



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0827

Introduced 2/10/2021, by Rep. Adam Niemerg

SYNOPSIS AS INTRODUCED:

New Act

Creates the Partial-Birth Abortion Ban Act of 2021. Provides that any person who knowingly performs a partial-birth abortion and thereby kills a human fetus or infant is guilty of a Class 4 felony. Provides that a person shall only perform or induce a partial-birth abortion on a viable fetus if: (i) the person is a physician; (ii) the person has a documented referral from another physician not legally or financially affiliated with the person performing or inducing the abortion; (iii) both physicians determine that the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself; and (iv) there is no other medical procedure that would suffice for that purpose. Provides that the maternal grandparents of the fetus or infant, if the mother has not attained the age of 18 years at the time of the abortion, may obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Provides that a woman on whom a partial-birth abortion is performed may not be prosecuted under the Act, for a conspiracy to violate the Act, or for an offense under Article 31 of the Criminal Code of 2012, nor may she be held accountable under Article 5 of the Criminal Code of 2012. Effective immediately.

LRB102 11395 LNS 16728 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Partial-Birth Abortion Ban Act of 2021.

6 Section 5. Findings; purposes.

7 (a) The General Assembly finds that:

8 (1) Partial-birth abortion is a gruesome and inhumane
9 procedure that is never medically necessary and, as such,
10 should be prohibited.

11 (2) In 2003, the 108th United States Congress passed
12 the Partial-Birth Abortion Ban Act of 2003 (18 U.S.C.
13 1531), and President George W. Bush signed it into law.

14 (3) Later, on April 18, 2007, the U.S. Supreme Court
15 upheld the Partial-Birth Abortion Ban Act of 2003 ("the
16 federal ban") in *Gonzales v. Carhart*, 550 U.S. 124 (2007),
17 specifically ruling that a ban on partial-birth abortion
18 need not include a maternal "health" exception to be
19 constitutional.

20 (4) This Act's language stems from and uses as its
21 primary influence the language of the federal ban as
22 upheld in *Gonzales v. Carhart*.

23 (5) This Act - a state ban on partial-birth abortion -

1 is needed to supplement the federal ban. Importantly, the
2 federal ban was narrowly tailored to reach only those
3 partial-birth abortion procedures that implicate Congress'
4 power to regulate interstate or foreign commerce. U.S.
5 CONST. art. 1, 8, cl. 3. Without this Act, partial-birth
6 abortions performed, but not affecting these categories of
7 commerce, are not prohibited under the federal ban.

8 (6) A partial-birth abortion poses serious risk to a
9 woman's long-term health.

10 (7) There is a substantial evidentiary record upon
11 which the General Assembly has based its conclusion that a
12 maternal "health" exception is not constitutionality
13 required in a State ban on partial-birth abortion.

14 (8) Moreover, the medical evidence clearly supports
15 the informed judgment of this State that a partial-birth
16 abortion is never medically necessary to preserve a
17 woman's health and instead poses serious health risks to
18 the woman.

19 (9) Specifically, partial-birth abortion poses serious
20 risks, including, but not limited to: an increased risk of
21 cervical incompetence, as a result of cervical dilation,
22 that makes it difficult or impossible for a woman to
23 successfully carry a subsequent pregnancy to term; an
24 increased risk of uterine rupture, abruption, amniotic
25 fluid embolus, and trauma to the uterus, as a result of
26 converting the child to a footling breech position - a

1 procedure which, according to a leading obstetrics
2 textbook, "there are very few, if any, indications for
3 other than for delivery of a second twin"; and a risk of
4 lacerations and secondary hemorrhaging, as a result of the
5 physician blindly forcing a sharp instrument into the base
6 of the unborn child's skull while he or she is lodged in
7 the birth canal - an act that could result in severe
8 bleeding and subsequent shock.

9 (10) There is no credible medical evidence that
10 partial-birth abortions are safer than other abortion
11 procedures. No controlled studies of partial-birth
12 abortion have been conducted nor have any comparative
13 studies been conducted to demonstrate its safety and
14 efficacy compared to other abortion methods. Furthermore,
15 there have been no articles published in peer-reviewed
16 journals that establish that partial-birth abortions are
17 superior in any way to established abortion procedures.

