

1 **PARTIAL BIRTH ABORTION AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Curtis S. Bramble**

5

LONG TITLE

6 **General Description:**

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

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ adds definitions;
- 11 ▶ removes provisions dealing with partial birth abortion procedures from one section
- 12 and creates a new section that prohibits these procedures;
- 13 ▶ provides and sets limitations on remedies for a father or the maternal grandparents
- 14 of the fetus;
- 15 ▶ provides a penalty for a physician who performs a partial birth abortion under
- 16 certain circumstances; and
- 17 ▶ provides that a physician accused of an offense of performing a partial birth
- 18 abortion is entitled to a hearing before the State Medical Board to determine the
- 19 necessity of the physician's conduct.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **76-7-301**, as last amended by Chapter 70, Laws of Utah 1993

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28 **76-7-310.5**, as enacted by Chapter 267, Laws of Utah 1996
 29 **76-7-314**, as last amended by Chapter 267, Laws of Utah 1996
 30 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

31 ENACTS:

32 **76-7-326**, Utah Code Annotated 1953
 33 **76-7-327**, Utah Code Annotated 1953
 34 **76-7-328**, Utah Code Annotated 1953

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

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

38 **76-7-301. Definitions.**

39 As used in this part:

40 (1) "Abortion" means the intentional termination or attempted termination of human
 41 pregnancy after implantation of a fertilized ovum, and includes any and all procedures
 42 undertaken to kill a live unborn child and includes all procedures undertaken to produce a
 43 miscarriage. "Abortion" does not include removal of a dead unborn child.

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

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

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

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

57 [~~(3)~~] (4) "Physician" means a medical doctor licensed to practice medicine and surgery
 58 under the Utah Medical Practice Act, a physician in the employment of the government of the

59 United States who is similarly qualified, or an osteopathic physician licensed to practice
60 medicine under the Utah Osteopathic Medicine Licensing Act.

61 ~~[(4)]~~ (5) "Hospital" means a general hospital licensed by the Department of Health
62 according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and
63 includes a clinic or other medical facility to the extent that such clinic or other medical facility
64 provides equipment and personnel sufficient in quantity and quality to provide the same degree
65 of safety to the pregnant woman and the unborn child as would be provided for the particular
66 medical procedures undertaken by a general hospital licensed by the Department of Health. It
67 shall be the responsibility of the Department of Health to determine if such clinic or other
68 medical facility so qualifies and to so certify.

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

70 **76-7-310.5. Prohibition of specified abortion procedures.**

71 (1) As used in this section:

72 (a) [~~"Partial birth abortion" or "dilation"~~] "Dilation and extraction procedure" means the
73 termination of a pregnancy [~~by partially vaginally delivering a living intact fetus, purposefully~~
74 ~~inserting an instrument into the skull of the intact fetus, and utilizing a suction device to~~
75 ~~remove the skull contents. This definition does not include the dilation and evacuation~~
76 ~~procedure~~] involving dismemberment prior to removal, the suction curettage procedure, or the
77 suction aspiration procedure for abortion.

78 (b) "Saline abortion procedure" means performance of amniocentesis and injection of
79 saline into the amniotic sac within the uterine cavity.

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

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

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

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

92 **76-7-314. Violations of abortion laws -- Classifications.**

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

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

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

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

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

101 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

102 When due to a serious medical emergency, time does not permit compliance with
103 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
104 of those sections do not apply.

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

106 **76-7-326. Partial birth abortions prohibited.**

107 (1) Any physician who knowingly performs a partial birth abortion shall be fined under
108 this chapter. This section does not apply to a partial birth abortion that is necessary to save the
109 life of a mother whose life is endangered by a physical disorder, physical illness, or physical
110 injury, including a life endangering physical condition caused by or arising from the pregnancy
111 itself.

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

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

115 **76-7-327. Remedies for father or maternal grandparents.**

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

121 (2) Such relief shall include:

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

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

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

127 **76-7-328. Hearing to determine necessity of physician's conduct.**

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

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

Legislative Review Note

as of 6-26-03 8:20 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 Stenberg, 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)).

It is possible that a court would find the legislative prohibition of partial birth abortion procedures places an undue burden upon a woman's right to choose, and may be unconstitutional. In addition, because this bill does not provide an exception for the preservation of the health of the woman, further constitutional questions may arise.

Office of Legislative Research and General Counsel