

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 196 of the Regular Session

As Engrossed: H2/3/09,H2/11/09

A Bill

1 State of Arkansas

2 87th General Assembly

3 Regular Session, 2009

HOUSE BILL 1113

4
5 By: Representatives D. Creekmore, Lea, Dismang, English, Greenberg, G. Smith, Rice, J. Burris, S.
6 *Malone, Clemmer, M. Martin, Ragland, Barnett, Garner, Baird, Breedlove, J. Dickinson, Glidewell,*
7 *Lowery, Summers, Wells, Adcock, Maloch, Dale*

8 By: Senators Bledsoe, Glover, G. Baker, Trusty, J. Taylor, Altes

11 **For An Act To Be Entitled**

12 AN ACT TO PROHIBIT PARTIAL-BIRTH ABORTIONS; AND
13 FOR OTHER PURPOSES.

15 **Subtitle**

16 THE PARTIAL-BIRTH ABORTION BAN ACT.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21 *SECTION 1. Arkansas Code Title 20, Chapter 16 is amended to add an*
22 *additional subchapter to read as follows:*

23 *20-16-1201. Title.*

24 *This subchapter shall be known and may be cited as the "Partial-Birth*
25 *Abortion Ban Act".*

27 *20-16-1202. Definitions.*

28 *As used in this subchapter:*

29 *(1) "Partial-birth abortion" means an abortion in which the*
30 *person performing the abortion:*

31 *(A) Purposely vaginally delivers a living human fetus*
32 *until, in the case of a head-first presentation, the entire fetal head is*
33 *outside the body of the female or, in the case of breech presentation, any*
34 *part of the fetal trunk past the navel is outside the body of the female, for*
35 *the purpose of performing an overt act that the person knows will kill the*



1 partially delivered living human fetus; and

2 (B) Performs the overt act, other than completion of
3 delivery of a living human fetus, that kills the partially delivered living
4 human fetus; and

5 (2)(A) "Physician" means a doctor of medicine or osteopathy
6 legally authorized to practice medicine and surgery in this state, or any
7 other individual legally authorized by the state to perform abortions.

8 (B) However, any individual who is not a physician or not
9 otherwise legally authorized by the state to perform abortions, but who
10 nevertheless directly performs a partial-birth abortion, is subject to this
11 subchapter.

12
13 20-16-1203. Partial-birth abortions prohibited – Penalty – Exception.

14 (a)(1) Any person who knowingly performs a partial-birth abortion and
15 thereby kills a human fetus is guilty of a Class D felony.

16 (2) This subsection (a) does not apply to a partial-birth
17 abortion that is necessary to save the life of a mother whose life is
18 endangered by a physical disorder, physical illness, or physical injury,
19 including a life-endangering physical condition caused by or arising from the
20 pregnancy itself.

21 (b) A female upon whom a partial-birth abortion is performed shall not
22 be prosecuted under this subchapter.

23
24 20-16-1204. License suspension or revocation and fines.

25 (a)(1) After proper notice and an opportunity to be heard, the
26 Arkansas State Medical Board may assess a civil fine against a physician who
27 violates this subchapter.

28 (2) The civil fine shall not exceed:

29 (A) Twenty-five thousand dollars (\$25,000) for the first
30 violation;

31 (B) Fifty thousand dollars (\$50,000) for the second
32 violation;

33 (C) One hundred thousand dollars (\$100,000) for the third
34 violation; and

35 (D) For each subsequent violation, any amount over one
36 hundred thousand dollars (\$100,000) sufficient to deter future violations.

1 (b) The board may suspend or revoke the physician's license in
2 accordance with procedures established under § 17-95-410.

3 (c)(1) All fines assessed and collected under this section shall be
4 remitted into the Treasurer of State.

5 (2) The Treasurer of State shall deposit the entire amount of
6 any fines collected under this section in the State Treasury as general
7 revenues.

8 (d) The civil fine assessed under this section is in addition to the
9 criminal penalty imposed under § 20-16-1203.

10
11 20-16-1205. Civil Liability.

12 (a) The father, if married to the mother at the time she receives a
13 partial-birth abortion procedure, and if the mother has not attained the age
14 of eighteen (18) years at the time of the abortion, the maternal grandparents
15 of the fetus, may obtain appropriate relief in a civil action, unless the
16 pregnancy resulted from the plaintiff's criminal conduct or the plaintiff
17 consented to the abortion.

18 (b) Relief under subsection (a) of this section shall include:

19 (1) Money damages for all injuries, psychological and physical,
20 occasioned by the violation of this section: and

21 (2) Statutory damages equal to three (3) times the cost of the
22 partial-birth abortion.

23 (c) Damages shall not be assessed against the female upon whom a
24 partial-birth abortion is performed.

25
26 20-16-1206. Hearings before the Arkansas State Medical Board.

27 (a) A physician accused of a violation of this subchapter may seek a
28 hearing before the Arkansas State Medical Board to determine whether the
29 physician's conduct was necessary to save the life of the female under § 20-
30 16-1203.

31 (b) Findings from a hearing held under subsection (a) of this section
32 are admissible at the trial of the physician on the issue of whether the
33 physician's conduct was necessary to save the life of the female under § 20-
34 16-1203.

35 (c) Upon a motion of the physician, the circuit court shall delay the
36 beginning of the trial for not more than ninety (90) days to permit a hearing

1 under subsection (a) of this section to take place.

