

Senator Curtis S. Bramble proposes the following substitute bill:

PARTIAL BIRTH ABORTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

5	Gregory S. Bell	Thomas V. Hatch	Howard A. Stephenson
6	Leonard M. Blackham	Parley G. Hellewell	David L. Thomas
7	D. Chris Buttars	John W. Hickman	John L. Valentine
8	Dan R. Eastman	Lyle W. Hillyard	Michael G. Waddoups
9	Beverly Ann Evans	Scott K. Jenkins	Carlene M. Walker
10	James M. Evans	Sheldon L. Killpack	Bill Wright
11	David L. Gladwell	Peter C. Knudson	L. Alma Mansell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **76-7-301**, as last amended by Chapter 70, Laws of Utah 1993

35 **76-7-310.5**, as enacted by Chapter 267, Laws of Utah 1996

36 **76-7-314**, as last amended by Chapter 267, Laws of Utah 1996

37 **76-7-315**, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

38 ENACTS:

39 **76-7-326**, Utah Code Annotated 1953

40 **76-7-327**, Utah Code Annotated 1953

41 **76-7-328**, Utah Code Annotated 1953



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

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

45 **76-7-301. Definitions.**

46 As used in this part:

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

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

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

57 (a) the person performing the abortion deliberately and intentionally vaginally delivers
58 a living fetus until, in the case of a head first presentation, the entire fetal head is outside the

59 body of the mother, or in the case of breech presentation, any part of the fetal trunk past the
 60 navel is outside the body of the mother for the purpose of performing an overt act that the
 61 person knows will kill the partially delivered living fetus; and

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

64 ~~[(3)]~~ (4) "Physician" means a medical doctor licensed to practice medicine and surgery
 65 under the Utah Medical Practice Act, a physician in the employment of the government of the
 66 United States who is similarly qualified, or an osteopathic physician licensed to practice
 67 medicine under the Utah Osteopathic Medicine Licensing Act.

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

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

77 **76-7-310.5. Prohibition of specified abortion procedures.**

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

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

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

88 (2) (a) After viability has been determined in accordance with Subsection ~~[(b)]~~ (1), no
 89 person may knowingly perform ~~[a partial birth abortion or dilation and extraction procedure,~~

90 ~~or~~] a saline abortion procedure[;] unless all other available abortion procedures would pose a
91 risk to the life or the health of the pregnant woman.

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

98 (3) Intentional, knowing, and willful violation of this section is a third degree felony.
99 Section 3. Section **76-7-314** is amended to read:

100 **76-7-314. Violations of abortion laws -- Classifications.**

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

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

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

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

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

109 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**

110 When due to a serious medical emergency, time does not permit compliance with
111 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
112 of those sections do not apply.

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

114 **76-7-326. Partial birth abortions prohibited.**

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

120 (2) A woman upon which a partial birth abortion is performed may not be prosecuted

121 under this chapter for a conspiracy to violate this section.

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

123 **76-7-327. Remedies for father or maternal grandparents.**

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

129 (2) Such relief shall include:

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

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

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

135 **76-7-328. Hearing to determine necessity of physician's conduct.**

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

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

Legislative Review Note
as of 1-12-04 1:54 PM

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. Stenberg, 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.

Notwithstanding Stenberg, the United States Court of Appeals for the Sixth Circuit held that an Ohio statute prohibiting partial birth abortion did "not restrict the most commonly used procedure for second trimester abortions. . . [and] provide[d] an exception for significant health risks" and therefore did "not impose an undue burden on a woman's right to abort a non-viable fetus." Women's Medical Professional Corp. v. Taft, 2003 U.S. App. Lexis 25413, 2003 Fed. App. 0446p (6th Cir.). Because the health exception in Utah's law is similar to that of Ohio it is possible that if challenged this law could be upheld.

Office of Legislative Research and General Counsel