

HJR 39 -- ABORTION

SPONSOR: Seitz

Upon voter approval, this resolution amends the State Constitution by repealing Article I, Section 36, known as "The Right to Reproductive Freedom Initiative", and requires a physician to perform a fetal heartbeat detection test prior to performing or inducing an abortion, except in cases of medical emergency. A physician is prohibited from performing or inducing an abortion if a fetal heartbeat has been detected. The physician must record in the pregnant woman's medical record the estimated gestational age of the unborn child, the method used to estimate the gestational age, the test used to detect the fetal heartbeat, and the date, time, and results of the test. If an abortion is performed or induced without first performing the test because of a medical emergency, the physician must record that information in the pregnant woman's medical record and in the abortion report submitted to the Department of Health and Senior Services.

The provisions of this constitutional amendment must be exclusively enforced through private civil action, as described in the amendment, and will not be enforced through the State, any political subdivision of the State, a prosecuting or circuit attorney, or an executive or administrative officer of a political subdivision. Any other person may bring a civil action against any person who:

- (1) Performs or induces an abortion in violation of this amendment;
- (2) Knowingly engages in conduct that aids or abets in the performance or induction of an abortion in violation of this amendment, including reimbursing the costs of the abortion through insurance or otherwise, or
- (3) Intends to engage in any of the above conduct.

If a claimant prevails, the court must award injunctive relief, damages of not less than \$10,000 for each abortion performed or induced in violation of this amendment, and costs and attorney's fees. A court will not award attorney's fees to the defendant. The defendant may claim some affirmative defenses as specified in the amendment, but may not claim ignorance, the defendant's belief that this amendment is unconstitutional, reliance upon overruled court decisions, consent of the unborn child's mother, or other specified defenses in the amendment.