

SENATE BILL No. 392

May 18, 2017, Introduced by Senators CASPERSON, HILDENBRAND, COLBECK, BOOHER, GREEN, PAVLOV, ROBERTSON, PROOS, HANSEN, HORN, JONES, MARLEAU, NOFS, KOWALL, STAMAS, SCHUITMAKER, KNOLLENBERG, O'BRIEN, SCHMIDT, EMMONS and SHIRKEY and referred to the Committee on Health Policy.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 90h (MCL 750.90h), as added by 2011 PA 168.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 90h. (1) This section shall be known and may be cited as
2 the "partial-birth abortion **AND DISMEMBERMENT ABORTION** ban act".

3 (2) Except as provided in subsection (3), a physician, an
4 individual performing an act, task, or function under the
5 delegatory authority of a physician, or any other individual who is
6 not a physician or not otherwise legally authorized to perform an
7 abortion who knowingly performs a partial-birth abortion **OR**
8 **DISEMBERMENT ABORTION** and kills a human fetus is guilty of a
9 felony punishable by imprisonment for not more than 2 years or a
10 fine of not more than \$50,000.00, or both.

11 (3) It is not a violation of subsection (2) if in the
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1 physician's reasonable medical judgment a partial-birth abortion **OR**
2 **DISMEMBERMENT ABORTION** is necessary to save the life of a mother
3 whose life is endangered by a physical disorder, physical illness,
4 or physical injury.

5 (4) The spouse of the mother at the time of the partial-birth
6 abortion **OR DISMEMBERMENT ABORTION** or either parent of the mother
7 if the mother had not attained the age of 18 at the time of the
8 partial-birth abortion **OR DISMEMBERMENT ABORTION** may file a civil
9 action against the physician or individual described in subsection
10 (2) for a violation of this section unless the pregnancy is a
11 result of the plaintiff's criminal conduct or the plaintiff
12 consented to the partial-birth abortion **OR DISMEMBERMENT ABORTION**.
13 A plaintiff who prevails in a civil action brought under this
14 section may recover both of the following:

15 (a) Actual damages, including damages for emotional distress.

16 (b) Treble damages for the cost of the partial-birth abortion
17 **OR DISMEMBERMENT ABORTION**.

18 (5) A woman who obtains or seeks to obtain a partial-birth
19 abortion **OR DISMEMBERMENT ABORTION** is not a conspirator to commit a
20 violation of this section.

21 (6) This section does not create a right to abortion.

22 (7) Notwithstanding any other provision of this section, a
23 person shall not perform an abortion that is prohibited by law.

24 (8) Nothing in this section shall be construed to repeal or
25 amend, explicitly or by implication, any provision of law
26 prohibiting or regulating abortion, including, but not limited to,
27 section 14, 15, 322, or 323.

(9) As used in this section:

(A) "DISMEMBERMENT ABORTION" MEANS 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 USES ANY INSTRUMENT, DEVICE, OR OBJECT TO DISMEMBER A LIVING FETUS BY DISARTICULATING LIMBS OR DECAPITATING THE HEAD FROM THE FETAL TORSO AND REMOVING THE DISMEMBERED FETAL BODY PARTS FROM THE UTERUS REGARDLESS OF WHETHER THE FETAL BODY PARTS ARE REMOVED BY THE SAME INSTRUMENT, DEVICE, OR OBJECT OR BY SUCTION OR OTHER MEANS. DISMEMBERMENT ABORTION DOES NOT INCLUDE AN ABORTION THAT USES SUCTION TO DISMEMBER AND REMOVE THE BODY OF A FETUS FROM THE UTERUS.

(B) ~~(a)~~—"Partial-birth abortion" means 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 a headfirst presentation, the entire fetal head is outside the body of the mother, or in the case of breech presentation, any part of the fetal trunk past the ~~naval~~—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, other than completion of delivery, that kills the partially delivered living fetus.

(C) ~~(b)~~—"Physician" means an individual licensed by this state to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

1 Enacting section 1. This amendatory act takes effect January
2 1, 2018.

3 Enacting section 2. This amendatory act does not take effect
4 unless Senate Bill No. ____ or House Bill No. ____ (request no.
5 00074'17 a) of the 99th Legislature is enacted into law.

6 Enacting section 3. (1) Every provision in this amendatory act
7 and every application of the provisions in this amendatory act are
8 severable from each other. If any application of a provision in
9 this amendatory act to any person or group of persons or
10 circumstances is found by a court to be invalid, the remainder of
11 this amendatory act and the application of the amendatory act's
12 provisions to all other persons and circumstances shall not be
13 affected. All constitutionally valid applications of this
14 amendatory act shall be severed from any applications that a court
15 finds to be invalid, leaving the valid applications in force,
16 because it is the legislature's intent and priority that the valid
17 applications be allowed to stand alone. Even if a reviewing court
18 finds a provision of this amendatory act invalid in a large or
19 substantial fraction of relevant cases, the remaining valid
20 applications shall be severed and allowed to remain in force.

21 (2) The provisions of this amendatory act shall be construed,
22 as a matter of state law, to be enforceable up to but no further
23 than the maximum possible extent consistent with federal
24 constitutional requirements, even if that construction is not
25 readily apparent, as such constructions are authorized only to the
26 extent necessary to save the amendatory act from judicial
27 invalidation. If any court determines that any provision of this

1 amendatory act is unconstitutionally vague, it shall interpret this
2 amendatory act, as a matter of state law, in a manner that avoids
3 the vagueness problem while enforcing the amendatory act's
4 provisions to the maximum possible extent consistent with federal
5 constitutional requirements.