

SENATE BILL NO. 778

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

4098S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 188.052, RSMo, and to enact in lieu thereof five new sections relating to abortion.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 188.052, RSMo, is repealed and five
2 new sections enacted in lieu thereof, to be known as sections
3 188.052, 188.909, 188.910, 188.911, and 188.912, to read as
4 follows:

188.052. 1. An individual abortion report for each
2 abortion performed or induced upon a woman shall be
3 completed by the physician who performed or induced the
4 abortion. Abortion reports shall include, but not be
5 limited to, a certification that the physician does not have
6 any knowledge that the woman sought the abortion solely
7 because of a prenatal diagnosis, test, or screening
8 indicating Down Syndrome or the potential of Down Syndrome
9 in the unborn child and a certification that the physician
10 does not have any knowledge that the woman sought the
11 abortion solely because of the sex or race of the unborn
12 child. **Abortion reports shall also include the time, date,
13 method, and results of the test performed to detect a fetal
14 heartbeat under section 188.909 and information concerning
15 any medical emergency as required under subsection 7 of
16 section 188.909.**

17 2. An individual complication report for any post-
18 abortion care performed upon a woman shall be completed by
19 the physician providing such post-abortion care. This
20 report shall include:

- 21 (1) The date of the abortion;
- 22 (2) The name and address of the abortion facility or
23 hospital where the abortion was performed or induced;
- 24 (3) The nature of the abortion complication diagnosed
25 or treated.

26 3. All abortion reports shall be signed by the
27 attending physician who performed or induced the abortion
28 and submitted to the department within forty-five days from
29 the date of the abortion. All complication reports shall be
30 signed by the physician providing the post-abortion care and
31 submitted to the department within forty-five days from the
32 date of the post-abortion care.

33 4. A copy of the abortion report shall be made a part
34 of the medical record of the patient of the abortion
35 facility or hospital in which the abortion was performed or
36 induced.

37 5. The department shall be responsible for collecting
38 all abortion reports and complication reports and collating
39 and evaluating all data gathered therefrom and shall
40 annually publish a statistical report based on such data
41 from abortions performed or induced in the previous calendar
42 year.

**188.909. 1. For the purposes of determining the
2 presence of a fetal heartbeat under this section, "standard
3 medical practice" includes employing the appropriate means
4 of detecting the heartbeat based on the estimated
5 gestational age of the unborn child and the condition of the
6 woman and her pregnancy.**

7 2. Notwithstanding any other provision of law to the
8 contrary and except in cases of medical emergency, a
9 physician shall not knowingly perform or induce an abortion
10 on a pregnant woman unless the physician has determined, in
11 accordance with this section, whether the woman's unborn
12 child has a detectable fetal heartbeat.

13 3. In making a determination under subsection 2 of
14 this section, the physician shall use a test that is:

15 (1) Consistent with the physician's good faith and
16 reasonable understanding of standard medical practice; and

17 (2) Appropriate for the estimated gestational age of
18 the unborn child and the condition of the pregnant woman and
19 her pregnancy.

20 4. A physician making a determination under subsection
21 2 of this section shall record in the pregnant woman's
22 medical record:

23 (1) The estimated gestational age of the unborn child;

24 (2) The method used to estimate the gestational age;

25 and

26 (3) The test used for detecting a fetal heartbeat,
27 including the date, time, and results of the test.

28 5. Except in cases of medical emergency, a physician
29 shall not knowingly perform or induce an abortion on a
30 pregnant woman if the physician detected a fetal heartbeat
31 for the unborn child or if the physician failed to perform a
32 test to detect a fetal heartbeat.

33 6. A physician shall not be considered in violation of
34 the provisions of this section if the physician performed a
35 test for a fetal heartbeat and did not detect a fetal
36 heartbeat.

37 7. A physician who performs or induces an abortion in
38 the case of medical emergency without first performing a

39 test for a fetal heartbeat shall make written notations in
40 the woman's medical record of:

41 (1) The physician's belief that a medical emergency
42 necessitated the abortion; and

43 (2) The medical condition of the pregnant woman that
44 prevented compliance with the provisions of this section.

45 8. This section shall not affect:

46 (1) The provisions of this chapter that restrict or
47 regulate an abortion by a particular method or during a
48 particular stage of pregnancy; or

49 (2) Any other provision of state law that regulates or
50 prohibits abortion.

