

**PARTIAL BIRTH ABORTION AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies sections of the Utah Criminal Code relating to partial birth abortion.

**Highlighted Provisions:**

This bill:

- ▶ revises definitions;
- ▶ prohibits and makes criminal and civil penalties for a physician that performs a partial birth abortion;
- ▶ provides and sets limitations on remedies for a father or the maternal grandparents of the fetus;
- ▶ provides that a physician accused of an offense of performing a partial birth abortion is entitled to a hearing before the Physicians Licensing Board or Osteopathic Physician and Surgeon's Licensing Board to determine the necessity of the physician's conduct;
- ▶ providing for contingent continuance of prior law; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

ENACTS:

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

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

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

**76-7-329**, Utah Code Annotated 1953

**76-7-330**, Utah Code Annotated 1953

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

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

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

As used in this part:

(1) "Abortion" means the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum, and includes any and all procedures undertaken to kill a live unborn child and includes all procedures undertaken to produce a miscarriage.

"Abortion" does not include removal of a dead unborn child.

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

(3) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head

first 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 navel 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

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

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.

(3) "Physician" means a medical doctor licensed to practice medicine and surgery under ~~[the]~~ Title 58, Chapter 67, Utah Medical Practice Act, a physician in the employment of the government of the United States who is similarly qualified, or an osteopathic physician licensed to practice osteopathic medicine under [the] Title 58, Chapter 68, Utah Osteopathic [Medicine Licensing] Medical Practice Act.

(4) "Hospital" means a general hospital licensed by the Department of Health according to Title 26, Chapter 21, and includes a clinic or other medical facility to the extent that such clinic or other medical facility provides equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health. It shall be the responsibility of the Department of Health to determine if such clinic or other medical facility so qualifies and to so certify.

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

**76-7-310.5. Prohibition of specified abortion procedures -- Viability defined.**

~~[(1) As used in this section:]~~

~~[(a) "Partial birth abortion" or "dilation and extraction procedure" means the termination of pregnancy by partially vaginally delivering a living intact fetus, purposefully inserting an instrument into the skull of the intact fetus, and utilizing a suction device to remove the skull contents. This definition does not include the dilation and evacuation procedure involving~~

~~dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.]~~

~~[(b) "Saline]~~ (1) As used in this section, "saline abortion procedure" means performance of amniocentesis and injection of saline into the amniotic sac within the uterine cavity.

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

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

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

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

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

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

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

(ii) A woman upon whom a partial birth abortion is performed may not be prosecuted under Section 76-7-326 or 76-7-329 for a conspiracy to violate Section 76-7-326 or 76-7-329.

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

(3) A violation of Section 76-7-326 or 76-7-329 is a felony of the third degree.

~~[(3)]~~ (4) A violation of any other provision of this part is a class A misdemeanor.

Section 4. Section **76-7-326** is enacted to read:

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

Any physician who knowingly performs a partial birth abortion and thereby kills a human fetus shall be fined or imprisoned, or both, as provided under this part. This section does not apply to a partial birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy itself.

Section 5. Section **76-7-327** is enacted to read:

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

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

(2) Such relief shall include:

(a) money damages for all injuries, psychological and physical, occasioned by the violation of Section 76-7-326 or 76-7-329; and

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

Section 6. Section **76-7-328** is enacted to read:

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

(1) A physician accused of an offense under Section 76-7-326 may seek a hearing before the Physicians Licensing Board created in Section 58-67-201, or the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201 on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

Section 7. Section **76-7-329** is enacted to read:

**76-7-329. Person unauthorized to perform abortions -- Penalties.**

A person who is not legally authorized by the state to perform abortions, but who nevertheless directly performs a partial birth abortion, is subject to Sections 76-7-301, 76-7-314, 76-7-326, and 76-7-327.

Section 8. Section **76-7-330** is enacted to read:

**76-7-330. Contingent continuance of prior law.**

(1) If the implementation of Section 76-7-326 enacted by this bill is stayed or otherwise ordered by a court of competent jurisdiction to not be implemented, beginning on the day on which the implementation of Section 76-7-326 is stayed or otherwise ordered not to be implemented the statutes listed in Subsection (2) shall:

(a) be given effect as if this bill did not amend those statutes; and

(b) remain in effect as if not amended by this bill until the day on which a court orders that Section 76-7-326 may be implemented.

(2) Subsection (1) applies to:

(a) Section 76-7-301;

(b) Section 76-7-310.5; and

(c) Section 76-7-314.

(3) Nothing in this section prevents the Legislature from amending, repealing, or taking any other action regarding the sections listed in Subsection (2) in this or a subsequent session.