

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

***** 750.90h.added THIS ADDED SECTION IS EFFECTIVE JANUARY 1, 2012 *****

750.90h.added Section to be known as "partial-birth abortion ban act"; prohibited conduct; violation as felony; penalty; exception; civil action; section construed; definitions.

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

(2) Except as provided in subsection (3), 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.

(3) It is not a violation of subsection (2) 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.

(4) 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 (2) 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 under 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.

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

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

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

(8) Nothing in this section shall be construed to repeal or amend, explicitly or by implication, any provision of law prohibiting or regulating abortion, including, but not limited to, section 14, 15, 322, or 323.

(9) 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 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, other than completion of delivery, that kills the partially delivered living fetus.

(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.

History: Add. 2011, Act 168, Eff. Jan. 1, 2012.

Compiler's note: Enacting section 2 of Act 168 of 2011 provides:

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

(2) The provisions of this amendatory act shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the amendatory act from judicial invalidation. If any court determines that any provisions of this amendatory act are unconstitutionally vague, it shall interpret this amendatory act, as a matter of state law, in a manner that avoids the vagueness problem while enforcing the amendatory act provision to the maximum possible extent consistent with federal constitutional requirements."

In subsection (9)(a) of this section, the word "naval" evidently should read "navel".