

FIRST REGULAR SESSION

HOUSE BILL NO. 195

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SEITZ.

0606H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 188.035, RSMo, and to enact in lieu thereof one new section relating to abortion, with penalty provisions.

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

Section A. Section 188.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.035, to read as follows:

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. (1) A health care provider or employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of subsection 3 of this section shall

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.

18 immediately report such violation to an appropriate state or federal law enforcement
19 agency. Any such person who fails to report a violation shall, upon conviction, be
20 punished by imprisonment of not more than five years or by fine of not less than two
21 thousand five hundred dollars but not more than ten thousand dollars or by both such
22 imprisonment and fine.

23 (2) Any person who intentionally performs or attempts to perform an overt act
24 that kills a child born alive described under subsection 3 of this section shall be guilty of
25 first degree murder under section 565.020.

26 5. In addition to any criminal or administrative liability which may be incurred,
27 a person shall be civilly liable when he or she:

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

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

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

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

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

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

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

47 (1) A person upon whom the unlawful abortion or attempted unlawful abortion
48 was performed or induced;

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

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

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

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