

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 753

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Section A. Section 188.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.035, to read as follows: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 or with the same fetal weight. This shall include, but not be limited to, never abandoning the child, but instead determining whether to initiate resuscitation, to continue treatment, or to provide comfort and palliative care; and

(2) If necessary, 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. 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 aids or abets another person to undergo a self-induced abortion or attempted self-induced abortion or to procure an unlawful abortion or attempted unlawful abortion;

(5) 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

(6) 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.

5. If injury or death arises out of or results from any circumstance under subsection 4 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, and children of the deceased person, child, or unborn child 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, or unborn child; and for injury to or destruction of the spouse, partner, parent, child, or unborn child 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.

6. No person shall maintain a cause of action or receive an award of damages under this section if such person engaged in criminal conduct, or in domestic violence or sexual assault, as defined in section 455.010, that caused the pregnancy in which another person was injured or died as the result of an abortion or attempted abortion. No person shall maintain a cause of action or receive an award of damages under this section if he or she is a family or household member, as defined in section 455.010, who aided or abetted such person who engaged in criminal conduct, or in domestic violence or sexual assault, as defined in section 455.010, that caused the pregnancy in which another person was injured or died as the result of an abortion or attempted abortion.

7. The provisions of this section shall be applied, interpreted, and construed in a manner consistent with the Constitution of the United States and the constitution of this state.