



## HB 2688

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**Path to full text:** <https://documents.house.mo.gov/billtracking/bills261/hlrbillspdf/5103H.01L.pdf>

### PART 1 — QUICK SNAPSHOT

#### 1.1 One-Paragraph Overview (Plain Language)

HB 2688 repeals and reenacts Missouri’s existing “life begins at conception” statute (**RSMo §1.205**) with mostly the same structure, but **adds new language stating unborn children are entitled to protections under the U.S. Constitution’s Fifth and Fourteenth Amendments**. It still directs Missouri courts to interpret state laws to acknowledge “rights, privileges, and immunities” of the unborn (subject to the U.S. Constitution, U.S. Supreme Court interpretations, and contrary provisions in Missouri law). It keeps the definition of “unborn child” from conception to birth and keeps a narrow “no cause of action” protection for women regarding *indirect* harm from failing to follow prenatal care. In practice, this bill is **more of a legal-positioning and litigation-signaling measure** than an enforcement mechanism.

#### 1.2 Triage Table (Fast Flags)

- **Single-Subject / Clear Title:** Likely compliant (single statute; single topic).
- **Title Specificity (0–3): 2** (“relating to unborn children” is on-topic but not very specific about constitutional-claims/litigation intent).
- **Department Scope: Single** (general statutory construction rule; no agency program).
- **Does it grow government? No** (no new bureaucracy; mostly interpretive language).
- **Impact on Missouri families (overall): Mixed** (symbolic pro-life signal, but limited practical effect and high litigation/uncertainty risk).
- **Alignment with Act for Missouri core beliefs: Supports (in intent), Mixed (in effectiveness/structure).**
- **Initial stance: Watch / Mixed**

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## PART 2 — PURPOSE & PROVISION MAP

### 2.1 Stated Purpose & Title

- **Title:** “relating to unborn children.”
- **Apparent real purpose:** to strengthen (or at least state) a **federal constitutional framing** for unborn-child protections by expressly invoking the **5th and 14th Amendments**, likely anticipating post- Amendment 3 litigation.

### 2.2 Provision-by-Provision Map (Major Clauses)

#### Provision A — Findings: Life begins at conception

- **Location:** §1.205.1(1)–(3)
- **What it does:** Restates conception, unborn interests, parents’ interests.
- **Tag:** [Great]
- **Why:** Clear moral/legal statement consistent with pro-life principle.

#### Provision B — Canon of construction (“laws shall be interpreted...”)

- **Location:** §1.205.2
- **What it does:** Directs courts to construe Missouri law to acknowledge unborn rights, but **subject to U.S. Constitution/SCOTUS and contrary Missouri statutes/constitution.**
- **Tag:** [Mixed]
- **Why:** It is broad, but also self-limiting—meaning it may **not overcome** contrary constitutional text (like Amendment 3) and may mostly function as a litigation talking point.

#### Provision C — New: “entitled to protection” under the 5th and 14th Amendments

- **Location:** §1.205.3
- **What it does:** Adds explicit claim that unborn children are entitled to rights protection under the Fifth and Fourteenth Amendments.
- **Tag:** [Great]
- **Why:** This is a **major legal claim** that invites constitutional conflict; The problem is it’s not paired with a clean enforcement mechanism.

#### Provision D — Definition of “unborn child”

- **Location:** §1.205.4

- **What it does:** Defines an unborn child from conception to birth at every developmental stage.
- **Tag:** [Great]

#### Provision E — “no cause of action” for indirect prenatal-care failures

- **Location:** §1.205.5
- **What it does:** Says nothing here creates a cause of action against a woman for *indirectly* harming her unborn child by failing prenatal care.
- **Tag:** [Mixed]
- **Why:** Helps prevent miscarriage/pregnancy policing theories *in that narrow frame*, but it is **not a clear shield** for intentional acts (and it doesn’t define the boundary cleanly).

#### 2.3 Changes to Existing Law (High-Level)

- Missouri already has §1.205 with findings + construction rule + definition + prenatal-care shield.
- HB 2688’s main substantive change is **adding** the explicit Fifth/Fourteenth Amendment “entitled to protection” clause and renumbering the definition/shield.
- It does **not** amend homicide statutes, abortion regulations, enforcement, venue, or defenses.

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### PART 3 — CONSTITUTIONAL & PROCESS CHECKS

#### 3.1 Single-Subject & Clear-Title (Art. III §23)

- **Likely complies** (one section; one topic).
- **Fair-notice issue (minor):** Probably fails. The title doesn’t highlight the **federal constitutional strategy** angle, but it’s still within “unborn children.”

#### 3.2 U.S. & Missouri Constitutional Rights

- **Direct collision risk with Missouri’s Article I, Section 36 (“Right to Reproductive Freedom”):** that section states *no person shall be penalized, prosecuted, or subjected to adverse action based on pregnancy outcomes, including abortion*, and extends protection to those assisting with consent.
- HB 2688 is statutory; it **cannot override** a Missouri constitutional provision unless a court finds the constitutional provision itself invalid under federal law. That is precisely the litigation pathway HB 2688 appears to tee up by invoking the 5th/14th.
- **Federal personhood uncertainty:** the Supreme Court has not established a clear rule recognizing unborn children as “persons” under the Fourteenth Amendment; HB 2688

effectively asserts that position anyway. This in itself is good. Act for Missouri would welcome that court fight.

### 3.3 Delegation / Separation of Powers

- No new agency power, no rulemaking, no NGO delegation.
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## PART 4 — IMPACT ON MISSOURI FAMILIES

### 4.1 Economic / Tax Impacts

- None directly.

