

# SENATE BILL NO. 458

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

1909S.011

ADRIANE D. CROUSE, Secretary

## AN ACT

To amend chapter 188, RSMo, by adding thereto 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. Chapter 188, RSMo, is amended by adding thereto one new section, to be known as section 188.380, to read as follows:

**188.380. 1. This section shall be known and may be cited as the "Missouri Unborn Child Protection from Dismemberment Abortion Act."**

**2. For purposes of this section the following terms shall mean:**

**(1) "Attempt to perform an abortion", to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in oneself performing an abortion. Such substantial steps include, but are not limited to:**

**(a) Agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; or**

**(b) Scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is**

20 contingent on another factor such as receipt of payment or a  
21 determination of pregnancy.

22 This definition shall not be construed to require that an  
23 abortion procedure actually be initiated for an attempt to  
24 occur;

25 (2) "Dismemberment abortion", with the purpose of  
26 causing the death of an unborn child, purposely to dismember  
27 a living unborn child and extract him or her one piece at a  
28 time from the uterus through use of clamps, grasping  
29 forceps, tongs, scissors, or similar instruments that,  
30 through convergence of two rigid levers, slice, crush, or  
31 grasp a portion of the unborn child's body to cut or rip it  
32 off;

33 (3) "Purposely", a person acts purposely with respect  
34 to a material element of an offense when:

35 (a) If the element involves the nature of his or her  
36 conduct or a result thereof, it is his or her conscious  
37 object to engage in conduct of that nature or to cause such  
38 a result; and

39 (b) If the element involves the attendant  
40 circumstances, he or she is aware of the existence of such  
41 circumstances or he or she believes or hopes that they exist.

42 3. (1) Notwithstanding any other provision of law, it  
43 shall be unlawful for any physician to purposely perform or  
44 attempt to perform a dismemberment abortion and thereby kill  
45 an unborn child, except in cases of medical emergency. Any  
46 person who violates the provisions of this section shall be  
47 guilty of a class E felony, as well as subject to suspension  
48 or revocation of his or her professional license.

49 (2) A physician accused in any proceeding of unlawful  
50 conduct under subdivision (1) of this subsection may seek a

51 hearing before the state board of registration for the  
52 healing arts on whether the dismemberment abortion was  
53 necessary in cases of a medical emergency. The board's  
54 findings shall be admissible on that issue at any trial in  
55 which such unlawful conduct is alleged. Upon a motion of  
56 the person accused, the court shall delay the beginning of  
57 the trial for not more than thirty days to permit such  
58 hearing to take place.

59 (3) No woman upon whom an abortion is performed or  
60 attempted to be performed in violation of this section shall  
61 be prosecuted for a conspiracy to violate the provisions of  
62 this section. No nurse, technician, secretary,  
63 receptionist, or other employee or agent who is not a  
64 physician, but who acts at the direction of a physician, and  
65 no pharmacist or other individual who is not a physician,  
66 but who fills a prescription or provides instruments or  
67 materials used in an abortion at the direction of or to a  
68 physician, shall be prosecuted for a conspiracy to violate  
69 the provisions of this section.

70 4. (1) A cause of action for injunctive relief  
71 against a physician who has performed a dismemberment  
72 abortion in violation of subsection 3 of this section may be  
73 maintained by:

74 (a) A woman upon whom such a dismemberment abortion  
75 was performed; or

76 (b) If the woman had not attained the age of eighteen  
77 years at the time of the dismemberment abortion, a person  
78 who is the parent or guardian of a woman upon whom such a  
79 dismemberment abortion was performed; or

80 (c) A prosecuting or circuit attorney or the attorney  
81 general with appropriate jurisdiction.

82           (2) The injunction shall prevent the defendant from  
83 performing or attempting to perform further dismemberment  
84 abortions in violation of subsection 3 of this section.

85           5. In every civil, criminal, or administrative  
86 proceeding or action brought under this section, the court  
87 shall rule whether the anonymity of any woman upon whom an  
88 abortion has been performed or attempted to be performed  
89 shall be preserved from public disclosure if she does not  
90 give her consent to such disclosure. The court, upon motion  
91 or sua sponte, shall make such a ruling and, upon  
92 determining that her anonymity should be preserved, shall  
93 issue orders to the parties, witnesses, and counsel and  
94 shall direct the sealing of the record and exclusion of  
95 individuals from courtrooms or hearing rooms to the extent  
96 necessary to safeguard her identity from public disclosure.  
97 Each such order shall be accompanied by specific written  
98 findings explaining why the anonymity of the woman should be  
99 preserved from public disclosure, why the order is essential  
100 to that end, how the order is narrowly tailored to serve  
101 that interest, and why no reasonable less restrictive  
102 alternative exists. In the absence of written consent of  
103 the woman upon whom an abortion has been performed or  
104 attempted to be performed, anyone other than a public  
105 official who brings an action under this section shall do so  
106 under a pseudonym. This section shall not be construed to  
107 conceal the identity of the plaintiff or of witnesses from  
108 the defendant or from attorneys for the defendant.

109           6. Nothing in this section shall be construed as  
110 creating or recognizing a right to abortion, nor a right to  
111 a particular method of abortion.

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