

# SENATE BILL No. 776

September 17, 2007, Introduced by Senators BROWN, McMANUS, KAHN, GEORGE, JELINEK, PAPPAGEORGE, BIRKHOLZ, JANSEN, HARDIMAN, STAMAS, ALLEN, KUIPERS, VAN WOERKOM, GLEASON, GILBERT, BASHAM, BARCIA, OLSHOVE, SANBORN, CROSEY, RICHARDVILLE, PATTERSON, BISHOP, CASSIS and GARCIA and referred to the Committee on Health Policy.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
(MCL 750.1 to 750.568) by adding section 90h.

**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 BAN ACT".

3           (2) THE LEGISLATURE FINDS ALL OF THE FOLLOWING:

4           (A) THAT PARTIAL-BIRTH ABORTIONS POSE SERIOUS RISKS TO THE  
5 HEALTH OF A WOMAN, NO CREDIBLE MEDICAL EVIDENCE EXISTS THAT  
6 PARTIAL-BIRTH ABORTIONS ARE SAFE, AND PARTIAL-BIRTH ABORTIONS ARE  
7 NEVER MEDICALLY NECESSARY TO PRESERVE THE HEALTH OF THE MOTHER.

8           (B) THAT THE STATE HAS A COMPELLING INTEREST IN PRESERVING AND  
9 PROTECTING THE LIFE OF THE MOTHER AND THE CHILD BY PROHIBITING  
10 PARTIAL-BIRTH ABORTIONS.

1 (C) THAT A PROMINENT MEDICAL ASSOCIATION HAS DETERMINED THAT A  
2 PARTIAL-BIRTH ABORTION IS NOT AN ACCEPTED MEDICAL PRACTICE, IS  
3 BROADLY DISFAVORED BY MEDICAL EXPERTS AND THE PUBLIC, AND IS  
4 ETHICALLY WRONG AND NEVER THE ONLY APPROPRIATE PROCEDURE; AND THAT  
5 A PARTIAL-BIRTH ABORTION HAS NEVER BEEN SUBJECT TO EVEN A MINIMAL  
6 AMOUNT OF THE NORMAL MEDICAL PRACTICE DEVELOPMENT, AND THEREFORE  
7 THE RELATIVE ADVANTAGES AND DISADVANTAGES OF THE PARTIAL-BIRTH  
8 PROCEDURE IN SPECIFIC CIRCUMSTANCES REMAIN UNKNOWN AND NO CONSENSUS  
9 EXISTS AMONG OBSTETRICIANS ABOUT THE PERFORMANCE OF PARTIAL-BIRTH  
10 ABORTIONS.

11 (D) THAT THE PHYSICIAN WHO IS CREDITED WITH DEVELOPING THE  
12 PARTIAL-BIRTH ABORTION PROCEDURE HAS TESTIFIED THAT HE HAS NEVER  
13 ENCOUNTERED A SITUATION WHERE A PARTIAL-BIRTH ABORTION WAS  
14 MEDICALLY NECESSARY TO PRESERVE THE HEALTH OF A WOMAN.

15 (E) THAT A BAN ON PARTIAL-BIRTH ABORTIONS WILL ADVANCE THE  
16 HEALTH INTERESTS OF PREGNANT WOMEN SEEKING TO TERMINATE A  
17 PREGNANCY.

