

SUBSTITUTE FOR  
HOUSE BILL NO. 4109

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) 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 AND KILLS  
8        A HUMAN FETUS IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR  
9        NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$50,000.00, OR  
10       BOTH.

1           (3) IT IS NOT A VIOLATION OF SUBSECTION (2) IF IN THE  
2   PHYSICIAN'S REASONABLE MEDICAL JUDGMENT A PARTIAL-BIRTH ABORTION IS  
3   NECESSARY TO SAVE THE LIFE OF A MOTHER WHOSE LIFE IS ENDANGERED BY  
4   A PHYSICAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY.

5           (4) THE SPOUSE OF THE MOTHER AT THE TIME OF THE PARTIAL-BIRTH  
6   ABORTION OR EITHER PARENT OF THE MOTHER IF THE MOTHER HAD NOT  
7   ATTAINED THE AGE OF 18 AT THE TIME OF THE PARTIAL-BIRTH ABORTION  
8   MAY FILE A CIVIL ACTION AGAINST THE PHYSICIAN OR INDIVIDUAL  
9   DESCRIBED IN SUBSECTION (2) FOR A VIOLATION OF THIS SECTION UNLESS  
10   THE PREGNANCY IS A RESULT OF THE PLAINTIFF'S CRIMINAL CONDUCT OR  
11   THE PLAINTIFF CONSENTED TO THE PARTIAL-BIRTH ABORTION. A PLAINTIFF  
12   WHO PREVAILS IN A CIVIL ACTION BROUGHT UNDER THIS SECTION MAY  
13   RECOVER BOTH OF THE FOLLOWING:

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

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

16           (5) A WOMAN WHO OBTAINS OR SEEKS TO OBTAIN A PARTIAL-BIRTH  
17   ABORTION IS NOT A CONSPIRATOR TO COMMIT A VIOLATION OF THIS  
18   SECTION.

19           (6) AS USED IN THIS SECTION:

20           (A) "PARTIAL-BIRTH ABORTION" MEANS AN ABORTION IN WHICH THE  
21   PHYSICIAN, AN INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF  
22   THE PHYSICIAN, OR ANY OTHER INDIVIDUAL PERFORMING THE ABORTION  
23   DELIBERATELY AND INTENTIONALLY VAGINALLY DELIVERS A LIVING FETUS  
24   UNTIL, IN THE CASE OF A HEADFIRST PRESENTATION, THE ENTIRE FETAL  
25   HEAD IS OUTSIDE THE BODY OF THE MOTHER, OR IN THE CASE OF BREECH  
26   PRESENTATION, ANY PART OF THE FETAL TRUNK PAST THE NAVAL IS OUTSIDE  
27   THE BODY OF THE MOTHER, FOR THE PURPOSE OF PERFORMING AN OVERT ACT

1 THAT THE PERSON KNOWS WILL KILL THE PARTIALLY DELIVERED LIVING  
2 FETUS, AND PERFORMS THE OVERT ACT, OTHER THAN COMPLETION OF  
3 DELIVERY, THAT KILLS THE PARTIALLY DELIVERED LIVING FETUS.

4 (B) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED BY THIS STATE TO  
5 ENGAGE IN THE PRACTICE OF MEDICINE OR THE PRACTICE OF OSTEOPATHIC  
6 MEDICINE AND SURGERY UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE,  
7 1978 PA 368, MCL 333.16101 TO 333.18838.

8 Enacting section 1. This amendatory act takes effect January  
9 1, 2012.

10 Enacting section 2. (1) Every provision in this amendatory act  
11 and every application of the provisions in this amendatory act are  
12 severable from each other. If any application of a provision in  
13 this amendatory act to any person or group of persons or  
14 circumstances is found by a court to be invalid, the remainder of  
15 this amendatory act and the application of the amendatory act's  
16 provisions to all other persons and circumstances may not be  
17 affected. All constitutionally valid applications of this  
18 amendatory act shall be severed from any applications that a court  
19 finds to be invalid, leaving the valid applications in force,  
20 because it is the legislature's intent and priority that the valid  
21 applications be allowed to stand alone. Even if a reviewing court  
22 finds a provision of this amendatory act invalid in a large or  
23 substantial fraction of relevant cases, the remaining valid  
24 applications shall be severed and allowed to remain in force.

25 (2) The provisions of this amendatory act shall be construed,  
26 as a matter of state law, to be enforceable up to but no further  
27 than the maximum possible extent consistent with federal

1 constitutional requirements, even if that construction is not  
2 readily apparent, as such constructions are authorized only to the  
3 extent necessary to save the amendatory act from judicial  
4 invalidation. If any court determines that any provisions of this  
5 amendatory act are unconstitutionally vague, it shall interpret  
6 this amendatory act, as a matter of state law, in a manner that  
7 avoids the vagueness problem while enforcing the amendatory act  
8 provision to the maximum possible extent consistent with federal  
9 constitutional requirements.