

FIRST REGULAR SESSION

SENATE BILL NO. 168

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

0165S.01I

ADRIANE D. CROUSE, Secretary

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Section A. Section 188.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.035, to read as follows: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

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

19 (2) Ensure that the child born alive is immediately
20 transported and admitted to a hospital following the
21 exercise of skill, care, and diligence required under
22 subdivision (1) of this subsection.

23 4. In addition to any criminal or administrative
24 liability which may be incurred, a person shall be civilly
25 liable when he or she:

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

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

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

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

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

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

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

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

55 (2) A person who underwent a self-induced abortion or
56 attempted self-induced abortion or who procured an unlawful
57 abortion or attempted unlawful abortion;

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

60 (4) An unborn child,

61 then a cause of action for personal injury, bodily injury,
62 or wrongful death may be brought. In a cause of action for
63 wrongful death, the spouse, partner, parents, siblings, and
64 children of the deceased person, child, or unborn child
65 shall be entitled to bring the action. Damages for injury
66 or death may be recovered for, including, but not limited
67 to, any damages described in chapters 537 and 538 which are
68 applicable; loss of future fertility; loss of love and
69 companionship of the spouse, partner, parent, child, unborn
70 child, or sibling; and for injury to or destruction of the
71 spouse, partner, parent, child, unborn child, or sibling
72 relationship in such amount as, under all the circumstances
73 of the case, may be just. The court shall also award a
74 prevailing plaintiff reasonable attorney fees and litigation
75 costs, including, but not limited to, expert witness fees
76 and expenses as part of the costs. A defendant may not
77 plead or prove as a defense that the plaintiff assumed the
78 risk of undergoing, or consented to undergo, a self-induced
79 abortion or attempted self-induced abortion or that the
80 plaintiff assumed the risk of procuring, or consented to

81 procure, an unlawful abortion or attempted unlawful
82 abortion. The fact that a plaintiff consented to undergo a
83 self-induced abortion or attempted self-induced abortion or
84 to procure an unlawful abortion or attempted unlawful
85 abortion shall not, in and of itself, be considered evidence
86 of contributory or comparative negligence. Any exculpatory
87 agreement between or among parties that is related to
88 undergoing a self-induced abortion or attempted self-induced
89 abortion or to procuring an unlawful abortion or attempted
90 unlawful abortion shall be against public policy and shall
91 be void.

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