

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 825

AN ACT

To repeal sections 188.035 and 191.1145, RSMo, and to enact in lieu thereof two new sections relating to health care, with penalty provisions.

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

Section A. Sections 188.035 and 191.1145, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.035 and 191.1145, to read as follows: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 immediately report such violation to an appropriate state or federal law enforcement agency. Any such person who fails to report a violation shall, upon conviction, be punished by imprisonment of not more than five years or by fine of not less than two thousand five hundred dollars but not more than ten thousand dollars or by both such imprisonment and fine.

(2) Any person who knowingly performs or attempts to perform an overt act that kills a child born alive described under subsection 3 of this section shall be guilty of first degree murder under section 565.020.

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

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

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

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

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

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

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

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

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

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

(4) An unborn child,

then a cause of action for personal injury, bodily injury, or wrongful death may be brought. In a cause of action for wrongful death, the spouse, partner, parents, siblings, and children of the deceased person shall be entitled to bring the action. Damages for injury or death may be recovered for, including, but not limited to, any damages described in chapters 537 and 538 that are applicable; loss of future fertility; loss of love and companionship of the spouse, partner, parent, child, unborn child, or sibling; and for injury to or destruction of the spouse, partner, parent, child, unborn child, or sibling relationship in such amount as, under all the circumstances of the case, may be just. The court shall also award a prevailing plaintiff reasonable attorney's fees and litigation costs, including, but not limited to, expert witness fees and expenses as part of the costs. A defendant shall not be permitted to plead or prove

as a defense that the plaintiff or deceased person assumed the risk of undergoing, or consented to undergo, a self-induced abortion or attempted self-induced abortion or that the plaintiff or deceased person assumed the risk of procuring, or consented to procure, an unlawful abortion or attempted unlawful abortion. The fact that a plaintiff or deceased person consented to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion shall not, in and of itself, be considered evidence of contributory or comparative negligence. Any exculpatory agreement between or among parties that is related to undergoing a self-induced abortion or attempted self-induced abortion or to procuring an unlawful abortion or attempted unlawful abortion shall be against public policy and shall be void.

7. The natural and spontaneous loss of an unborn child before fetal viability shall not be construed to be an abortion, as such term is defined in section 188.015.

191.1145. 1. As used in sections 191.1145 and 191.1146, the following terms shall mean:

(1) "Asynchronous store-and-forward transfer", the collection of a patient's relevant health information and the subsequent transmission of that information from an originating site to a health care provider at a distant site without the patient being present;

(2) "Clinical staff", any health care provider licensed in this state;

(3) "Distant site", a site at which a health care provider is located while providing health care services by means of telemedicine;

(4) "Health care provider", as that term is defined in section 376.1350;

(5) "Originating site", a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine. For the purposes of asynchronous store-and-forward transfer, originating site shall also mean the location at which the health care provider transfers information to the distant site;

(6) "Telehealth" or "telemedicine", the delivery of health care services by means of information and communication technologies, including audiovisual and audio-only technologies, which facilitate the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while such patient is at the originating site and the health care provider is at the distant site. Telehealth or telemedicine shall also include the use of asynchronous store-and-forward technology. Health care providers shall not be limited in their choice of electronic platforms used to deliver telehealth or telemedicine, provided that all services delivered are in accordance with the Health Insurance Portability and Accountability Act of 1996.

2. Any licensed health care provider shall be authorized to provide telehealth services if such services are within the scope of practice for which the health care provider is licensed and are provided with the same standard of care as services provided in person. This section shall not be construed to prohibit a health carrier, as defined in section 376.1350, from reimbursing nonclinical staff for services otherwise allowed by law.

3. In order to treat patients in this state through the use of telemedicine or telehealth, health care providers shall be fully licensed to practice in this state and shall be subject to regulation by their respective professional boards.

4. Nothing in subsection 3 of this section shall apply to:

(1) Informal consultation performed by a health care provider licensed in another state, outside of the context of a contractual relationship, and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;

(2) Furnishing of health care services by a health care provider licensed and located in another state in case of an emergency or disaster; provided that, no charge is made for the medical assistance; or

(3) Episodic consultation by a health care provider licensed and located in another state who provides such consultation services on request to a physician in this state.

5. Nothing in this section shall be construed to alter the scope of practice of any health care provider or to authorize the delivery of health care services in a setting or in a manner not otherwise authorized by the laws of this state.

6. No originating site for services or activities provided under this section shall be required to maintain immediate availability of on-site clinical staff during the telehealth services, except as necessary to meet the standard of care for the treatment of the patient's medical condition if such condition is being treated by an eligible health care provider who is not at the originating site, has not previously seen the patient in person in a clinical setting, and is not providing coverage for a health care provider who has an established relationship with the patient. Health care providers shall not be limited in their choice of electronic platforms used to deliver telehealth or telemedicine.

7. Nothing in this section shall be construed to alter any collaborative practice requirement as provided in chapters 334 and 335.