

Representative Mike Thompson proposes the following substitute bill:

PARTIAL BIRTH ABORTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

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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:

- ▶ modifies definitions;
- ▶ prohibits partial birth abortion except in certain circumstances;
- ▶ provides a penalty for any person who performs a partial birth abortion under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 76-7-301, as last amended by Chapter 70, Laws of Utah 1993

30 76-7-310.5, as enacted by Chapter 267, Laws of Utah 1996

31 76-7-314, as last amended by Chapter 267, Laws of Utah 1996

32 76-7-315, as last amended by Chapter 5, Laws of Utah 1996, Second Special Session

33 ENACTS:

34 76-7-326, Utah Code Annotated 1953

35

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) "Dilation and evacuation procedure of abortion" does not include the dilation and
45 extraction procedure of abortion.

46 (3) "From the body of the mother" means that the portion of the fetus' body in question
47 is beyond the mother's vaginal introitus in a vaginal delivery.

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

56 [~~(2)~~] (5) "Medical emergency" means that condition which, on the basis of the
57 physician's good faith clinical judgment, so [~~complicates the medical condition~~] threatens the
58 life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her

59 death, or for which a delay will create serious risk of substantial and irreversible impairment of
60 major bodily function.

61 (6) "Partial birth abortion" means the medical procedure that includes all of the
62 following elements in sequence:

63 (a) intentional dilation of the cervix of a pregnant woman, usually over a sequence of
64 days;

65 (b) in a breach presentation, intentional extraction of at least the lower torso to the
66 navel, but not the entire body, of an infant fetus from the body of the mother, or in a cephalic
67 presentation, intentional extraction of at least the complete head, but not the entire body, of an
68 intact fetus from the body of the mother;

69 (c) intentional partial evacuation of the intracranial contents of the fetus, which
70 procedure the person performing the procedure knows will cause the death of the fetus,
71 intentionally compression of the head of the fetus, which procedure the person performing the
72 procedure knows will cause the death of the fetus, or performance of another intentional act
73 that the person performing the procedure knows will cause the death of the fetus; and

74 (d) completion of the vaginal delivery of the fetus.

75 (7) "Partially born" means that the portion of the body of an intact fetus described in
76 Subsection (6)(b) has been intentionally extracted from the body of the mother.

77 [~~(3)~~] (8) "Physician" means a medical doctor licensed to practice medicine and surgery
78 under [the] Title 58, Chapter 67, Utah Medical Practice Act, a physician in the employment of
79 the government of the United States who is similarly qualified, or an osteopathic physician
80 licensed to practice osteopathic medicine under [the] Title 58, Chapter 68, Utah Osteopathic
81 [Medicine Licensing] Medical Practice Act.

82 (9) "Serious risk of substantial and irreversible impairment of a major bodily function"
83 means any medically diagnosed condition that so complicates the pregnancy of the woman as
84 to directly or indirectly cause the substantial and irreversible impairment of a major bodily
85 function.

86 (10) "Viability" has the same meaning as defined in Subsection 76-7-310.5(2)(b).

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

88 **76-7-310.5. Prohibition of specified abortion procedures -- Viability defined.**

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

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

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

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

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

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

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

111 **76-7-314. Violations of abortion laws -- Classifications -- Exceptions.**

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

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

116 (ii) A pregnant woman upon whom a partial birth abortion is performed in violation of
117 Section 76-7-326 is not guilty of committing, attempting to commit, complicity in the
118 commission of, or conspiracy in the commission of a violation of that section.

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

121 (3) A violation of Section 76-7-326 is a felony of the third degree.
122 [~~3~~] (4) A violation of any other provision of this part is a class A misdemeanor.
123 Section 4. Section **76-7-315** is amended to read:
124 **76-7-315. Exceptions to certain requirements in serious medical emergencies.**
125 When due to a serious medical emergency, time does not permit compliance with
126 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
127 of those sections do not apply.

128 Section 5. Section **76-7-326** is enacted to read:
129 **76-7-326. Partial birth abortions prohibited -- Application of law.**
130 (1) When the fetus that is the subject of a partial birth abortion is viable, no person
131 shall knowingly perform a partial birth abortion on a pregnant woman when the partial birth
132 abortion is not necessary, in reasonable medical judgment, to preserve the life or health of the
133 mother as a result of the mother's life or health being endangered by a serious risk of the
134 substantial and irreversible impairment of a major bodily function.

135 (2) When the fetus that is the subject of the partial birth abortion is not viable, no
136 person shall knowingly perform a partial birth abortion on a pregnant woman when the partial
137 birth abortion is not necessary, in reasonable medical judgment, to preserve the life or health of
138 the mother as a result of the mother's life or health being endangered by a serious risk of the
139 substantial and irreversible impairment of a major bodily function.

140 (3) This section does not prohibit:
141 (a) the suction curettage procedure of abortion;
142 (b) the suction aspiration procedure of abortion; or
143 (c) the dilation and evacuation procedure of abortion.

144 (4) This section does not apply to any person who performs or attempts to perform a
145 legal abortion if the act that causes the death of the fetus is performed prior to the fetus being
146 partially born even though the death of the fetus occurs after it is partially born.

Legislative Review Note
as of 2-6-04 8:51 AM

The legislative prohibition of partial birth abortion procedures in this bill raises constitutional issues. The United States Supreme Court has considered the constitutionality of a ban on partial birth abortions in Stenberg v. Carhart, 530 U.S. 914 (2000). 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 more commonly used method of abortion, thereby unduly burdening the right to choose abortion itself. See Stenberg, 530 U.S. at 930 (citing Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 874 (1992)).

The United States Court of Appeals for the Sixth Circuit recently ruled that an Ohio statute prohibiting partial birth abortion was constitutional. The court held that Ohio's statute 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. Dec. 17, 2003). The Ohio statute allows a partial birth abortion for either the preservation of the life or health of the woman. This bill closely parallels the Ohio law which was held constitutional in providing an exception for the life and health of the woman as appears to be required by both the United States Supreme Court and Sixth Circuit Court cases.

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