

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas

As Engrossed: H1/22/99 H1/27/99

82nd General Assembly

A Bill

Regular Session, 1999

HOUSE BILL 1005

By: Representatives Hendren, Morris, Simon, Files, Magnus, Minton, Bledsoe, Haak, T. Thomas, Womack, Hausam, Buchanan, Milum, Elliott, Wilkinson, Rodgers, Parks, M. Smith, Green, Rackley, R. Smith, Taylor, Bennett, French, Duggar, Agee, Glover
By: Senators Webb, Russ, Wooldridge, DeLay, Hunter, Brown, Bisbee

For An Act To Be Entitled

"AN ACT TO BAN PARTIAL-BIRTH ABORTIONS; AND FOR OTHER PURPOSES. "

Subtitle

"AN ACT TO BAN PARTIAL-BIRTH ABORTIONS. "

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

SECTION 1. Short Title. This act may be cited as the "Partial-Birth Abortion Ban Act of 1999".

SECTION 2. For purposes of this Act:

(1) "Partial birth abortion", means a procedure performed after sixteen (16) weeks gestation which terminates the pregnancy by vaginally delivering a living intact fetus before killing the fetus.

(A) This is a procedure in which the cervix is dilated over a period of days. At that point, the doctor ruptures the membranes, drains the fluid and injects prostaglandin.

(i) If the fetus presents headfirst, the fetal head enters the cervical canal and begins to descend toward the vagina. The physician then inserts an instrument into the head and aspirates the central nervous system with suction, collapsing the head. The fetus would then be extracted intact.

(ii) If the fetus presents itself in a footling breech position or is turned to that position, the doctor then performs a breech

1 delivery, as done at term, pulling the fetus down so that its body and limbs
2 are in the vagina, with the head held against the cervix inside the uterus.
3 The physician then uses a sharp instrument to make an opening at the base of
4 the fetal skull and aspirates the central nervous system, collapsing the skull
5 so that the head can pass through the cervix. The delivery is then considered
6 completed.

7 (B) Partial-birth abortion may also be
8 medically referred to as intact dilation and evacuation, dilation and
9 extraction, and intact dilation and extraction. This definition does not
10 include the dilation and evacuation procedure involving dismemberment prior to
11 removal, the suction curettage procedure, dilation and evacuation with labor
12 induction and hysterotomy.

13 (2) "Physician" means a doctor of medicine or osteopathy legally
14 authorized to practice medicine and surgery in this state or any other
15 individual legally authorized by this state to perform abortions. However,
16 any individual who is not a physician or not otherwise legally authorized by
17 this state to perform abortions, but who nevertheless directly performs a
18 partial-birth abortion, shall be subject to the provisions of this Act;

19 (3) "Vaginally delivers a living fetus before killing the fetus" means
20 deliberately and intentionally delivering into the vagina a living fetus, or a
21 substantial portion thereof, for the purpose of performing a procedure the
22 physician knows will kill the fetus, and kills the fetus;

23 (4) "Suction curettage" means a gradual dilation of the cervix and then
24 the evacuation of the fetus through a cannula attached to a vacuum device
25 inserted through the vagina into the uterus;

26 (5) "Dilation and evacuation" means the use of forceps to grasp and
27 remove the fetus where the fetus is dismembered and removed in pieces;

28 (6) "Dilation and evacuation with labor induction" means the use of a
29 chemical injected by amniocentesis through the woman's abdominal wall into the
30 gestational sac around the fetus to cause fetal death and labor to begin;

31 (7) "Hysterotomy" means a surgical method where the surgeon removes the
32 fetus by opening the abdominal and uterine walls; and

33 (8) "Vaginally delivering a living fetus before killing the fetus" means
34 deliberately and intentionally delivering into the vagina a living fetus, or a
35 substantial portion thereof, for the purpose of performing a procedure the
36 physician knows will kill the fetus and kills the fetus. This definition does

1 not mean delivering the fetus in pieces or dismembering the fetus.

2 SECTION 3. (a) Any physician who knowingly performs a partial-birth
3 abortion and thereby kills a human fetus shall be guilty of a Class D felony.
4 This Act shall not apply to a partial-birth abortion that the physician, in
5 good faith, finds is necessary to save the life of a mother whose life is
6 endangered by a physical disorder, illness, or injury.

7 (b)(1) The father, if married to the mother at the time she receives a
8 partial-birth abortion procedure may in a civil action obtain appropriate
9 relief, unless the pregnancy resulted from the plaintiff's criminal conduct or
10 the plaintiff consented to the abortion. If the mother has not attained the
11 age of eighteen (18) years at the time of the abortion, the maternal
12 grandparents of the fetus, may in a civil action obtain appropriate relief,
13 unless the pregnancy resulted from the plaintiff's criminal conduct or the
14 plaintiff consented to the abortion.

15 (2) Such relief shall include:

16 (A) Money damages for all injuries, psychological and
17 physical, occasioned by the violation of this act; and

18 (B) Statutory damages equal to three (3) times the cost of
19 the partial-birth abortion.

20 (c)(1) A defendant accused of an offense under this Act may seek a
21 hearing before the Arkansas State Medical Board on whether the physician was
22 acting in good faith in finding that a partial-birth abortion was necessary to
23 save the life of the mother whose life was endangered by a physical disorder,
24 illness or injury.

25 (2) The findings on that issue are admissible on that issue at the
26 trial of the defendant. Upon a motion of the defendant, the court shall delay
27 the beginning of the trial for not more than thirty (30) days to permit such a
28 hearing to take place.

29 (d) A woman upon whom a partial-birth abortion is performed may not be
30 prosecuted under this section, for a conspiracy to violate this Act.

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32 SECTION 4. All provisions of this Act of a general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

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36 SECTION 5. If any provision of this Act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the Act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 Act are declared to be severable.

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6 SECTION 6. All laws and parts of laws in conflict with this Act are
7 hereby repealed.

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9 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
10 Eighty-Second General Assembly that the provisions of this Act are of critical
11 importance in saving the lives of the children of Arkansas. It is necessary
12 to ensure that partial-birth abortions are only performed when necessary when
13 the life of the mother is endangered. Therefore, an emergency is declared to
14 exist and this act being immediately necessary for the preservation of the
15 public peace, health and safety shall become effective on the date of its
16 approval by the Governor. If the bill is neither approved nor vetoed by the
17 Governor, it shall become effective on the expiration of the period of time
18 during which the Governor may veto the bill. If the bill is vetoed by the
19 Governor and the veto is overridden, it shall become effective on the date the
20 last house overrides the veto.

21 /s/ Hendren, et al
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