

# HOUSE BILL No. 4833

August 19, 2015, Introduced by Reps. Cox, Poleski, Kelly, Heise, Kesto, Runestad, Chatfield, Lauwers, Glenn, Inman, Franz, Webber, Cole, Tedder, Johnson, Yonker, Leutheuser, LaFontaine, Jenkins and Vaupel and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 90h (MCL 750.90h), as added by 2011 PA 168.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 90h. (1) This section shall be known and may be cited as  
2 the "partial-birth abortion **AND DISMEMBERMENT ABORTION** ban act".

3           (2) Except as provided in subsection (3), a physician, an  
4 individual performing an act, task, or function under the  
5 delegatory authority of a physician, or any other individual who is  
6 not a physician or not otherwise legally authorized to perform an  
7 abortion who knowingly performs a partial-birth abortion **OR**  
8 **DISEMPOWERMENT ABORTION** and kills a human fetus is guilty of a  
9 felony punishable by imprisonment for not more than 2 years or a  
10 fine of not more than \$50,000.00, or both.

1 (3) It is not a violation of subsection (2) if in the  
2 physician's reasonable medical judgment a partial-birth abortion **OR**  
3 **DISMEMBERMENT ABORTION** is necessary to save the life of a mother  
4 whose life is endangered by a physical disorder, physical illness,  
5 or physical injury.

6 (4) The spouse of the mother at the time of the partial-birth  
7 abortion **OR DISMEMBERMENT ABORTION** or either parent of the mother  
8 if the mother had not attained the age of 18 at the time of the  
9 partial-birth abortion **OR DISMEMBERMENT ABORTION** may file a civil  
10 action against the physician or individual described in subsection  
11 (2) for a violation of this section unless the pregnancy is a  
12 result of the plaintiff's criminal conduct or the plaintiff  
13 consented to the partial-birth abortion **OR DISMEMBERMENT ABORTION**.  
14 A plaintiff who prevails in a civil action brought under this  
15 section may recover both of the following:

16 (a) Actual damages, including damages for emotional distress.

17 (b) Treble damages for the cost of the partial-birth abortion  
18 **OR DISMEMBERMENT ABORTION**.

19 (5) A woman who obtains or seeks to obtain a partial-birth  
20 abortion **OR DISMEMBERMENT ABORTION** is not a conspirator to commit a  
21 violation of this section.

22 (6) This section does not create a right to abortion.

23 (7) Notwithstanding any other provision of this section, a  
24 person shall not perform an abortion that is prohibited by law.

25 (8) Nothing in this section shall be construed to repeal or  
26 amend, explicitly or by implication, any provision of law  
27 prohibiting or regulating abortion, including, but not limited to,

1 section 14, 15, 322, or 323.

2 (9) As used in this section:

3 (A) "DISMEMBERMENT ABORTION" MEANS AN ABORTION IN WHICH THE  
4 PHYSICIAN, AN INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF  
5 THE PHYSICIAN, OR ANY OTHER INDIVIDUAL PERFORMING THE ABORTION  
6 DELIBERATELY AND INTENTIONALLY USES ANY INSTRUMENT, DEVICE, OR  
7 OBJECT TO DISMEMBER A LIVING FETUS BY DISARTICULATING LIMBS OR  
8 DECAPITATING THE HEAD FROM THE FETAL TORSO AND REMOVING THE  
9 DISMEMBERED FETAL BODY PARTS FROM THE UTERUS REGARDLESS OF WHETHER  
10 THE FETAL BODY PARTS ARE REMOVED BY THE SAME INSTRUMENT, DEVICE, OR  
11 OBJECT OR BY SUCTION OR OTHER MEANS. DISMEMBERMENT ABORTION DOES  
12 NOT INCLUDE AN ABORTION THAT USES SUCTION TO DISMEMBER AND REMOVE  
13 THE BODY OF A FETUS FROM THE UTERUS.

14 (B) ~~(a)~~—"Partial-birth abortion" means an abortion in which  
15 the physician, an individual acting under the delegatory authority  
16 of the physician, or any other individual performing the abortion  
17 deliberately and intentionally vaginally delivers a living fetus  
18 until, in the case of a headfirst presentation, the entire fetal  
19 head is outside the body of the mother, or in the case of breech  
20 presentation, any part of the fetal trunk past the ~~naval~~—NAVEL is  
21 outside the body of the mother, for the purpose of performing an  
22 overt act that the person knows will kill the partially delivered  
23 living fetus, and performs the overt act, other than completion of  
24 delivery, that kills the partially delivered living fetus.

25 (C) ~~(b)~~—"Physician" means an individual licensed by this state  
26 to engage in the practice of medicine or the practice of  
27 osteopathic medicine and surgery under article 15 of the public

1 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

2 Enacting section 1. This amendatory act takes effect January  
3 1, 2016.

4 Enacting section 2. This amendatory act does not take effect  
5 unless Senate Bill No. \_\_\_\_ or House Bill No. \_\_\_\_ (request no.  
6 03223'15 a) of the 98th Legislature is enacted into law.

7 Enacting section 3. (1) Every provision in this amendatory act  
8 and every application of the provisions in this amendatory act are  
9 severable from each other. If any application of a provision in  
10 this amendatory act to any person or group of persons or  
11 circumstances is found by a court to be invalid, the remainder of  
12 this amendatory act and the application of the amendatory act's  
13 provisions to all other persons and circumstances shall not be  
14 affected. All constitutionally valid applications of this  
15 amendatory act shall be severed from any applications that a court  
16 finds to be invalid, leaving the valid applications in force,  
17 because it is the legislature's intent and priority that the valid  
18 applications be allowed to stand alone. Even if a reviewing court  
19 finds a provision of this amendatory act invalid in a large or  
20 substantial fraction of relevant cases, the remaining valid  
21 applications shall be severed and allowed to remain in force.

22 (2) The provisions of this amendatory act shall be construed,  
23 as a matter of state law, to be enforceable up to but no further  
24 than the maximum possible extent consistent with federal  
25 constitutional requirements, even if that construction is not  
26 readily apparent, as such constructions are authorized only to the  
27 extent necessary to save the amendatory act from judicial

1 invalidation. If any court determines that any provision of this  
2 amendatory act is unconstitutionally vague, it shall interpret this  
3 amendatory act, as a matter of state law, in a manner that avoids  
4 the vagueness problem while enforcing the amendatory act's  
5 provisions to the maximum possible extent consistent with federal  
6 constitutional requirements.