
SUBSTITUTE HOUSE BILL 2395

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Sterk, Mulliken, D. Schmidt, Johnson, D. Sommers, Koster, Sherstad, Sheahan, Thompson, Mielke, Smith, Dunn, Boldt and Backlund)

Read first time 02/04/98. Referred to Committee on .

1 AN ACT Relating to limiting partial-birth abortions; amending RCW
2 9.02.100; adding new sections to chapter 9.02 RCW; creating a new
3 section; prescribing penalties; and providing for submission of this
4 act to a vote of the people.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 partial-birth abortion ban act.

8 NEW SECTION. **Sec. 2.** (1) Any physician or other person who
9 knowingly performs a partial-birth abortion and thereby kills a human
10 fetus is guilty of a felony and shall be fined not more than four
11 thousand dollars or imprisoned not more than two years, or both.

12 (2) This act shall not apply to a partial-birth abortion that is
13 necessary to save the life of a mother if her life is endangered by a
14 physical disorder, physical illness, or physical injury, and no other
15 procedure to terminate the pregnancy, including the induction of labor
16 or cesarean section, will suffice for that purpose.

17 (3) A woman upon whom a partial-birth abortion is performed may not
18 be prosecuted for conspiracy to violate this act.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply
2 throughout this act unless the context clearly requires otherwise.

3 (1) "Partial-birth abortion" means an abortion in which the person
4 performing the abortion partially vaginally delivers a living fetus
5 before killing the fetus and completing the delivery. "Partial-birth
6 abortion" includes repositioning a living fetus into a breach position
7 and terminating the life of the fetus by introducing an instrument or
8 device into the cranium of the fetus and evacuating the contents of the
9 cranium.

10 (2) "Physician" means a doctor of medicine or osteopathy legally
11 authorized to practice medicine and surgery by the state of Washington,
12 or any other individual legally authorized by the state of Washington
13 to perform abortions.

14 (3) "Vaginally delivers a living fetus before killing the fetus"
15 means deliberately and intentionally delivers into the vagina a living
16 fetus, or a substantial portion of a living fetus, for the purpose of
17 performing a procedure the physician knows will kill the fetus.

18 NEW SECTION. **Sec. 4.** (1) A physician accused of an offense under
19 this act may seek a hearing before the state medical board, which may
20 convene a hearing and make findings on the following issues:

21 (a) Whether the life of the mother was endangered by a physical
22 disorder, physical illness, or physical injury;

23 (b) Whether the physician's conduct was necessary to save the life
24 of the mother; and

25 (c) Whether no other procedure to terminate the pregnancy,
26 including the induction of labor or cesarean section, would have
27 sufficed to save the life of the mother.

28 (2) The state medical board's findings on those issues are
29 admissible on those issues at the criminal or civil trial of the
30 defendant physician.

31 (3) Upon motion of the defendant physician, the court shall delay
32 the beginning of the criminal or civil trial for not more than thirty
33 days to permit the state medical board hearing to take place.

34 NEW SECTION. **Sec. 5.** (1) The father, if married to the mother at
35 the time she receives a partial-birth abortion procedure, and the
36 maternal grandparents of the fetus, if the mother has not attained the
37 age of eighteen years at the time of the partial-birth abortion, may

1 obtain appropriate relief in a civil action, unless the pregnancy
2 resulted from the plaintiff's criminal conduct or the plaintiff
3 consented to the abortion.

4 (2) Civil relief includes:

5 (a) Money damages for all injuries, psychological and physical,
6 resulting from a violation of this act; and

7 (b) Statutory damages equal to three times the cost of the partial-
8 birth abortion.

9 NEW SECTION. **Sec. 6.** Sections 2 through 5 of this act are each
10 added to chapter 9.02 RCW.

11 **Sec. 7.** RCW 9.02.100 and 1992 c 1 s 1 are each amended to read as
12 follows:

13 The sovereign people hereby declare that every individual possesses
14 a fundamental right of privacy with respect to personal reproductive
15 decisions.

16 Accordingly, it is the public policy of the state of Washington
17 that:

18 (1) Every individual has the fundamental right to choose or refuse
19 birth control;

20 (2) Every woman has the fundamental right to choose or refuse to
21 have an abortion, except as specifically limited by RCW 9.02.100
22 through 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 2
23 through 5 of this act;

24 (3) Except as specifically permitted by RCW 9.02.100 through
25 9.02.170 (~~and~~), 9.02.900 through 9.02.902, and sections 2 through 5
26 of this act, the state shall not deny or interfere with a woman's
27 fundamental right to choose or refuse to have an abortion; and

28 (4) Except as specifically permitted by RCW 9.02.100 through
29 9.02.170, 9.02.900 through 9.02.902, and sections 2 through 5 of this
30 act, the state shall not discriminate against the exercise of these
31 rights in the regulation or provision of benefits, facilities,
32 services, or information.

33 NEW SECTION. **Sec. 8.** The secretary of state shall submit this act
34 to the people for their adoption and ratification, or rejection, at the
35 next general election to be held in this state, in accordance with

1 Article II, section 1 of the state Constitution and the laws adopted to
2 facilitate its operation.

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