

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

**Introduced by Senators Brown, McManus, Kahn, George, Jelinek, Pappageorge, Birkholz, Jansen, Hardiman, Stamas, Allen, Kuipers, Van Woerkom, Gleason, Gilbert, Basham, Barcia, Olshove, Sanborn, Cropsey, Richardville, Patterson, Bishop, Cassis and Garcia**

**ENROLLED SENATE BILL No. 776**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 750.1 to 750.568) by adding section 90h.

*The People of the State of Michigan enact:*

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

(2) The legislature finds all of the following:

(a) That partial-birth abortions pose serious risks to the health of a woman, no credible medical evidence exists that partial-birth abortions are safe, and partial-birth abortions are never medically necessary to preserve the health of the mother.

(b) That the state has a compelling interest in preserving and protecting the life of the mother and the child by prohibiting partial-birth abortions.

(c) That a prominent medical association has determined that a partial-birth abortion is not an accepted medical practice, is broadly disfavored by medical experts and the public, and is ethically wrong and never the only appropriate procedure; and that a partial-birth abortion has never been subject to even a minimal amount of the normal medical practice development, and therefore the relative advantages and disadvantages of the partial-birth procedure in specific circumstances remain unknown and no consensus exists among obstetricians about the performance of partial-birth abortions.

(d) That the physician who is credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to preserve the health of a woman.

(e) That a ban on partial-birth abortions will advance the health interests of pregnant women seeking to terminate a pregnancy.

(f) That based on Roe v Wade and Planned Parenthood v Casey, a governmental interest in protecting the life of a child during the delivery process arises because a partial-birth abortion involves the inducement of labor and the beginning of the birth process. This distinction was recognized in Roe when the court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child in a state of being born and before actual birth, was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a person. Partial-birth abortions involve the killing of a child that is in the process of being born, in fact mere inches away from becoming a person. Thus, the government has a heightened interest in protecting the life of a partially born child.

(g) That, according to a prominent medical association, a partial-birth abortion is ethically different from other abortion procedures because a partial-birth abortion normally involves the killing of a fetus that has completed at least 20 weeks of gestation outside of the womb. In light of the findings in subdivision (f), the partial delivery of a fetus gives the fetus an autonomy which separates it from the right of a woman to choose treatments for her own body.

(h) That a partial-birth abortion confuses the medical, legal, and ethical duties of a physician to preserve and promote life. By performing a partial-birth abortion, the physician acts directly against his or her duties to preserve and promote the life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life.

(i) That, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, a partial-birth abortion procedure undermines the public's perception of the appropriate role of a physician during the delivery process and perverts a process during which life is brought into the world, in order to destroy a partially born child.

(j) That the gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the partial-birth abortion procedure.

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

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

(5) The spouse of the mother at the time of the partial-birth abortion or either parent of the mother if the mother had not attained the age of 18 at the time of the partial-birth abortion may file a civil action against the physician or individual described in subsection (3) for a violation of this section unless the pregnancy is a result of the plaintiff's criminal conduct or the plaintiff consented to the partial-birth abortion. A plaintiff who prevails in a civil action brought pursuant to this section may recover both of the following:

- (a) Actual damages, including damages for emotional distress.
- (b) Treble damages for the cost of the partial-birth abortion.

(6) A woman who obtains or seeks to obtain a partial-birth abortion is not a conspirator to commit a violation of this section.

(7) As used in this section:

(a) "Partial-birth abortion" means an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother, or in the case of a breech presentation, any part of the fetal trunk past the naval is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, and performs the overt act that kills the partially delivered living fetus rather than completing the delivery.

(b) "Physician" means an individual licensed by this state to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved .....

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Governor