

HOUSE BILL No. 4109

January 20, 2011, Introduced by Reps. Daley, Kurtz, Hooker, Glardon, Scott, Outman, Shaughnessy, McBroom, Cotter, McMillin, Heise, Goike, Lori, Somerville, Muxlow, Lyons, MacGregor, Johnson, Zorn, Walsh, Bumstead, Knollenberg, Pscholka, LeBlanc, Huuki, Shirkey, Franz, Rendon, Opsommer, Potvin, Damrow, Yonker, Jenkins, LaFontaine, Agema, Tyler, Denby, Forlini, Haveman, Price, Moss, O'Brien, Crawford, Kowall, MacMaster, Gilbert, Dillon, Darany, Genetski and Brunner and referred to the Committee on Families, Children, and Seniors.

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.

11 (C) THAT A PROMINENT MEDICAL ASSOCIATION HAS DETERMINED THAT A
12 PARTIAL-BIRTH ABORTION IS NOT AN ACCEPTED MEDICAL PRACTICE, IS

1 BROADLY DISFAVORED BY MEDICAL EXPERTS AND THE PUBLIC, AND IS
2 ETHICALLY WRONG AND NEVER THE ONLY APPROPRIATE PROCEDURE; AND THAT
3 A PARTIAL-BIRTH ABORTION HAS NEVER BEEN SUBJECT TO EVEN A MINIMAL
4 AMOUNT OF THE NORMAL MEDICAL PRACTICE DEVELOPMENT, AND THEREFORE
5 THE RELATIVE ADVANTAGES AND DISADVANTAGES OF THE PARTIAL-BIRTH
6 PROCEDURE IN SPECIFIC CIRCUMSTANCES REMAIN UNKNOWN AND NO CONSENSUS
7 EXISTS AMONG OBSTETRICIANS ABOUT THE PERFORMANCE OF PARTIAL-BIRTH
8 ABORTIONS.

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

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

16 (F) THAT BASED ON ROE V WADE, 410 US 113 (1973), AND PLANNED
17 PARENTHOOD V CASEY, 505 US 833 (1992), A GOVERNMENTAL INTEREST IN
18 PROTECTING THE LIFE OF A CHILD DURING THE DELIVERY PROCESS ARISES
19 BECAUSE A PARTIAL-BIRTH ABORTION INVOLVES THE INDUCEMENT OF LABOR
20 AND THE BEGINNING OF THE BIRTH PROCESS. THIS DISTINCTION WAS
21 RECOGNIZED IN ROE WHEN THE COURT NOTED, WITHOUT COMMENT, THAT THE
22 TEXAS PARTURITION STATUTE, WHICH PROHIBITED ONE FROM KILLING A
23 CHILD IN A STATE OF BEING BORN AND BEFORE ACTUAL BIRTH, WAS NOT
24 UNDER ATTACK. THIS INTEREST BECOMES COMPELLING AS THE CHILD EMERGES
25 FROM THE MATERNAL BODY. A CHILD THAT IS COMPLETELY BORN IS A FULL,
26 LEGAL PERSON ENTITLED TO CONSTITUTIONAL PROTECTIONS AFFORDED A
27 PERSON. PARTIAL-BIRTH ABORTIONS INVOLVE THE KILLING OF A CHILD THAT

1 IS IN THE PROCESS OF BEING BORN, IN FACT MERE INCHES AWAY FROM
2 BECOMING A PERSON. THUS, THE GOVERNMENT HAS A HEIGHTENED INTEREST
3 IN PROTECTING THE LIFE OF A PARTIALLY BORN CHILD.

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

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

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

24 (J) THAT THE GRUESOME AND INHUMANE NATURE OF THE PARTIAL-BIRTH
25 ABORTION PROCEDURE AND ITS DISTURBING SIMILARITY TO THE KILLING OF
26 A NEWBORN INFANT PROMOTES A COMPLETE DISREGARD FOR INFANT HUMAN
27 LIFE THAT CAN ONLY BE COUNTERED BY A PROHIBITION OF THE PARTIAL-

1 BIRTH ABORTION PROCEDURE.

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

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

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

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

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

25 (6) A WOMAN WHO OBTAINS OR SEEKS TO OBTAIN A PARTIAL-BIRTH
26 ABORTION IS NOT A CONSPIRATOR TO COMMIT A VIOLATION OF THIS
27 SECTION.

1 (7) AS USED IN THIS SECTION:

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

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