51 9. Notwithstanding any other provision of law to the
52 contrary, the provisions of this section shall be enforced
53 exclusively through the private civil actions described in
54 section 188.910. No enforcement of this section in response
55 to violations of this section shall be taken or threatened
56 by the state, a political subdivision of the state, a
57 prosecuting or circuit attorney, or an executive or
58 administrative officer or employee of this state or a
59 political subdivision of this state against any person,
60 except as provided in section 188.910.

188.910. 1. Any person, other than an officer or
2 employee of the state or a political subdivision of the
3 state, may bring a civil action against any person who:

4 (1) Performs or induces an abortion in violation of
5 section 188.909;

6 (2) Knowingly engages in conduct that aids or abets
7 the performance or induction of an abortion, including
8 paying for reimbursing the costs of an abortion through
9 insurance or otherwise, if the abortion is performed or
10 induced in violation of section 188.909, regardless of

11 whether the person knew or should have known that the
12 abortion would be performed or induced in violation of
13 section 188.909; or

14 (3) Intends to engage in the conduct described by
15 subdivision (1) or (2) of this subsection.

16 2. If a claimant prevails in an action brought under
17 this section, the court shall award:

18 (1) Injunctive relief sufficient to prevent the
19 defendant from violating this section or engaging in acts
20 that aid or abet violations of section 188.909;

21 (2) Statutory damages in an amount of not less than
22 ten thousand dollars for each abortion that the defendant
23 performed or induced in violation of section 188.909, and
24 for each abortion performed or induced in violation of
25 section 188.909 that the defendant aided or abetted; and

26 (3) Costs and attorney's fees.

27 3. Notwithstanding the provisions of subsection 2 of
28 this section, a court shall not award relief under this
29 section in response to a violation of subdivision (1) or (2)
30 of subsection 1 of this section if the defendant
31 demonstrates that he or she previously paid the full amount
32 of statutory damages under subdivision (2) of subsection 2
33 of this section in a previous action for that particular
34 abortion performed or induced in violation of section
35 188.909, or for the particular conduct that aided or abetted
36 an abortion performed or induced in violation of section
37 188.909.

38 4. Notwithstanding any other provision of law to the
39 contrary, a person may bring an action under this section
40 not later than the fourth anniversary of the date the cause
41 of action accrues.

42 5. Notwithstanding any other provision of law to the
43 contrary, the following shall not be a defense to an action
44 brought under this section:

45 (1) Ignorance or mistake of law;

46 (2) A defendant's belief that the requirements of
47 section 188.909 are unconstitutional or were
48 unconstitutional;

49 (3) A defendant's reliance on any court decision that
50 has been overruled on appeal or by a subsequent court, even
51 if that court decision had not been overruled when the
52 defendant engaged in conduct that violates section 188.909;

53 (4) A defendant's reliance on any state or federal
54 court decision that is not binding on the court in which the
55 action has been brought;

56 (5) Nonmutual issue preclusion or nonmutual claim
57 preclusion;

58 (6) The consent of the unborn child's mother to the
59 abortion; or

60 (7) Any claim that the enforcement of section 188.909
61 or the imposition of civil liability against the defendant
62 will violate the constitutional rights of third parties,
63 except as provided by section 188.911.

64 6. It shall be an affirmative defense if:

65 (1) A defendant under subdivision (2) of subsection 1
66 of this section reasonably believed, after conducting a
67 reasonable investigation, that the physician performing or
68 inducing the abortion had complied or would comply with this
69 section; or

70 (2) A defendant under subdivision (3) of subsection 1
71 of this section reasonably believed, after conducting a
72 reasonable investigation, that the physician performing or
73 inducing the abortion will comply with this section.

74 The defendant has the burden of proving an affirmative
75 defense under subdivision (1) or (2) of this subsection by a
76 preponderance of the evidence.

77 7. This section may not be construed to impose
78 liability on any speech or conduct protected by the First
79 Amendment of the U.S. Constitution, as made applicable to
80 the states through the U.S. Supreme Court's interpretation
81 of the Fourteenth Amendment of the U.S. Constitution, or by
82 the Missouri Constitution.

