

SECOND REGULAR SESSION

# HOUSE BILL NO. 1593

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALSH (50).

3931H.01I

DANA RADEMAN MILLER, Chief Clerk

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Section A. Section 188.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 188.035, to read as follows: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

**(2) 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:**

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

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

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

24           (4) Knowingly aids or abets another person to undergo a self-induced abortion  
25 or attempted self-induced abortion or to procure an unlawful abortion or attempted  
26 unlawful abortion;

27           (5) Knowingly, recklessly, or negligently supplies or makes available any  
28 instrument, device, medicine, drug, or any other means or substance for another person  
29 to undergo a self-induced abortion or attempted self-induced abortion or to procure an  
30 unlawful abortion or attempted unlawful abortion; or

31           (6) Knowingly incites, solicits, or otherwise uses speech or writing as an integral  
32 part of conduct in violation of a valid criminal statute to influence another person to  
33 undergo a self-induced abortion or attempted self-induced abortion or to procure an  
34 unlawful abortion or attempted unlawful abortion.

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

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

39           (2) A person who underwent a self-induced abortion or attempted self-induced  
40 abortion or who procured an unlawful abortion or attempted unlawful abortion;

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

43           (4) An unborn child,  
44

45 then a cause of action for personal injury, bodily injury, or wrongful death may be  
46 brought. In a cause of action for wrongful death, the spouse, partner, parents, siblings,  
47 and children of the deceased person, child, or unborn child shall be entitled to bring the  
48 action. Damages for injury or death may be recovered for, including, but not limited to,  
49 any damages described in chapters 537 and 538 that are applicable; loss of future  
50 fertility; loss of love and companionship of the spouse, partner, parent, child, unborn  
51 child, or sibling; and for injury to or destruction of the spouse, partner, parent, child,  
52 unborn child, or sibling relationship in such amount as, under all the circumstances of  
53 the case, may be just. The court shall also award a prevailing plaintiff reasonable  
54 attorney's fees and litigation costs, including, but not limited to, expert witness fees and

55 expenses as part of the costs. A defendant shall not plead or prove as a defense that the  
56 plaintiff assumed the risk of undergoing, or consented to undergo, a self-induced  
57 abortion or attempted self-induced abortion or that the plaintiff assumed the risk of  
58 procuring, or consented to procure, an unlawful abortion or attempted unlawful  
59 abortion. The fact that a plaintiff consented to undergo a self-induced abortion or  
60 attempted self-induced abortion or to procure an unlawful abortion or attempted  
61 unlawful abortion shall not, in and of itself, be considered evidence of contributory or  
62 comparative negligence. Any exculpatory agreement between or among parties that is  
63 related to undergoing a self-induced abortion or attempted self-induced abortion or to  
64 procuring an unlawful abortion or attempted unlawful abortion shall be against public  
65 policy and shall be void.

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