

HB 537 -- UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT

SPONSOR: Hubrecht

This bill establishes the "Unborn Child Protection from Dismemberment Abortion Act."

The bill specifies that it is unlawful for any person to purposely perform or attempt to perform a dismemberment abortion unless necessary to prevent serious health risk to the unborn child's mother.

Anyone accused of performing an unlawful dismemberment abortion may request a hearing before the State Board of Registration for the Healing Arts within the Department of Insurance, Financial Institutions and Professional Registration to determine if the procedure was necessary to prevent a serious health risk to the mother. The board's findings are admissible in court and the accused may motion the court and the court must delay the beginning of a trial no longer than 30 days to allow the hearing to take place. A woman upon whom an abortion is attempted or performed and anyone who acted at the direction of a physician cannot be held liable.

Any individual who violates these provisions shall be fined \$10,000, imprisoned for not more than two years, or both (Section 188.142, RSMo).

A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of these provisions may be maintained by the woman, specified individuals, or the prosecuting attorney.

Any injunction granted under these provisions must prevent the defendant from performing or attempting to perform further dismemberment abortions. A cause of action for civil damages against a person who has performed a dismemberment abortion may be maintained by the woman; the father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or if the woman was less than 18 years of age or died as a result of the abortion, the maternal grandparents of the unborn child.

Damages cannot be award where the pregnancy resulted from the plaintiff's criminal conduct.

Damages awarded must include money damages for all injuries, psychological and physical, caused by the dismemberment abortion, and statutory damages equal to three times the cost of the dismemberment abortion (Section 188.144).

If judgment is rendered in favor of the plaintiff, the court must also render judgment for reasonable attorneys' fees against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court must render judgment for reasonable attorneys' fees against the plaintiff except as specified.

In every civil, criminal, or administrative proceeding or action brought under these provisions, the court must rule whether the anonymity of the woman must be preserved from public disclosure unless she gives her consent to the disclosure. The court upon determining that her anonymity should be preserved, must issue orders to the parties, witnesses, and counsel and must direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure, as specified in the bill. In the absence of written consent of the woman anyone other than a public official who brings an action under Section 188.144 must do so under a fictitious name. This section must not be construed to conceal the identity of the plaintiff or witnesses from the defendant or his or her attorney.

Nothing in these provisions is to be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion (Section 188.146).

This bill is the same as HB 1714 (2016) and HB 920 (2015).