

# HOUSE BILL NO. 537

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HUBRECHT.

1281H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 188, RSMo, by adding thereto four new sections relating to the unborn child protection from dismemberment abortion act, with penalty provisions.

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

Section A. Chapter 188, RSMo, is amended by adding thereto four new sections, to be  
2 known as sections 188.140, 188.142, 188.144, and 188.146, to read as follows:

**188.140. 1. The provisions of sections 188.140 to 188.146 shall be known and may  
2 be cited as the “Unborn Child Protection from Dismemberment Abortion Act”.**

**3 2. For purposes of sections 188.140 to 188.146, the following terms shall mean:**

**4 (1) “Attempt to perform an abortion”, to do or omit to do anything that, under the  
5 circumstances as the actor believes them to be, is an act or omission constituting a  
6 substantial step in a course of conduct planned to culminate in oneself performing an  
7 abortion. The term shall not be construed to require that an abortion procedure be  
8 initiated for an attempt to occur. Such substantial steps include, but are not limited to:**

**9 (a) Agreeing with an individual to perform an abortion on that individual or on  
10 some other person, regardless of whether the term “abortion” is used in the agreement, or  
11 whether the agreement is contingent on another factor, such as receipt of payment or a  
12 determination of pregnancy; or**

**13 (b) Scheduling or planning a time to perform an abortion on an individual,  
14 regardless of whether the term “abortion” is used, or whether the performance is  
15 contingent on another factor such as receipt of payment or a determination of pregnancy;**

**16 (2) “Dismemberment abortion”, with the purpose of causing the death of an unborn  
17 child, purposely to dismember a living unborn child and extract him or her one piece at**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar  
19 instruments that, through the convergence of two rigid levers, slice, crush, slash, or grasp  
20 a portion of the unborn child's body to cut or rip it off. The term does not include an  
21 abortion which uses suction to dismember the body of the developing unborn child by  
22 sucking fetal parts into a collection container;

23 (3) "Purposely", a person acts purposely with respect to a material element of an  
24 offense if:

25 (a) The element involves the nature of his or her conduct or a result thereof, it is  
26 his or her conscious object to engage in conduct of that nature or to cause such a result; or

27 (b) The element involves the attendant circumstances, he or she is aware of the  
28 existence of such circumstances or he or she believes or hopes that they exist;

29 (4) "Serious health risk to the unborn child's mother", in reasonable medical  
30 judgment the mother has a condition that so complicates her medical condition that it  
31 necessitates the abortion of her pregnancy to avert her death or to avert serious risk of  
32 substantial and irreversible physical impairment of a major bodily function not including  
33 psychological or emotional conditions. No such condition shall be determined to exist if it  
34 is based on a claim or diagnosis that the woman will engage in conduct which she intends  
35 to result in her death or in substantial and irreversible physical impairment of a major  
36 bodily function.

188.142. 1. Notwithstanding any other provision of law, it shall be unlawful for any  
2 person to purposely perform or attempt to perform a dismemberment abortion and  
3 thereby kill an unborn child unless necessary to prevent serious health risk to the unborn  
4 child's mother.

5 2. A person accused in any proceeding of unlawful conduct under subsection 1 of  
6 this section may seek a hearing before the state board of registration for the healing arts  
7 on whether the dismemberment abortion was necessary to prevent serious health risk to  
8 the unborn child's mother. The board's findings are admissible on that issue at any trial  
9 in which such unlawful conduct is alleged. Upon a motion of the person accused, the court  
10 shall delay the beginning of the trial for not more than thirty days to permit such a hearing  
11 to take place.