18 (F) THAT BASED ON ROE V WADE AND PLANNED PARENTHOOD V CASEY, A  
19 GOVERNMENTAL INTEREST IN PROTECTING THE LIFE OF A CHILD DURING THE  
20 DELIVERY PROCESS ARISES BECAUSE A PARTIAL-BIRTH ABORTION INVOLVES  
21 THE INDUCEMENT OF LABOR AND THE BEGINNING OF THE BIRTH PROCESS.  
22 THIS DISTINCTION WAS RECOGNIZED IN ROE WHEN THE COURT NOTED,  
23 WITHOUT COMMENT, THAT THE TEXAS PARTURITION STATUTE, WHICH  
24 PROHIBITED ONE FROM KILLING A CHILD IN A STATE OF BEING BORN AND  
25 BEFORE ACTUAL BIRTH, WAS NOT UNDER ATTACK. THIS INTEREST BECOMES  
26 COMPELLING AS THE CHILD EMERGES FROM THE MATERNAL BODY. A CHILD  
27 THAT IS COMPLETELY BORN IS A FULL, LEGAL PERSON ENTITLED TO

1 CONSTITUTIONAL PROTECTIONS AFFORDED A PERSON. PARTIAL-BIRTH  
2 ABORTIONS INVOLVE THE KILLING OF A CHILD THAT IS IN THE PROCESS OF  
3 BEING BORN, IN FACT MERE INCHES AWAY FROM BECOMING A PERSON. THUS,  
4 THE GOVERNMENT HAS A HEIGHTENED INTEREST IN PROTECTING THE LIFE OF  
5 A PARTIALLY BORN CHILD.

6 (G) THAT, ACCORDING TO A PROMINENT MEDICAL ASSOCIATION, A  
7 PARTIAL-BIRTH ABORTION IS ETHICALLY DIFFERENT FROM OTHER ABORTION  
8 PROCEDURES BECAUSE A PARTIAL-BIRTH ABORTION NORMALLY INVOLVES THE  
9 KILLING OF A FETUS THAT HAS COMPLETED AT LEAST 20 WEEKS OF  
10 GESTATION OUTSIDE OF THE WOMB. IN LIGHT OF THE FINDINGS IN  
11 SUBDIVISION (F), THE PARTIAL DELIVERY OF A FETUS GIVES THE FETUS AN  
12 AUTONOMY WHICH SEPARATES IT FROM THE RIGHT OF A WOMAN TO CHOOSE  
13 TREATMENTS FOR HER OWN BODY.

14 (H) THAT A PARTIAL-BIRTH ABORTION CONFUSES THE MEDICAL, LEGAL,  
15 AND ETHICAL DUTIES OF A PHYSICIAN TO PRESERVE AND PROMOTE LIFE. BY  
16 PERFORMING A PARTIAL-BIRTH ABORTION, THE PHYSICIAN ACTS DIRECTLY  
17 AGAINST HIS OR HER DUTIES TO PRESERVE AND PROMOTE THE LIFE OF A  
18 CHILD, WHOM HE OR SHE HAD JUST DELIVERED, ALL BUT THE HEAD, OUT OF  
19 THE WOMB, IN ORDER TO END THAT LIFE.

20 (I) THAT, BY ABORTING A CHILD IN THE MANNER THAT PURPOSEFULLY  
21 SEEKS TO KILL THE CHILD AFTER HE OR SHE HAS BEGUN THE PROCESS OF  
22 BIRTH, A PARTIAL-BIRTH ABORTION PROCEDURE UNDERMINES THE PUBLIC'S  
23 PERCEPTION OF THE APPROPRIATE ROLE OF A PHYSICIAN DURING THE  
24 DELIVERY PROCESS AND PERVERTS A PROCESS DURING WHICH LIFE IS  
25 BROUGHT INTO THE WORLD, IN ORDER TO DESTROY A PARTIALLY BORN CHILD.

26 (J) THAT THE GRUESOME AND INHUMANE NATURE OF THE PARTIAL-BIRTH  
27 ABORTION PROCEDURE AND ITS DISTURBING SIMILARITY TO THE KILLING OF

1 A NEWBORN INFANT PROMOTES A COMPLETE DISREGARD FOR INFANT HUMAN  
2 LIFE THAT CAN ONLY BE COUNTERED BY A PROHIBITION OF THE PARTIAL-  
3 BIRTH ABORTION PROCEDURE.

