

1 **PARTIAL BIRTH ABORTION AMENDMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Mike Thompson**

5 **This act modifies the Health and Human Services Code. This act adds a definition of**
6 **partial birth abortion to the definition section. This act removes provisions dealing with**
7 **partial birth abortion procedures from one section and creates a section that prohibits**
8 **these procedures. This act provides and sets limitations on remedies for a father or the**
9 **maternal grandparents of the fetus. This act also provides that a physician is entitled to a**
10 **hearing before the State Medical Board to determine the necessity of the physician's**
11 **conduct.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **76-7-301**, as last amended by Chapter 70, Laws of Utah 1993

15 **76-7-310.5**, as enacted by Chapter 267, Laws of Utah 1996

16 **76-7-314**, as last amended by Chapter 267, Laws of Utah 1996

17 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

18 ENACTS:

19 **76-7-326**, Utah Code Annotated 1953

20 **76-7-327**, Utah Code Annotated 1953

21 **76-7-328**, Utah Code Annotated 1953

22 *Be it enacted by the Legislature of the state of Utah:*

23 Section 1. Section **76-7-301** is amended to read:

24 **76-7-301. Definitions.**

25 As used in this part:

26 (1) "Abortion" means the intentional termination or attempted termination of human
27 pregnancy after implantation of a fertilized ovum, and includes any and all procedures



28 undertaken to kill a live unborn child and includes all procedures undertaken to produce a
29 miscarriage. "Abortion" does not include removal of a dead unborn child.

30 (2) "Medical emergency" means that condition which, on the basis of the physician's
31 good faith clinical judgment, so ~~[complicates the medical condition]~~ threatens the life of a
32 pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death,
33 or for which a delay will create serious risk of substantial and irreversible impairment of major
34 bodily function.

35 (3) "Partial birth abortion" means an abortion in which:

36 (a) the person performing the abortion deliberately and intentionally vaginally delivers
37 a living fetus until, in the case of a head first presentation, the entire fetal head is outside the
38 body of the mother, or in the case of breech presentation, any part of the fetal trunk past the
39 navel is outside the body of the mother for the purpose of performing an overt act that the
40 person knows will kill the partially delivered living fetus; and

41 (b) performs the overt act, other than completion of delivery, that kills the partially
42 living fetus.

43 ~~[(3)]~~ (4) "Physician" means a medical doctor licensed to practice medicine and surgery
44 under the Utah Medical Practice Act, a physician in the employment of the government of the
45 United States who is similarly qualified, or an osteopathic physician licensed to practice
46 medicine under the Utah Osteopathic Medicine Licensing Act.

47 ~~[(4)]~~ (5) "Hospital" means a general hospital licensed by the Department of Health
48 according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and
49 includes a clinic or other medical facility to the extent that such clinic or other medical facility
50 provides equipment and personnel sufficient in quantity and quality to provide the same degree
51 of safety to the pregnant woman and the unborn child as would be provided for the particular
52 medical procedures undertaken by a general hospital licensed by the Department of Health. It
53 shall be the responsibility of the Department of Health to determine if such clinic or other
54 medical facility so qualifies and to so certify.

55 Section 2. Section **76-7-310.5** is amended to read:

56 **76-7-310.5. Prohibition of specified abortion procedures.**

57 (1) As used in this section~~[- (a) "Partial birth abortion" or "dilation and extraction~~
58 ~~procedure" means the termination of pregnancy by partially vaginally delivering a living intact~~

59 fetus, purposefully inserting an instrument into the skull of the intact fetus, and utilizing a
 60 suction device to remove the skull contents. This definition does not include the dilation and
 61 evacuation procedure involving dismemberment prior to removal, the suction curettage
 62 procedure, or the suction aspiration procedure for abortion. (b) "Saline], "saline abortion
 63 procedure" means performance of amniocentesis and injection of saline into the amniotic sac
 64 within the uterine cavity.

65 (2) (a) After viability has been determined in accordance with Subsection [(b)] (1), no
 66 person may knowingly perform a [partial birth abortion or] dilation and extraction procedure[;]
 67 or a saline abortion procedure, unless all other available abortion procedures would pose a risk
 68 to the life or the health of the pregnant woman.