12 3. No woman upon whom an abortion is performed or attempted to be performed  
13 shall be thereby liable for performing or attempting to perform a dismemberment  
14 abortion. No nurse, technician, secretary, receptionist, or other employee or agent who is  
15 not a physician but who acts at the direction of a physician, nor any pharmacist or other  
16 individual who is not a physician but who fills a prescription or provides instruments or

17 **materials used in an abortion at the direction of or to a physician shall be thereby liable**  
18 **for performing or attempting to perform a dismemberment abortion.**

19 **4. Any individual who violates the provisions of this section shall be fined ten**  
20 **thousand dollars, imprisoned for not more than two years, or both.**

**188.144. 1. A cause of action for injunctive relief against a person who has**  
2 **performed or attempted to perform a dismemberment abortion in violation of section**  
3 **188.142 may be maintained by:**

4 **(1) A woman upon whom such a dismemberment abortion was performed or**  
5 **attempted to be performed;**

6 **(2) A person who is the spouse, parent, or guardian of, or a current or former**  
7 **licensed health care provider of, a woman upon whom such a dismemberment abortion**  
8 **was performed or attempted to be performed; or**

9 **(3) A prosecuting attorney with appropriate jurisdiction.**

10 **2. Any injunction granted under the provisions of this section shall prevent the**  
11 **defendant from performing or attempting to perform further dismemberment abortions**  
12 **in violation of section 188.142.**

13 **3. A cause of action for civil damages against a person who has performed a**  
14 **dismemberment abortion in violation of section 188.142 may be maintained by:**

15 **(1) Any woman upon whom a dismemberment abortion has been performed in**  
16 **violation of section 188.142;**

17 **(2) The father of the unborn child, if married to the woman at the time the**  
18 **dismemberment abortion was performed; or**

19 **(3) If the woman was under eighteen years of age at the time of the dismemberment**  
20 **abortion or has died as a result of the abortion, the maternal grandparents of the unborn**  
21 **child.**

22 **4. No damages shall be awarded a plaintiff if the pregnancy resulted from the**  
23 **plaintiff's criminal conduct.**

24 **5. Damages awarded shall include:**

25 **(1) Money damages for all injuries, psychological and physical, occasioned by the**  
26 **dismemberment abortion; and**

27 **(2) Statutory damages equal to three times the cost of the dismemberment abortion.**

28 **6. If judgment is rendered in favor of the plaintiff in an action described in this**  
29 **section, the court shall also render judgment for reasonable attorneys' fees.**

30 **7. If judgment is rendered in favor of the defendant and the court finds that the**  
31 **plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for**  
32 **reasonable attorneys' fees in favor of the defendant.**

33           **8. No attorneys' fees shall be assessed against the woman upon whom an abortion**  
34 **was performed or attempted to be performed except in accordance with subsection 7 of this**  
35 **section.**

**188.146. 1. In every civil, criminal, or administrative proceeding or action brought**  
2 **under sections 188.140 to 188.146, the court shall rule whether the anonymity of any**  
3 **woman upon whom an abortion has been performed or attempted to be performed shall**  
4 **be preserved from public disclosure if she does not give her consent to such disclosure. The**  
5 **court, upon motion or sua sponte, shall make such a ruling and, upon determining that her**  
6 **anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and**  
7 **shall direct the sealing of the record and exclusion of individuals from courtrooms or**  
8 **hearing rooms to the extent necessary to safeguard her identity from public disclosure.**  
9 **Each such order shall be accompanied by specific written findings explaining why the**  
10 **anonymity of the woman should be preserved from public disclosure, why the order is**  
11 **essential to that end, how the order is narrowly tailored to serve that interest, and why no**  
12 **reasonable, less restrictive alternative exists. In the absence of written consent of the**  
13 **woman upon whom an abortion has been performed or attempted to be performed, anyone**  
14 **other than a public official who brings an action under section 188.144 shall do so under**  
15 **a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or**  
16 **of witnesses from the defendant or from attorneys for the defendant.**

17           **2. Nothing in sections 188.140 to 188.146 shall be construed as creating or**  
18 **recognizing a right to abortion, nor a right to a particular method of abortion.**

19           **3. If any provision of sections 188.140 to 188.146 or the application thereof to any**  
20 **person or circumstance is held invalid, the invalidity shall not affect other provisions or**  
21 **application of sections 188.140 to 188.146 which can be given effect without the invalid**  
22 **provision or application, and to this end the provisions of sections 188.140 to 188.146 are**  
23 **declared severable.**

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