4 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), A PHYSICIAN, AN  
5 INDIVIDUAL PERFORMING AN ACT, TASK, OR FUNCTION UNDER THE  
6 DELEGATORY AUTHORITY OF A PHYSICIAN, OR ANY OTHER INDIVIDUAL WHO IS  
7 NOT A PHYSICIAN OR NOT OTHERWISE LEGALLY AUTHORIZED TO PERFORM AN  
8 ABORTION WHO KNOWINGLY PERFORMS A PARTIAL-BIRTH ABORTION AND KILLS  
9 A HUMAN FETUS IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR  
10 NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$50,000.00, OR  
11 BOTH.

12 (4) IT IS NOT A VIOLATION OF SUBSECTION (3) IF IN THE  
13 PHYSICIAN'S REASONABLE MEDICAL JUDGMENT A PARTIAL-BIRTH ABORTION IS  
14 NECESSARY TO SAVE THE LIFE OF A MOTHER WHOSE LIFE IS ENDANGERED BY  
15 A PHYSICAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY.

16 (5) THE SPOUSE OF THE MOTHER AT THE TIME OF THE PARTIAL-BIRTH  
17 ABORTION OR EITHER PARENT OF THE MOTHER IF THE MOTHER HAD NOT  
18 ATTAINED THE AGE OF 18 AT THE TIME OF THE PARTIAL-BIRTH ABORTION  
19 MAY FILE A CIVIL ACTION AGAINST THE PHYSICIAN OR INDIVIDUAL  
20 DESCRIBED IN SUBSECTION (3) FOR A VIOLATION OF THIS SECTION UNLESS  
21 THE PREGNANCY IS A RESULT OF THE PLAINTIFF'S CRIMINAL CONDUCT OR  
22 THE PLAINTIFF CONSENTED TO THE PARTIAL-BIRTH ABORTION. A PLAINTIFF  
23 WHO PREVAILS IN A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MAY  
24 RECOVER BOTH OF THE FOLLOWING:

25 (A) ACTUAL DAMAGES, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS.

26 (B) TREBLE DAMAGES FOR THE COST OF THE PARTIAL-BIRTH ABORTION.

27 (6) A WOMAN WHO OBTAINS OR SEEKS TO OBTAIN A PARTIAL-BIRTH

1 ABORTION IS NOT A CONSPIRATOR TO COMMIT A VIOLATION OF THIS  
2 SECTION.

3 (7) AS USED IN THIS SECTION:

4 (A) "PARTIAL-BIRTH ABORTION" MEANS AN ABORTION IN WHICH THE  
5 PHYSICIAN, AN INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF  
6 THE PHYSICIAN, OR ANY OTHER INDIVIDUAL PERFORMING THE ABORTION  
7 DELIBERATELY AND INTENTIONALLY VAGINALLY DELIVERS A LIVING FETUS  
8 UNTIL, IN THE CASE OF A HEADFIRST PRESENTATION, THE ENTIRE FETAL  
9 HEAD IS OUTSIDE THE BODY OF THE MOTHER, OR IN THE CASE OF A BREECH  
10 PRESENTATION, ANY PART OF THE FETAL TRUNK PAST THE NAVAL IS OUTSIDE  
11 THE BODY OF THE MOTHER, FOR THE PURPOSE OF PERFORMING AN OVERT ACT  
12 THAT THE PERSON KNOWS WILL KILL THE PARTIALLY DELIVERED LIVING  
13 FETUS, AND PERFORMS THE OVERT ACT THAT KILLS THE PARTIALLY  
14 DELIVERED LIVING FETUS RATHER THAN COMPLETING THE DELIVERY.

15 (B) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED BY THIS STATE TO  
16 ENGAGE IN THE PRACTICE OF MEDICINE OR THE PRACTICE OF OSTEOPATHIC  
17 MEDICINE AND SURGERY UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE,  
18 1978 PA 368, MCL 333.16101 TO 333.18838.