

# SENATE BILL NO. 1221

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

5152S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 188.035, RSMo, and to enact in lieu thereof one new section relating to abortion.

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Section A. Section 188.035, RSMo, is repealed and one new  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

188.035. [Whoever, with intent to do so, shall take  
2 the life of a child aborted alive, shall be guilty of murder  
3 of the second degree.] 1. This section shall be known and  
4 may be cited as the "Born-Alive Abortion Survivors  
5 Protection Act".

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

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

14 (1) Exercise the same degree of professional skill,  
15 care, and diligence to preserve the life and health of the  
16 child as a reasonably diligent and conscientious health care  
17 provider would render to any other child born alive at the  
18 same gestational age or with the same fetal weight. This

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

19 shall include, but not be limited to, never abandoning the  
20 child, but instead determining whether to initiate  
21 resuscitation, to continue treatment, or to provide comfort  
22 and palliative care; and

23 (2) If necessary, ensure that the child born alive is  
24 immediately transported and admitted to a hospital following  
25 the exercise of skill, care, and diligence required under  
26 subdivision (1) of this subsection.

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

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

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

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

38 (4) Knowingly aids or abets another person to undergo  
39 a self-induced abortion or attempted self-induced abortion  
40 or to procure an unlawful abortion or attempted unlawful  
41 abortion;

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

48 (6) Knowingly incites, solicits, or otherwise uses  
49 speech or writing as an integral part of conduct in  
50 violation of a valid criminal statute to influence another

51 person to undergo a self-induced abortion or attempted self-  
52 induced abortion or to procure an unlawful abortion or  
53 attempted unlawful abortion.

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

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

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

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

64 (4) An unborn child;

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

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

97 6. No person shall maintain a cause of action or  
98 receive an award of damages under this section if such  
99 person engaged in criminal conduct, or in domestic violence  
100 or sexual assault, as defined in section 455.010, that  
101 caused the pregnancy in which another person was injured or  
102 died as the result of an abortion or attempted abortion. No  
103 person shall maintain a cause of action or receive an award  
104 of damages under this section if he or she is a family or  
105 household member, as defined in section 455.010, who aided  
106 or abetted such person who engaged in criminal conduct, or  
107 in domestic violence or sexual assault, as defined in  
108 section 455.010, that caused the pregnancy in which another  
109 person was injured or died as the result of an abortion or  
110 attempted abortion.

111 7. The provisions of this section shall be applied,  
112 interpreted, and construed in a manner consistent with the

113 Constitution of the United States and the constitution of  
114 this state.

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