



**House
Legislative
Analysis
Section**

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BAN PARTIAL BIRTH ABORTIONS

**House Bill 5889 (Substitute H-1)
First Analysis (5-29-96)**

**Sponsor: Rep. James Ryan
Committee: Human Services**

THE APPARENT PROBLEM:

Congress has approved, and the President has vetoed, legislation that would ban a particular abortion procedure, known as "partial-birth abortion". Opponents of abortion believe that acceptance of this particular abortion procedure moves the country close to acceptance of infanticide. Legislation has been introduced to ban partial-birth abortions.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.16221 et. al.) to prohibit a physician or a person performing an act, task, or function under the delegatory authority of a physician from performing a "partial-birth abortion," which would be defined under the bill to mean an abortion in which the physician or an individual acting under the delegatory authority of the physician performing the abortion "partially vaginally delivers a living fetus before killing the fetus and completing the delivery". A physician (M.D. or D.O.) who performed such an abortion would be subject to disciplinary action, including license denial, suspension, or revocation. A suspension of a license or registration under the bill would have to be for at least two years. It would be an affirmative defense to disciplinary proceedings initiated under the bill if the physician reasonably believed that performing the partial-birth abortion was necessary to save the life of a pregnant woman whose life was endangered by a physical disorder, physical illness, or physical injury and that no other medical procedure would accomplish that purpose.

"Abortion" would be defined under the bill to mean the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion would not include the use or prescription of a drug or device intended as a contraceptive. In addition, the bill would define "fetus" to mean an individual organism of the species *Homo Sapiens* at any time before complete delivery from a pregnant woman.

The bill would specify, however, that, notwithstanding any other provision of the bill, a person could not perform an abortion that was prohibited by law, and that the provisions of the bill would not create a right to abortion.

FISCAL IMPLICATIONS:

According to the Department of Consumer and Industry Services, the bill would result in some cost for investigation and prosecution of violations. (5-21-96)

ARGUMENTS:

For:

Proponents of the bill say that partial-birth abortion is very close to infanticide. They describe a gruesome procedure whereby a nearly full-term fetus is partially delivered and then killed by means of having its skull crushed or incised before the delivery is completed. According to proponents of the bill, several thousand partial birth abortions are performed nationwide each year, most on non-medical grounds. They cite physicians who say there is no medical need for the procedure, that there are other, safer methods for terminating a pregnancy. The bill would hold physicians accountable through possible license sanctions. Most reasonable people would agree that this extreme practice should not be tolerated in a civilized society.

Against:

Opponents of the bill point out that its language is not limited to late-term pregnancies; its definition of "partial-term abortion" would cover many earlier term abortions, even those performed in the first trimester. In fact, opponents say the definition used in the bill is not a medical definition, and there is no agreement on precisely which procedures it would include. Opponents of the bill say that no abortions are performed in Michigan after 24 weeks of pregnancy, and that, in general, late-term abortions are very rare and are only performed when there are grave fetal defects or maternal illness. Further, the bill contains no exception for a pregnancy that would endanger a woman's health,

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including her future childbearing ability. The American Civil Liberties Union stated in testimony before the House Human Services Committee that the U.S. Supreme Court has held that state restrictions on abortion must contain such exceptions.

Response:

Proponents of the bill say that, since there are safe and available alternatives, banning this particular procedure would not create a "substantial obstacle" to obtaining an abortion, the new standard set by the court in the 1992 Casey decision.

POSITIONS:

The following presented testimony to the House Human Services Committee in support of the bill (5-23-96):

- * The Department of Consumer and Industry Services
- * Right to Life of Michigan
- * The Michigan Catholic Conference

The following presented testimony to the House Human Services Committee in opposition to the bill (5-23-96):

- * Planned Parenthood Affiliates of Michigan
- * The American Civil Liberties Union of Michigan
- * The Michigan Chapter of the National Organization for Women
- * The Michigan Abortion and Reproductive Rights Action League

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.