### 4.2 Family / Parental Rights

- Indirect: could be cited in litigation about unborn-child rights and parental interests, but the bill itself creates no new process.

### 4.3 Moral & Cultural Climate

- **Pro-life signal:** yes.
  - **Practical protection effect:** limited unless paired with enforceable statutes *and* unless Amendment 3 barriers are removed or defeated in court.
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## PART 6 — SPECIAL TOPIC: Amendment 3 & Self-Managed Abortion Pills

### What HB 2688 changes for telemed “abortion pill” self-abortion

**In plain terms: almost nothing directly.** HB 2688 does not create a new crime, new civil liability, or a direct enforcement hook for prosecuting a woman who orders pills via telemedicine and self-administers.

**The hard barrier is Amendment 3’s text:** it explicitly bars penalizing/prosecuting someone for pregnancy outcomes “including... abortion,” and bars penalizing those who assist with consent.

**So HB 2688’s realistic role is as a litigation stepping-stone:**

- It strengthens the argument Missouri is taking the position that unborn children are entitled to federal constitutional protections (5th/14th).
  - But unless courts accept that theory *and* invalidate Amendment 3’s protections accordingly, **self-managed abortion-pill prosecutions remain constitutionally obstructed** in Missouri.
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## PART 7 — RED FLAGS, FIXES, FINAL RECOMMENDATION

## 7.1 Red Flags (Prioritized)

### 1. Symbolic/non-operational bill (necessity failure)

- **Why:** Missouri already has §1.205; HB 2688 adds a legal claim but not an enforcement solution.
- **Severity:** Serious (because it may create false expectations and consume bandwidth without delivering protection).

### 2. High litigation/uncertainty with Amendment 3, without a clear strategy vehicle

- **Why:** Amendment 3’s “no prosecution/adverse action” language is sweeping; HB 2688 does not resolve the conflict—only signals it.
- **Severity:** Serious.

## 7.2 Fixes / Amendments

Because HB 2688 is mostly a positioning statement, “tweaks” don’t really solve the core problem. If the real target is abortion-pill/self-managed abortion enabled by telemed, the legislature would need a **coherent, enforceable strategy** that addresses the Amendment 3 barrier head-on (constitutional repeal/replace strategy, or a deliberate test-case vehicle with clean standing and rapid review design).

## 7.3 Final Recommendation

**Act for Missouri rating: WATCH / MIXED. We would much rather see HB 1682 pass.**

HB 2688 is aligned in *sentiment* with the sanctity of life, but it appears **largely duplicative** of existing law and **non-operational** against the real-world problem you flagged (telemed/self-managed abortion pills), because Amendment 3’s “no prosecution/adverse action” language blocks the enforcement pathway.

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### Comparison: HB 2688 vs HB 1682 (and our HB 1682 analysis)

Our existing HB 1682 analysis describes HB 1682 as a **direct criminal-code personhood / equal-protection approach** that aims to “abolish abortion,” redefines “person” in the homicide chapter to include unborn children from fertilization, and tightens defenses (life-of-the-mother justification; duress option for coerced mothers), with a **statewide referendum in August 2027**.

#### Side-by-side practical differences

Category	HB 2688	HB 1682
Core mechanism	Statutory <b>construction</b> + <b>constitutional-claim signaling</b>	<b>Operative criminal-code rewrite</b> (homicide chapter personhood + defenses + venue)

Category	HB 2688	HB 1682
Direct enforcement	None	Yes (if effective and upheld): abortion treated as homicide framework
Treatment of mothers	Keeps narrow “no cause of action” for <i>indirect prenatal-care failures</i>	No broad immunity; includes <b>duress defense</b> exception for mothers in unborn-child homicide context
Timing	Would take effect like a normal bill if enacted	<b>Does not take effect unless voters approve in Aug 2027</b>
Collision with Amendment 3	Still blocked (statute subordinate)	Still blocked unless courts accept the federal equal-protection/personhood theory or Amendment 3 is repealed/invalidated
Telemed/self-managed abortion pill scenario	<b>No practical change;</b> mainly litigation posture	If ever effective + upheld, provides the <b>closest statutory structure</b> for prosecuting intentional self-abortion (subject to Amendment 3 conflict)

**The specific question: what happens with a woman who uses telemed to get pills and self-aborts?**

**Under HB 2688 (even if enacted)**

- **No new crime is created.**
- **Amendment 3 remains the controlling barrier** to prosecution/adverse action for “pregnancy outcomes, including... abortion,” and it also protects those assisting with consent.
- HB 2688 might be cited in court to argue unborn children have federal constitutional protections, but **that is a long, uncertain litigation path**—not an operational enforcement tool.

**Under HB 1682 (based on your analysis), assuming it became effective and survived court challenges**

- HB 1682 is designed to treat the unborn as a “person” under homicide law—meaning a self-managed abortion could be framed as criminal homicide **in theory**.
- However, **Amendment 3’s explicit “no prosecution/adverse action” language** is directly in the way, so the whole approach depends on either:
  1. repeal/replace of Amendment 3, or

2. a court accepting the fetal personhood/equal-protection theory that would negate Amendment 3's protections as applied.
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#### **Bottom line**

- **HB 2688 is a statement; HB 1682 is a system.**
- For the abortion-pill/telemed problem, **HB 2688 does not materially change enforcement reality**, because Amendment 3 is written to block prosecution of the woman (and those assisting with consent).
- **HB 1682 is far closer to an enforceable equal-protection framework**, but it is delayed by referendum timing and still faces the same constitutional collision unless Amendment 3 is defeated directly or indirectly.