

FIRST REGULAR SESSION

HOUSE BILL NO. 194

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SEITZ.

0841H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 1.205 and 188.052, RSMo, and to enact in lieu thereof six new sections relating to abortion.

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

Section A. Sections 1.205 and 188.052, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 1.205, 188.052, 188.909, 188.910, 188.911, and 188.912, to read as follows:

1.205. 1. The general assembly of this state finds that:

(1) The life of each human being begins at conception;

(2) Unborn children have protectable interests in life, health, and well-being **and are entitled to the same rights, powers, privileges, justice, and protections as are secured or granted by the laws of this state to any other human person;**

(3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.

2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.

3. As used in this section, the term "unborn children" or "unborn child" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.

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.

17 4. Nothing in this section shall be interpreted as creating a cause of action against a
18 woman for indirectly harming her unborn child by failing to properly care for herself or by
19 failing to follow any particular program of prenatal care.

188.052. 1. An individual abortion report for each abortion performed or induced
2 upon a woman shall be completed by the physician who performed or induced the abortion.
3 Abortion reports shall include, but not be limited to, a certification that the physician does not
4 have any knowledge that the woman sought the abortion solely because of a prenatal
5 diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome
6 in the unborn child and a certification that the physician does not have any knowledge that the
7 woman sought the abortion solely because of the sex or race of the unborn child. **Abortion**
8 **reports shall also include the time, date, method, and results of the test performed to**
9 **detect a fetal heartbeat under section 188.909 and information concerning any medical**
10 **emergency as required under subsection 7 of section 188.909.**

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

14 (1) The date of the abortion;

15 (2) The name and address of the abortion facility or hospital where the abortion was
16 performed or induced;

17 (3) The nature of the abortion complication diagnosed or treated.

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

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

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

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

5 **2. Notwithstanding any other provision of law to the contrary and except in**
6 **cases of medical emergency, a physician shall not knowingly perform or induce an**

7 **abortion on a pregnant woman unless the physician has determined, in accordance with**
8 **this section, whether the woman's unborn child has a detectable fetal heartbeat.**

9 **3. In making a determination under subsection 2 of this section, the physician**
10 **shall use a test that is:**

11 **(1) Consistent with the physician's good faith and reasonable understanding of**
12 **standard medical practice; and**

13 **(2) Appropriate for the estimated gestational age of the unborn child and the**
14 **condition of the pregnant woman and her pregnancy.**

15 **4. A physician making a determination under subsection 2 of this section shall**
16 **record in the pregnant woman's medical record:**

17 **(1) The estimated gestational age of the unborn child;**

18 **(2) The method used to estimate the gestational age; and**

19 **(3) The test used for detecting a fetal heartbeat, including the date, time, and**
20 **results of the test.**

21 **5. Except in cases of medical emergency, a physician shall not knowingly**
22 **perform or induce an abortion on a pregnant woman if the physician detected a fetal**
23 **heartbeat for the unborn child or if the physician failed to perform a test to detect a fetal**
24 **heartbeat.**

25 **6. A physician shall not be considered in violation of the provisions of this section**
26 **if the physician performed a test for a fetal heartbeat and did not detect a fetal**
27 **heartbeat.**

28 **7. A physician who performs or induces an abortion in the case of medical**
29 **emergency without first performing a test for a fetal heartbeat shall make written**
30 **notations in the woman's medical record of:**

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

33 **(2) The medical condition of the pregnant woman that prevented compliance**
34 **with the provisions of this section.**

35 **8. This section shall not affect:**

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

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

39 **9. Notwithstanding any other provision of law to the contrary, the provisions of**
40 **this section shall be enforced exclusively through the private civil actions described in**
41 **section 188.910. No enforcement of this section in response to violations of this section**
42 **shall be taken or threatened by the state, a political subdivision of the state, a**
43 **prosecuting or circuit attorney, or an executive or administrative officer or employee of**

44 this state or a political subdivision of this state against any person, except as provided in
45 section 188.910.

188.910. 1. Any person, other than an officer or employee of the state or a
2 political subdivision of the state, may bring a civil action against any person who:

3 (1) Performs or induces an abortion in violation of section 188.909;

4 (2) Knowingly engages in conduct that aids or abets the performance or
5 induction of an abortion, including paying for reimbursing the costs of an abortion
6 through insurance or otherwise, if the abortion is performed or induced in violation of
7 section 188.909, regardless of whether the person knew or should have known that the
8 abortion would be performed or induced in violation of section 188.909; or

9 (3) Intends to engage in the conduct described by subdivision (1) or (2) of this
10 subsection.

11 2. If a claimant prevails in an action brought under this section, the court shall
12 award:

13 (1) Injunctive relief sufficient to prevent the defendant from violating this
14 section or engaging in acts that aid or abet violations of section 188.909;

15 (2) Statutory damages in an amount of not less than ten thousand dollars for
16 each abortion that the defendant performed or induced in violation of section 188.909,
17 and for each abortion performed or induced in violation of section 188.909 that the
18 defendant aided or abetted; and

19 (3) Costs and attorney's fees.

