

HB 920 -- Unborn Child Protection from Dismemberment Abortion Act

SPONSOR: Hubrecht

This bill establishes the "Unborn Child Protection from Dismemberment Abortion Act."

The bill specifies that it is unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

A person accused in any proceeding of such unlawful conduct may seek a hearing before the State Board of Registration for the Healing Arts within the Department of Insurance, Financial Institutions and Professional Registration on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The board's findings are admissible on that issue at any trial in which the unlawful conduct is alleged. Upon a motion of the person accused, the court must delay the beginning of the trial for not more than 30 days to permit the hearing to take place.

A woman upon whom an abortion is performed or attempted to be performed is not liable for performing or attempting to perform a dismemberment abortion. Any nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, nor any pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician cannot be held liable for performing or attempting to perform a dismemberment abortion.

Any individual who violates these provisions must be fined \$10,000, imprisoned for not more than two years, or both.

A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of these provisions may be maintained by a woman upon whom the dismemberment abortion was performed or attempted to be performed, a person who is the spouse, parent, or guardian of, or a current or former licensed health care provider of, a woman upon whom the dismemberment abortion was performed or attempted to be performed, or a prosecuting attorney with appropriate jurisdiction.

Any injunction granted under these provisions must prevent the defendant from performing or attempting to perform further dismemberment abortions. A cause of action for civil damages

against a person who has performed a dismemberment abortion may be maintained by any woman upon whom a dismemberment abortion has been performed, the father of the unborn child, if married to the woman at the time the dismemberment abortion was performed, or if the woman was less than 18 years of age at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

Damages cannot be award where the pregnancy resulted from the plaintiff's criminal conduct.

Damages awarded must include money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion, and statutory damages equal to three times the cost of the dismemberment abortion.

If judgment is rendered in favor of the plaintiff, the court must also render judgment for reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court must render judgment for reasonable attorneys' fees in favor of the defendant against the plaintiff. Attorneys' fees can be assessed against the woman upon whom an abortion was performed or attempted to be performed except as specified.

In every civil, criminal, or administrative proceeding or action brought under these provisions, the court must rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed must be preserved from public disclosure if she does not give her consent to the disclosure. The court, upon motion or sua sponte, must make such a ruling and, upon determining that her anonymity should be preserved, must issue orders to the parties, witnesses, and counsel and must direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 188.144, RSMo, must do so under a pseudonym. This section must not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Nothing in these provisions is to be construed as creating or

recognizing a right to abortion, nor a right to a particular method of abortion.