

SENATE BILL NO. 453

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

1682S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapters 188 and 537, RSMo, by adding thereto four new sections relating to civil actions.

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

Section A. Chapters 188 and 537, RSMo, are amended by adding thereto four new sections, to be known as sections 188.135, 188.136, 188.137, and 537.660, to read as follows:

188.135. 1. Any person, other than an officer or employee of the state or a political subdivision of the state, may bring a cause of action against any person who:

(1) Performs or induces an abortion in violation of this chapter;

(2) Knowingly engages in conduct that aids or abets the performance or induction of an abortion, including reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this chapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this chapter; or

(3) Intends to engage in the conduct described by subdivision (1) or (2) of this subsection.

2. If a claimant prevails in an action brought pursuant to this section, the court shall award:

17 (1) Injunctive relief sufficient to prevent the
18 defendant from violating this section or engaging in acts
19 that aid or abet violations of this chapter;

20 (2) Damages in an amount of not less than ten thousand
21 dollars for each abortion that the defendant performed or
22 induced in violation of this chapter, and for each abortion
23 performed or induced in violation of this chapter that the
24 defendant aided or abetted; and

25 (3) Costs and attorney's fees.

26 3. Notwithstanding the provisions of subsection 2 of
27 this section to the contrary, a court shall not award relief
28 under this section in response to a violation of subdivision
29 (1) or (2) of subsection 1 of this section if the defendant
30 demonstrates that he or she previously paid the full amount
31 of damages under subdivision (2) of subsection 2 of this
32 section in a previous action for that particular abortion
33 performed or induced in violation of this chapter, or for
34 the particular conduct that aided or abetted an abortion
35 performed or induced in violation of this chapter.

36 4. Notwithstanding any other provision of law to the
37 contrary, a person may bring an action pursuant to this
38 section no later than four years after the date the cause of
39 action accrues.

40 5. Notwithstanding any other provision of law to the
41 contrary, the following defenses shall not be available in
42 an action brought pursuant to this section:

43 (1) Ignorance or mistake of law;

44 (2) A defendant's belief that the requirements of this
45 chapter are unconstitutional or were unconstitutional;

46 (3) A defendant's reliance on any court decision that
47 has been overruled on appeal or by a subsequent court, even

48 if that court decision had not been overruled when the
49 defendant engaged in conduct that violates this chapter;

50 (4) A defendant's reliance on any state or federal
51 court decision that is not binding on the court in which the
52 action has been brought;

53 (5) Nonmutual issue preclusion or nonmutual claim
54 preclusion;

55 (6) The consent of the unborn child's mother to the
56 abortion; or

57 (7) Any claim that the enforcement of this chapter or
58 the imposition of liability against the defendant will
59 violate the constitutional rights of third parties, except
60 as provided by section 188.136.

61 6. It shall be an affirmative defense if:

62 (1) A defendant under subdivision (2) of subsection 1
63 of this section reasonably believed, after conducting a
64 reasonable investigation, that the physician performing or
65 inducing the abortion had complied or would comply with this
66 chapter; or

67 (2) A defendant under subdivision (3) of subsection 1
68 of this section reasonably believed, after conducting a
69 reasonable investigation, that the physician performing or
70 inducing the abortion would comply with this chapter.

71 The defendant has the burden of proving an affirmative
72 defense pursuant to subdivision (1) or (2) of this
73 subsection by a preponderance of the evidence.

74 7. This section shall not be construed to impose
75 liability on any speech or conduct protected by the First
76 Amendment of the Constitution of the United States, as made
77 applicable to the states through the interpretation of the
78 Supreme Court of the United States of the Fourteenth

79 Amendment of the Constitution of the United States, or by
80 the Missouri Constitution.

81 8. Notwithstanding any other provision of law to the
82 contrary, the state, any state official, or a prosecuting or
83 circuit attorney shall not intervene in an action brought
84 pursuant to this section. This subsection shall not
85 prohibit a person described by this subsection from filing
86 an amicus curiae brief in the action.

87 9. Notwithstanding any other provision of law to the
88 contrary, a court shall not award costs or attorney's fees
89 to a defendant in an action brought pursuant to this section.