20 3. Notwithstanding the provisions of subsection 2 of this section, a court shall not
21 award relief under this section in response to a violation of subdivision (1) or (2) of
22 subsection 1 of this section if the defendant demonstrates that he or she previously paid
23 the full amount of statutory damages under subdivision (2) of subsection 2 of this section
24 in a previous action for that particular abortion performed or induced in violation of
25 section 188.909, or for the particular conduct that aided or abetted an abortion
26 performed or induced in violation of section 188.909.

27 4. Notwithstanding any other provision of law to the contrary, a person may
28 bring an action under this section not later than the fourth anniversary of the date the
29 cause of action accrues.

30 5. Notwithstanding any other provision of law to the contrary, the following shall
31 not be a defense to an action brought under this section:

32 (1) Ignorance or mistake of law;

33 (2) A defendant's belief that the requirements of section 188.909 are
34 unconstitutional or were unconstitutional;

35 (3) A defendant's reliance on any court decision that has been overruled on
36 appeal or by a subsequent court, even if that court decision had not been overruled
37 when the defendant engaged in conduct that violates section 188.909;

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

40 (5) Nonmutual issue preclusion or nonmutual claim preclusion;

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

42 (7) Any claim that the enforcement of section 188.909 or the imposition of civil
43 liability against the defendant will violate the constitutional rights of third parties,
44 except as provided by section 188.911.

45 6. It shall be an affirmative defense if:

46 (1) A defendant under subdivision (2) of subsection 1 of this section reasonably
47 believed, after conducting a reasonable investigation, that the physician performing or
48 inducing the abortion had complied or would comply with this section; or

49 (2) A defendant under subdivision (3) of subsection 1 of this section reasonably
50 believed, after conducting a reasonable investigation, that the physician performing or
51 inducing the abortion will comply with this section.

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53 The defendant has the burden of proving an affirmative defense under subdivision (1)
54 or (2) of this subsection by a preponderance of the evidence.

55 7. This section shall not be construed to impose liability on any speech or
56 conduct protected by the First Amendment of the U.S. Constitution, as made applicable
57 to the states through the U.S. Supreme Court's interpretation of the Fourteenth
58 Amendment of the U.S. Constitution, or by the Missouri Constitution.

59 8. Notwithstanding any other provision of law to the contrary, the state, any
60 state official, or a prosecuting or circuit attorney shall not intervene in an action
61 brought under this section. This subsection shall not prohibit a person described by this
62 subsection from filing an amicus curiae brief in the action.

63 9. Notwithstanding any other provision of law to the contrary, a court shall not
64 award costs or attorney's fees to a defendant in an action brought under this section.

65 10. Notwithstanding any other provision of law to the contrary, a civil action
66 under this section shall not be brought by a person who impregnated the pregnant
67 woman through an act of rape, sexual assault, or incest.

68 11. Notwithstanding any other provision of law to the contrary, a civil action
69 under this section shall not be brought against a woman upon whom an abortion was
70 performed or induced, or attempted to be performed or induced, in violation of section
71 188.909.

188.911. 1. A defendant against whom an action is brought under section 188.910 shall not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) The U.S. Supreme Court holds that the courts of this state are required to confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) The defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the U.S. Supreme Court.

2. A defendant in an action brought under section 188.910 may assert an affirmative defense to liability if:

(1) The defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with subsection 1 of this section; and

(2) The defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

3. A court shall not find an undue burden under subsection 2 of this section unless the defendant introduces evidence proving that:

(1) An award or relief will prevent a woman or a group of women from obtaining an abortion; or

(2) An award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

4. A defendant shall not establish an undue burden under this section by:

(1) Merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) Arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

5. The affirmative defense under subsection 2 of this section shall not be available if the U.S. 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.

6. Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under section 188.910, and a court shall not award relief under section 188.910 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.

188.912. 1. Notwithstanding any other provision of law to the contrary, a civil
2 action brought under section 188.910 may be brought in:

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

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

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

9 (4) The county of residence for the claimant if the claimant is a natural person
10 residing in this state.

11 2. If a civil action is brought under section 188.910 in any one of the venues
12 described by subsection 1 of this section, the action shall not be transferred to a different
13 venue without the written consent of all parties.

14 3. The state, a political subdivision of this state, and each officer and employee of
15 this state or a political subdivision of this state shall have all of the sovereign or official
16 immunities available to them in any action, claim, or counterclaim or any type of legal
17 or equitable action that challenges the validity of any provision or application of sections
18 188.909 to 188.912, on constitutional grounds or otherwise. No provision of state law
19 shall be construed to waive or abrogate any immunity described in this section, unless it
20 expressly waives immunity.

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