
SENATE BILL 5441

State of Washington

55th Legislature

1997 Regular Session

By Senators Stevens, Hargrove, Swecker, Hochstatter, Oke, Roach, McCaslin, Zarelli, Schow, West and Benton

Read first time 01/27/97. Referred to Committee on Law & Justice.

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

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

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

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout sections 3 through 5 of this act unless the context clearly
9 requires otherwise.

10 (1) "Partial-birth abortion" means an abortion in which the person
11 performing the abortion partially vaginally delivers a living fetus
12 before killing the fetus and completing the delivery.

13 (2) "Physician" means a doctor of medicine or osteopathy legally
14 authorized to practice medicine and surgery by the state, or any other
15 person legally authorized by the state to perform abortions.

16 (3) "Viability" means that stage of fetal development when, in the
17 medical judgment of the attending physician based on the particular
18 facts of the case, there is a reasonable likelihood of sustained

1 survival of the fetus outside the womb, with or without artificial
2 support.

3 NEW SECTION. **Sec. 3.** (1) No person may intentionally perform a
4 partial-birth abortion and thereby kill a human fetus.

5 (2) This section does not apply to a partial-birth abortion that is
6 necessary to save the life of a mother whose life is endangered by a
7 physical disorder, illness, or injury, provided that no other medical
8 procedure would suffice for that purpose.

9 (3) A woman upon whom a partial-birth abortion is performed may not
10 be prosecuted under this section for a conspiracy to violate this
11 section or an offense based on a violation of this section.

12 (4) A violation of this section is a class C felony.

13 NEW SECTION. **Sec. 4.** (1) The mother, the father if married to the
14 mother at the time she receives a partial-birth abortion procedure, and
15 the maternal grandparents of the fetus if the mother is a minor at the
16 time of the abortion, may in civil action obtain relief, even if any
17 party consented to the performance of an abortion.

18 (2) Relief awarded under this section may include:

19 (a) Money damages for all injuries, psychological and physical,
20 occasioned by the violation of section 3 of this act; and

21 (b) Statutory damages equal to three times the cost of the
22 partial-birth abortion, even if any party consented to the performance
23 of an abortion.

24 NEW SECTION. **Sec. 5.** It is an affirmative defense to a
25 prosecution under section 3 of this act or a civil action under section
26 4 of this act, to be proved by a preponderance of the evidence, that
27 the partial-birth abortion was performed by a physician who reasonably
28 believed:

29 (1) The partial-birth abortion was necessary to save the life of
30 the woman upon whom it was performed; and

31 (2) No other abortion procedure would suffice for that purpose.

32 NEW SECTION. **Sec. 6.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act are each
2 added to chapter 9.02 RCW.

3 NEW SECTION. **Sec. 8.** The secretary of state shall submit this act
4 to the people for their adoption and ratification, or rejection, at the
5 next general election to be held in this state, in accordance with
6 Article II, section 1 of the state Constitution and the laws adopted to
7 facilitate its operation.

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