90 10. Notwithstanding any other provision of law to the
91 contrary, an action pursuant to this section shall not be
92 brought by a person who impregnated the pregnant woman
93 through an act of rape, sexual assault, or incest.

94 11. Notwithstanding any other provision of law to the
95 contrary, an action pursuant to this section shall not be
96 brought against a woman upon whom an abortion was performed
97 or induced, or attempted to be performed or induced, in
98 violation of this chapter.

188.136. 1. A defendant against whom an action is
2 brought pursuant to section 188.135 shall not have standing
3 to assert the rights of women seeking an abortion as a
4 defense to liability under that section unless:

5 (1) The Supreme Court of the United States holds that
6 the courts of this state are required to confer standing on
7 that defendant to assert the third-party rights of women
8 seeking an abortion in state court as a matter of federal
9 constitutional law; or

10 (2) The defendant has standing to assert the rights of
11 women seeking an abortion under the tests for third-party

12 standing established by the Supreme Court of the United
13 States.

14 2. Nothing in this section shall in any way limit or
15 preclude a defendant from asserting the defendant's personal
16 constitutional rights as a defense to liability under
17 section 188.135, and a court shall not award relief under
18 section 188.135 if the conduct for which the defendant has
19 been sued was an exercise of state or federal constitutional
20 rights that personally belong to the defendant.

188.137. 1. Notwithstanding any other provision of
2 law to the contrary, an action brought pursuant to section
3 188.135 may be brought in:

4 (1) The county in which all or substantial part of the
5 events or omissions giving rise to the claim occurred;

6 (2) The county of residence for any one of the natural
7 person defendants at the time the cause of action accrued;

8 (3) The county of the principal office in this state
9 of any one of the defendants that is not a natural person; or

10 (4) The county of residence for the claimant if the
11 claimant is a natural person residing in this state.

12 2. If a civil action is brought pursuant to section
13 188.135 in any one of the venues described by subsection 1
14 of this section, the action shall not be transferred to a
15 different venue without the written consent of all parties.

16 3. The state, a political subdivision of this state,
17 and each officer and employee of this state or a political
18 subdivision of this state shall have all of the sovereign or
19 official immunities available to them in any action, claim,
20 or counterclaim or any type of legal or equitable action
21 that challenges the validity of any provision or application
22 of sections 188.135 to 188.137, on constitutional grounds or
23 otherwise. No provision of state law shall be construed to

24 waive or abrogate any immunity described in this section,
25 unless it expressly waives immunity.

537.660. 1. For purposes of this section, the
2 following terms mean:

3 (1) "Person", an individual, firm, a partner in a
4 firm, corporation, or a shareholder in an S corporation
5 doing business in the state of Missouri and subject to the
6 state income tax imposed by the provisions of chapter 143,
7 including any charitable organization which is exempt from
8 federal income tax and whose Missouri unrelated business
9 taxable income, if any, would be subject to the state income
10 tax imposed under chapter 143, or an insurance company
11 paying an annual tax on its gross premium receipts in this
12 state, or other financial institution paying taxes to the
13 state of Missouri or any political subdivision of this state
14 pursuant to the provisions of chapter 148, or an express
15 company which pays an annual tax on its gross receipts in
16 this state pursuant to chapter 153, or an individual subject
17 to the state income tax imposed by the provisions of chapter
18 143;

19 (2) "Public body", the state, any state agency,
20 county, city, town, village, or other political subdivision.

21 2. Any person shall have a cause of action against a
22 public body or an employee thereof if the public body or the
23 employee in performance of a statutory or constitutional
24 duty causes an economic detriment to the person due to:

25 (1) An error in the application of any provision of
26 law; or

27 (2) The enforcement of any order, ordinance, rule,
28 regulation, policy, or other similar measure that imposes a
29 greater restriction or burden on the person than on others.

30 3. Upon showing by a preponderance of the evidence
31 that the public body or an employee thereof has caused
32 economic detriment to the person, the court shall award
33 damages to the person in an amount equal to the amount of
34 the economic detriment.

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