

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1667 & 2294

103RD GENERAL ASSEMBLY

3882H.02P

JOSEPH ENGLER, 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Section A. Section 188.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.035, to read as follows: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 knowingly 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, recklessly, or negligently supplies or makes available any
35 instrument, device, medicine, drug, or any other means or substance for another person
36 to undergo a self-induced abortion or attempted self-induced abortion or to procure an
37 unlawful abortion or attempted unlawful abortion; or

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

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

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

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

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

50 (4) An unborn child,

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52 then a cause of action for personal injury, bodily injury, or wrongful death may be
53 brought. In a cause of action for wrongful death, the spouse, partner, parents, siblings,
54 and children of the deceased person shall be entitled to bring the action. Damages for

55 injury or death may be recovered for, including, but not limited to, any damages
56 described in chapters 537 and 538 that are applicable; loss of future fertility; loss of love
57 and companionship of the spouse, partner, parent, child, unborn child, or sibling; and
58 for injury to or destruction of the spouse, partner, parent, child, unborn child, or sibling
59 relationship in such amount as, under all the circumstances of the case, may be just.
60 The court shall also award a prevailing plaintiff reasonable attorney's fees and litigation
61 costs, including, but not limited to, expert witness fees and expenses as part of the costs.
62 A defendant shall not be permitted to plead or prove as a defense that the plaintiff or
63 deceased person assumed the risk of undergoing, or consented to undergo, a self-
64 induced abortion or attempted self-induced abortion or that the plaintiff or deceased
65 person assumed the risk of procuring, or consented to procure, an unlawful abortion or
66 attempted unlawful abortion. The fact that a plaintiff or deceased person consented to
67 undergo a self-induced abortion or attempted self-induced abortion or to procure an
68 unlawful abortion or attempted unlawful abortion shall not, in and of itself, be
69 considered evidence of contributory or comparative negligence. Any exculpatory
70 agreement between or among parties that is related to undergoing a self-induced
71 abortion or attempted self-induced abortion or to procuring an unlawful abortion or
72 attempted unlawful abortion shall be against public policy and shall be void.
73 7. The natural and spontaneous loss of an unborn child before fetal viability
74 shall not be construed to be an abortion, as such term is defined in section 188.015.

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