69 (b) For purposes of this section determination of viability shall be made by the
 70 physician, based upon his own best clinical judgment. The physician shall determine whether,
 71 based on the particular facts of a woman's pregnancy that are known to him, and in light of
 72 medical technology and information reasonably available to him, there is a realistic possibility
 73 of maintaining and nourishing a life outside of the womb, with or without temporary, artificial
 74 life-sustaining support.

75 (3) Intentional, knowing, and willful violation of this section is a third degree felony.

76 Section 3. Section **76-7-314** is amended to read:

77 **76-7-314. Violations of abortion laws -- Classifications.**

78 (1) (a) Any person who intentionally performs an abortion other than as authorized by
 79 this part is guilty of a felony of the third degree.

80 (b) Notwithstanding any other provision of law, a woman who seeks to have or obtains
 81 an abortion for herself is not criminally liable.

82 (2) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311,
 83 [or]76-7-312, or 76-7-326 is a felony of the third degree.

84 (3) A violation of any other provision of this part is a class A misdemeanor.

85 Section 4. Section **76-7-315** is amended to read:

86 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

87 When due to a serious medical emergency, time does not permit compliance with
 88 Section 76-7-302, 76-7-304, 76-7-305, 76-7-305.5, [or] 76-7-310.5, or 76-7-326 the provisions
 89 of those sections do not apply.

90 Section 5. Section **76-7-326** is enacted to read:

91 **76-7-326. Partial birth abortions prohibited.**

92 (1) Any physician who knowingly performs a partial birth abortion and thereby kills a
93 human fetus shall be fined under this chapter. This section does not apply to a partial birth
94 abortion that is necessary to save the life of a mother whose life is endangered by a physical
95 disorder, physical illness, or physical injury, including a life endangering physical condition
96 caused by or arising from the pregnancy itself.

97 (2) A woman upon which a partial birth abortion is performed may not be prosecuted
98 under this chapter for a conspiracy to violate this section.

99 Section 6. Section **76-7-327** is enacted to read:

100 **76-7-327. Remedies for father or maternal grandparents.**

101 (1) The father, if married to the mother at the time she receives a partial birth abortion
102 procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the
103 maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the
104 pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the
105 abortion.

106 (2) Such relief shall include:

107 (a) money damages for all injuries, psychological and physical, occasioned by the
108 violation of this section; and

109 (b) statutory damages equal to three times the cost of the partial birth abortion
110 procedure.

111 Section 7. Section **76-7-328** is enacted to read:

112 **76-7-328. Hearing to determine necessity of physician's conduct.**

113 (1) A physician accused of an offense under this section may seek a hearing before the
114 State Medical Board on whether the physician's conduct was necessary to save the life of the
115 mother whose life was endangered by a physical disorder, physical illness, or physical injury,
116 including a life endangering physical condition caused by or arising from the pregnancy itself.

117 (2) The findings on the issue of necessity are admissible on that issue at trial. Upon a
118 motion from the physician, the court must delay the beginning of the trial for not more than 30
119 days to permit such a hearing to take place.

Legislative Review Note
as of 1-30-03 9:07 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

REVISED - Legislative Review Note
as of 2-17-03 9:00 AM

This bill raises the following constitutional or statutory concerns:

The standard for judging whether a partial birth abortion is constitutional was outlined by the United States Supreme Court on June 28, 2000. See, Stenberg v. Carhart, 530 U.S. 914, 120 S. Ct. 2597. In Sternberg, the Nebraska statute was held to be unconstitutional for at least two independent reasons: first, because the law lacked any exception for the preservation of the health of the woman, and second, because it imposed an undue burden on a woman's ability to choose a partial birth abortion, thereby unduly burdening the right to choose abortion itself. Sternberg, 530 U.S. at 938 (citing Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 874 (1992)).

While it appears this statute would probably satisfy the first standard, it is possible that a court would find the legislative prohibition of partial birth abortion procedures place an undue burden upon a woman's right to choose, and may be unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0241

Partial Birth Abortion Amendments

10-Feb-03

3:11 PM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact assuming compliance with the provisions of this bill.

Office of the Legislative Fiscal Analyst