

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 999  
AN ACT

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

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*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Section A. Section 188.035, RSMo, is repealed and one new  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. A 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; and

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. (1) A health care provider or employee of a  
24 hospital, a physician's office, or an abortion clinic who  
25 has knowledge of a violation of subsection 3 of this section  
26 shall immediately report such violation to an appropriate  
27 state or federal law enforcement agency. Any such person  
28 who fails to report a violation shall, upon conviction, be  
29 punished by imprisonment of not more than five years or by  
30 fine of not less than two thousand five hundred dollars but  
31 not more than ten thousand dollars or by both such  
32 imprisonment and fine.

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

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

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

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

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

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

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

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

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

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

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

70 (4) An unborn child;

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

86 costs. A defendant shall not be permitted to plead or prove  
87 as a defense that the plaintiff or deceased person assumed  
88 the risk of undergoing, or consented to undergo, a self-  
89 induced abortion or attempted self-induced abortion or that  
90 the plaintiff or deceased person assumed the risk of  
91 procuring, or consented to procure, an unlawful abortion or  
92 attempted unlawful abortion. The fact that a plaintiff or  
93 deceased person consented to undergo a self-induced abortion  
94 or attempted self-induced abortion or to procure an unlawful  
95 abortion or attempted unlawful abortion shall not, in and of  
96 itself, be considered evidence of contributory or  
97 comparative negligence. Any exculpatory agreement between  
98 or among parties that is related to undergoing a self-  
99 induced abortion or attempted self-induced abortion or to  
100 procuring an unlawful abortion or attempted unlawful  
101 abortion shall be against public policy and shall be void.

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