2
3 20-16-1207. Provision for anonymity of female.

4 (a) In every proceeding or action under this subchapter, the circuit
5 court shall rule whether the anonymity of any female upon whom a partial-
6 birth abortion is performed should be preserved from public disclosure if the
7 female does not give her consent to the disclosure.

8 (b)(1) Upon its own motion or upon motion by a party to the proceeding
9 or action under this subchapter, the circuit court shall make a ruling
10 concerning the anonymity of any female upon whom a partial-birth abortion is
11 performed.

12 (2) Upon determining that the anonymity should be preserved, the
13 circuit court shall issue orders to the parties, witnesses, and counsel and
14 shall direct the sealing of the record and exclusion of individuals from
15 courtrooms or hearing rooms to the extent necessary to safeguard the female's
16 identity from public disclosure.

17 (3) Each order under subdivision (b)(2) of this section shall be
18 accompanied by a specific written finding explaining:

19 (A) Why the anonymity of the female should be preserved
20 from public disclosure;

21 (B) Why the order is essential to that end;

22 (C) How the order is narrowly tailored to serve that
23 interest; and

24 (D) Why no reasonable, less restrictive alternative
25 exists.

26 (c) In the absence of written consent of the female upon whom a
27 partial-birth abortion has been performed, any person other than a public
28 official who brings an action under this subchapter shall do so under a
29 pseudonym.

30 (d) This section shall not be construed to conceal the identity of the
31 plaintiff or of a witness from the defendant.

32
33 SECTION 2. Arkansas Code Title 5, Chapter 61, Subchapter 2 is
34 repealed.

35 ~~5-61-201. Title.~~

36 ~~This subchapter may be cited as the "Partial-Birth Abortion Ban Act of~~

1 ~~1997".~~

2
3 ~~5-61-202. Definitions.~~

4 ~~As used in this subchapter, "partial birth abortion" means an abortion~~
5 ~~in which the person performing the abortion partially vaginally delivers a~~
6 ~~living fetus before taking the life of the fetus and completing the delivery~~
7 ~~or as defined by the United States Supreme Court.~~

8
9 ~~5-61-203. Partial birth abortions prohibited.~~

10 ~~(a) Any person who knowingly performs a partial birth abortion and~~
11 ~~thereby takes the life of a human fetus is guilty of a Class D felony.~~

12 ~~(b) A woman upon whom a partial birth abortion is performed may not be~~
13 ~~prosecuted under this section for conspiracy, solicitation, attempt, or~~
14 ~~complicity to violate this section.~~

15 ~~(c) It is an affirmative defense to a prosecution under this section,~~
16 ~~which must be proved by a preponderance of the evidence, that the partial-~~
17 ~~birth abortion was performed by a physician who reasonably believed:~~

18 ~~(1) The partial birth abortion was necessary to save the life of~~
19 ~~the woman upon whom it was performed; and~~

20 ~~(2) No other form of abortion would suffice for that purpose.~~

21 ~~(d)(1) Prior to charging a person under this section, a prosecutor~~
22 ~~shall refer the investigation to the State Medical Board, which shall~~
23 ~~determine whether the procedure at issue in the investigation is a partial-~~
24 ~~birth abortion as defined by this subchapter.~~

25 ~~(2) If the board determines that the procedure being~~
26 ~~investigated is not a partial birth abortion as defined by this subchapter,~~
27 ~~the prosecutor shall not proceed with the case.~~

28 ~~(e) This subchapter is operative and shall be enforced to the extent~~
29 ~~permitted by the United States Constitution and laws.~~

30
31 ~~5-61-204. Professional sanctions.~~

32 ~~(a) Any person who knowingly performs a partial birth abortion is~~
33 ~~subject to disciplinary action by the State Medical Board.~~

34 ~~(b) Disciplinary action taken by the board against a physician who~~
35 ~~violates this subchapter shall include, as determined by the board:~~

36 ~~(1) A fine not greater than ten thousand dollars (\$10,000);~~

1 ~~(2) Suspension of the physician's license for a period not~~
2 ~~greater than one (1) year; or~~

3 ~~(3) Revocation of the physician's license.~~

4
5 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that partial-birth abortion poses
7 serious risks to the health of a female undergoing the procedure; that those
8 risks include, among other things: an increase in a female's risk of
9 suffering from cervical incompetence, a result of cervical dilation making it
10 difficult or impossible for a female to successfully carry a subsequent
11 pregnancy to term; an increased risk of uterine rupture, abruption, amniotic
12 fluid embolus, and trauma to the uterus as a result of converting the child
13 to a footling breech position and a risk of lacerations and secondary
14 hemorrhaging due to the physician blindly forcing a sharp instrument into the
15 base of the unborn child's skull while he or she is lodged in the birth
16 canal, an act which could result in severe bleeding, brings with it the
17 threat of shock, and could ultimately result in maternal death. Therefore,
18 an emergency is declared to exist and this act being immediately necessary
19 for the preservation of the public peace, health, and safety shall become
20 effective on:

21 (1) The date of its approval by the Governor;

22 (2) If the bill is neither approved nor vetoed by the Governor,
23 the expiration of the period of time during which the Governor may veto the
24 bill; or

25 (3) If the bill is vetoed by the Governor and the veto is
26 overridden, the date the last house overrides the veto.

27
28 /s/ D. Creekmore

29
30 **APPROVED: 2/20/2009**