person who knowingly performs or induces an abortion of an unborn child in
86 violation of the provisions of this section is guilty of a class D felony, and, upon a finding of
87 guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and,
88 notwithstanding the provisions of section 558.002, shall be fined not less than ten thousand
89 nor more than fifty thousand dollars.

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

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

97 6. Any abortion facility licensed in the state of Missouri that knowingly allows an
98 abortion of an unborn child to be performed or induced in violation of this section may be
99 subject to suspension or revocation of its license under the provisions of section 197.220.

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

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

105 9. It is the intent of the legislature that this section be severable as noted in section
106 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of
107 this section be declared invalid under the Constitution of the United States or the Constitution
108 of the State of Missouri, it is the intent of the legislature that the remaining provisions of this
109 section remain in force and effect as far as capable of being carried into execution as intended
110 by the legislature.

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

188.056. 1. Notwithstanding any other provision of law to the contrary, no abortion
2 shall be performed or induced upon a woman at eight weeks gestational age or later, except in
3 cases of medical emergency **or in cases where a woman's pregnancy resulted from rape or**

4 **incest.** Any person who knowingly performs or induces an abortion of an unborn child in
5 violation of this subsection shall be guilty of a class B felony, as well as subject to suspension
6 or revocation of his or her professional license by his or her professional licensing board. A
7 woman upon whom an abortion is performed or induced in violation of this subsection shall
8 not be prosecuted for a conspiracy to violate the provisions of this section.

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

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

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

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

10 2. It shall be an affirmative defense for any person alleged to have violated the
11 provisions of subsection 1 of this section that the person performed or induced an abortion
12 because of a medical emergency **or because the woman's pregnancy resulted from rape or**

13 **incest.** The defendant shall have the burden of persuasion that the defense is more probably
14 true than not.

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

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

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

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

14 3. Prosecution under this section shall bar prosecution under section 188.056,
15 188.057, or 188.375 if prosecution under such sections would violate the provisions of
16 Amendment V to the Constitution of the United States or Article I, Section 19 of the
17 Constitution of Missouri.

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

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

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

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

12 3. The attorney general shall have concurrent original jurisdiction throughout the
13 state, along with each prosecuting attorney and circuit attorney within their respective
14 jurisdictions, to commence actions for a violation of any provision of this chapter, for a
15 violation of any state law on the use of public funds for an abortion, or for a violation of any
16 state law which regulates an abortion facility or a person who performs or induces an
17 abortion. The attorney general, or prosecuting attorney or circuit attorney within their
18 respective jurisdictions, may seek injunctive or other relief against any person who, or entity
19 which, is in violation of any provision of this chapter, misuses public funds for an abortion, or
20 violates any state law which regulates an abortion facility or a person who performs or
21 induces an abortion.

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