

HOUSE BILL No. 4623

May 1, 2003, Introduced by Reps. Palmer, Brandenburg, O'Neil, Spade, Milosch, Sheen, Pastor, Farhat, LaJoy, Newell, Hummel, Caswell, Nitz, Pappageorge, Rocca, Hoogendyk and DeRossett and referred to the Committee on Criminal Justice.

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
2 as 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
9 and protecting the life of the mother and the child by
10 prohibiting partial-birth abortions.

11 (c) That a prominent medical association has determined that

1 a partial-birth abortion is not an accepted medical practice, is
2 broadly disfavored by medical experts and the public, and is
3 ethically wrong and never the only appropriate procedure; and
4 that a partial-birth abortion has never been subject to even a
5 minimal amount of the normal medical practice development, and
6 therefore the relative advantages and disadvantages of the
7 partial-birth procedure in specific circumstances remain unknown
8 and no consensus exists among obstetricians about the performance
9 of partial-birth abortions.

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

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

17 (f) That based on Roe v Wade and Planned Parenthood v Casey,
18 a governmental interest in protecting the life of a child during
19 the delivery process arises because a partial-birth abortion
20 involves the inducement of labor and the beginning of the birth
21 process. This distinction was recognized in Roe when the court
22 noted, without comment, that the Texas parturition statute, which
23 prohibited one from killing a child in a state of being born and
24 before actual birth, was not under attack. This interest becomes
25 compelling as the child emerges from the maternal body. A child
26 that is completely born is a full, legal person entitled to
27 constitutional protections afforded a person. Partial-birth

1 abortions involve the killing of a child that is in the process
2 of being born, in fact mere inches away from becoming a person.
3 Thus, the government has a heightened interest in protecting the
4 life of a partially born child.

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

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

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

26 (j) That the gruesome and inhumane nature of the
27 partial-birth abortion procedure and its disturbing similarity to

1 the killing of a newborn infant promotes a complete disregard for
2 infant human life that can only be countered by a prohibition of
3 the partial-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
7 is not a physician or not otherwise legally authorized to perform
8 an abortion who knowingly performs a partial-birth abortion and
9 kills a human fetus is guilty of a felony punishable by
10 imprisonment for not more than 2 years or a fine of not more than
11 \$50,000.00, or both.

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

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

26 (a) Actual damages, including damages for emotional
27 distress.

1 (b) Treble damages for the cost of the partial-birth
2 abortion.

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

6 (7) As used in this section:

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

19 (b) "Physician" means an individual licensed by this state to
20 engage in the practice of medicine or the practice of osteopathic
21 medicine and surgery under article 15 of the public health code,
22 1978 PA 368, MCL 333.16101 to 333.18838.