18 (11) In light of this overwhelming evidence, the State
19 of Illinois has a compelling interest in prohibiting
20 partial-birth abortion. Both *Roe v. Wade*, 410 U.S. 113
21 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833
22 (1992), recognized a governmental interest in protecting
23 the life of a child during the birth process. This
24 interest is specifically implicated during a partial-birth
25 abortion because labor is induced and the birth process is
26 begun before an abortion is attempted or the child is

1 actually aborted.

2 (12) In fact, partial-birth abortion kills a child who
3 is mere inches away from birth and being considered a
4 "person" under Roe. Thus, this State clearly has a
5 heightened interest in protecting the life of the
6 partially born child.

7 (13) The public's perception of the appropriate role
8 of a physician during a child's birth is undermined by
9 aborting a child in the manner that purposefully seeks to
10 kill the child inches from birth.

11 (14) Partial-birth abortion is disturbingly similar to
12 the killing of a newborn infant and blurs the legal and
13 moral lines between infanticide and abortion. This Act
14 reinforces that line at birth - just as the Supreme Court
15 established in Roe v. Wade - while also preserving the
16 integrity of the medical profession and promoting respect
17 for human life.

18 (15) The vast majority of infants killed during
19 partial-birth abortions are alive until the very end of
20 the procedure. Medical science has established that an
21 unborn child can feel pain when subjected to painful
22 stimuli like that inflicted during a partial-birth
23 abortion procedure. Moreover, fetal pain experts believe
24 that an unborn child's perception of pain can be even more
25 intense than that of newborn infants and older children
26 subjected to the same stimuli.

1 (b) Based on the findings in subsection (a), the purposes
2 of the General Assembly are to:

3 (1) conclusively establish that partial-birth abortion
4 is never medically indicated to preserve the health of the
5 mother and instead poses significant maternal health
6 risks;

7 (2) clearly define the line between abortion and
8 infanticide; and

9 (3) safeguard the role of a physician during
10 childbirth.

11 Section 10. Definitions; terms.

12 (a) As used in this Act, "partial-birth abortion" means an
13 abortion in which the person performing the abortion:

14 (1) deliberately and intentionally vaginally delivers
15 a living fetus until, in the case of a head-first
16 presentation, the entire fetal head is outside the body of
17 the mother, or, in the case of breech presentation, any
18 part of the fetal trunk past the navel is outside the body
19 of the mother, for the purpose of performing an overt act
20 that the person knows will kill the partially delivered
21 living fetus; and

22 (2) performs the overt act, other than completion of
23 delivery, which kills the partially delivered living
24 fetus.

25 (b) The terms "fetus" and "infant" are used

1 interchangeably to refer to the biological offspring of human
2 parents.

3 Section 15. Partial-birth abortions prohibited.
4 Notwithstanding any other law to the contrary, any person who
5 knowingly performs a partial-birth abortion and thereby kills
6 a human fetus or infant is guilty of a Class 4 felony. A person
7 shall only perform or induce a partial-birth abortion on a
8 viable fetus if: (i) the person is a physician; (ii) the person
9 has a documented referral from another physician not legally
10 or financially affiliated with the person performing or
11 inducing the abortion; (iii) both physicians determine that
12 the life of the mother is endangered by a physical disorder,
13 physical illness, or physical injury, including a
14 life-endangering condition caused by or arising from the
15 pregnancy itself; and (iv) there is no other medical procedure
16 that would suffice for that purpose.

17 Section 20. Civil action. The maternal grandparents of the
18 fetus or infant, if the mother has not attained the age of 18
19 years at the time of the abortion, may obtain, in a civil
20 action, appropriate relief unless the pregnancy resulted from
21 the plaintiff's criminal conduct or the plaintiff consented to
22 the abortion. The relief shall include money damages for all
23 injuries, psychological and physical, occasioned by the
24 violation of this Act and statutory damages equal to 3 times

1 the cost of the partial-birth abortion.

2 Section 25. Prosecution of woman prohibited. A woman on
3 whom a partial-birth abortion is performed may not be
4 prosecuted under this Act, for a conspiracy to violate this
5 Act, or for an offense under Article 31 of the Criminal Code of
6 2012 based on a violation of this Act, nor may she be held
7 accountable under Article 5 of the Criminal Code of 2012 for an
8 offense based on a violation of this Act.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.