

SECOND REGULAR SESSION

SENATE BILL NO. 665

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3684S.011

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Section A. Section 188.035, RSMo, is repealed and one new section
2 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
2 aborted alive, shall be guilty of murder of the second degree.] **1. This section**
3 **shall be known and may be cited as the "Born-Alive Abortion Survivors**
4 **Protection Act".**

5 **2. A child born alive during or after an abortion or an attempted**
6 **abortion shall have all the rights, privileges, and immunities available**
7 **to other persons, citizens, and residents of this state, including any**
8 **other liveborn child.**

9 **3. Any health care provider licensed, registered, or certified in**
10 **this state who is present at the time a child is born alive during or**
11 **after an abortion or attempted abortion shall:**

12 **(1) Exercise the same degree of professional skill, care, and**
13 **diligence to preserve the life and health of the child as a reasonably**
14 **diligent and conscientious health care provider would render to any**
15 **other child born alive at the same gestational age; and**

16 **(2) Ensure that the child born alive is immediately transported**
17 **and admitted to a hospital following the exercise of skill, care, and**
18 **diligence required under subdivision (1) of this subsection.**

19 **4. In addition to any criminal or administrative liability which**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 may be incurred, a person shall be civilly liable when he or she:

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

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

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

29 (4) Knowingly aids or abets another person to undergo a self-
30 induced abortion or attempted self-induced abortion or to procure an
31 unlawful abortion or attempted unlawful abortion;

32 (5) Knowingly, recklessly, or negligently supplies or makes
33 available any instrument, device, medicine, drug, or any other means
34 or substance for another person to undergo a self-induced abortion or
35 attempted self-induced abortion or to procure an unlawful abortion or
36 attempted unlawful abortion; or

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

42 5. If injury or death arises out of or results from any
43 circumstance under subsection 4 of this section to any of the following
44 persons, including:

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

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

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

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

57 for injury or death may be recovered for, including, but not limited to,
58 any damages described in chapters 537 and 538 which are applicable;
59 loss of future fertility; loss of love and companionship of the spouse,
60 partner, parent, child, unborn child, or sibling; and for injury to or
61 destruction of the spouse, partner, parent, child, unborn child, or
62 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
64 reasonable attorney fees and litigation costs, including, but not limited
65 to, expert witness fees and expenses as part of the costs. A defendant
66 may not plead or prove as a defense that the plaintiff assumed the risk
67 of undergoing, or consented to undergo, a self-induced abortion or
68 attempted self-induced abortion or that the plaintiff assumed the risk
69 of procuring, or consented to procure, an unlawful abortion or
70 attempted unlawful abortion. The fact that a plaintiff consented to
71 undergo a self-induced abortion or attempted self-induced abortion or
72 to procure an unlawful abortion or attempted unlawful abortion shall
73 not, in and of itself, be considered evidence of contributory or
74 comparative negligence. Any exculpatory agreement between or among
75 parties that is related to undergoing a self-induced abortion or
76 attempted self-induced abortion or to procuring an unlawful abortion
77 or attempted unlawful abortion shall be against public policy and shall
78 be void.

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