83 8. Notwithstanding any other provision of law to the
84 contrary, the state, any state official, or a prosecuting or
85 circuit attorney shall not intervene in an action brought
86 under this section. This subsection shall not prohibit a
87 person described by this subsection from filing an amicus
88 curiae brief in the action.

89 9. Notwithstanding any other provision of law to the
90 contrary, a court shall not award costs or attorney's fees
91 to a defendant in an action brought under this section.

92 10. Notwithstanding any other provision of law to the
93 contrary, a civil action under this section shall not be
94 brought by a person who impregnated the pregnant woman
95 through an act of rape, sexual assault, or incest.

96 11. Notwithstanding any other provision of law to the
97 contrary, a civil action under this section shall not be
98 brought against a woman upon whom an abortion was performed
99 or induced, or attempted to be performed or induced, in
100 violation of section 188.909.

188.911. 1. A defendant against whom an action is
2 brought under section 188.910 shall not have standing to
3 assert the rights of women seeking an abortion as a defense
4 to liability under that section unless:

5 (1) The U.S. Supreme Court holds that the courts of
6 this state are required to confer standing on that defendant
7 to assert the third-party rights of women seeking an
8 abortion in state court as a matter of federal
9 constitutional law; or

10 (2) The defendant has standing to assert the rights of
11 women seeking an abortion under the tests for third-party
12 standing established by the U.S. Supreme Court.

13 2. A defendant in an action brought under section
14 188.910 may assert an affirmative defense to liability if:

15 (1) The defendant has standing to assert the third-
16 party rights of a woman or group of women seeking an
17 abortion in accordance with subsection 1 of this section; and

18 (2) The defendant demonstrates that the relief sought
19 by the claimant will impose an undue burden on that woman or
20 that group of women seeking an abortion.

21 3. A court shall not find an undue burden under
22 subsection 2 of this section unless the defendant introduces
23 evidence proving that:

24 (1) An award or relief will prevent a woman or a group
25 of women from obtaining an abortion; or

26 (2) An award of relief will place a substantial
27 obstacle in the path of a woman or a group of women who are
28 seeking an abortion.

29 4. A defendant shall not establish an undue burden
30 under this section by:

31 (1) Merely demonstrating that an award of relief will
32 prevent women from obtaining support or assistance,
33 financial or otherwise, from others in their effort to
34 obtain an abortion; or

35 (2) Arguing or attempting to demonstrate that an award
36 of relief against other defendants or other potential

37 defendants will impose an undue burden on women seeking an
38 abortion.

39 5. The affirmative defense under subsection 2 of this
40 section shall not be available if the U.S. Supreme Court
41 overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned*
42 *Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of
43 whether the conduct on which the cause of action is based
44 occurred before the Supreme Court overruled either of those
45 decisions.

46 6. Nothing in this section shall in any way limit or
47 preclude a defendant from asserting the defendant's personal
48 constitutional rights as a defense to liability under
49 section 188.910, and a court shall not award relief under
50 section 188.910 if the conduct for which the defendant has
51 been sued was an exercise of state or federal constitutional
52 rights that personally belong to the defendant.

188.912. 1. Notwithstanding any other provision of
2 law to the contrary, a civil action brought under section
3 188.910 may be brought in:

4 (1) The county in which all or substantial part of the
5 events or omissions giving rise to the claim occurred;

6 (2) The county of residence for any one of the natural
7 person defendants at the time the cause of action accrued;

8 (3) The county of the principal office in this state
9 of any one of the defendants that is not a natural person; or

10 (4) The county of residence for the claimant if the
11 claimant is a natural person residing in this state.

12 2. If a civil action is brought under section 188.910
13 in any one of the venues described by subsection 1 of this
14 section, the action shall not be transferred to a different
15 venue without the written consent of all parties.

16 3. The state, a political subdivision of this state,
17 and each officer and employee of this state or a political
18 subdivision of this state shall have all of the sovereign or
19 official immunities available to them in any action, claim,
20 or counterclaim or any type of legal or equitable action
21 that challenges the validity of any provision or application
22 of sections 188.909 to 188.912, on constitutional grounds or
23 otherwise. No provision of state law shall be construed to
24 waive or abrogate any immunity described in this section,
25 unless it expressly waives immunity.

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