

Legislative Analysis



PARTIAL-BIRTH ABORTION BAN

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House Bill 4109

Sponsor: Rep. Kevin Daley

House Bill 4110

Sponsor: Rep. Ben Glardon

Committee: Families, Children, and Seniors

Complete to 6-15-11

A SUMMARY OF HOUSE BILLS 4109 AND 4110 AS INTRODUCED 1-20-11

House Bill 4109 would amend the Michigan Penal Code to create the Partial-Birth Abortion Ban Act. Under the new act, a physician, an individual performing an act, task, or function under the authority of a physician, or any other individual who knowingly performs a partial-birth abortion and kills a human fetus is guilty of a felony punishable by imprisonment for up to two years and/or a fine of not more than \$50,000 or both.

However, it would not be a violation of the act if, in the physician's reasonable medical judgment, a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury.

The bill says that a woman who seeks to obtain or obtains a partial-birth abortion is not a conspirator to commit a violation of the act.

Also under the bill, the spouse of the mother, or either parent of the mother if the mother had not attained the age of 18, could file a civil action against the physician or other individual for a violation of this section unless the pregnancy is a result of the plaintiff's criminal conduct or the plaintiff consented to the procedure. A plaintiff who prevails in a civil action brought under this section could recover both actual damages, including damages for emotional distress, and treble damages for the cost of the partial-birth abortion.

The bill would define "Partial-Birth Abortion" to mean an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of headfirst presentation, the entire fetal head is outside the body of the mother, or in the case of a 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 performs the overt act that kills the partially delivered living fetus rather than completing the delivery.

The bill begins with a set of 10 medical, legal, and ethical legislative findings that, generally speaking, aim at justifying the prohibition on partial-birth abortions. The findings section begins by asserting that "Partial-birth abortions pose serious risks to the health of a woman, no credible medical evidence exists that partial-birth abortions are safe, and partial-birth abortions are never medically necessary to preserve the health of the mother"; and that "the state has a compelling interest in preserving and protecting the life of the mother and the child by prohibiting partial-birth abortions." The final finding states, "The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the partial-birth abortion procedure."

House Bill 4110 would amend the sentencing guidelines in the Code of Criminal Procedure to list performing or assisting in performance of partial-birth abortion as a Class G felony with a statutory maximum of two years imprisonment. House Bill 4110 is tie-barred to House Bill 4109 meaning it could not take effect unless House Bill 4109 is enacted

MCL 750.1 et al

FISCAL IMPACT:

To the extent that the bills result in new felony convictions related to partial-birth abortions, they could increase costs on state and local correctional systems. There are no data to indicate how many offenders would be convicted under the provisions of the bills. The average cost of prison incarceration is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 4901 may have indeterminate fiscal implications for the Department of Community Health related to an increase in the limitation of access to safe abortion services, which may affect state-funded health services for women.

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■ 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.