



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB2180

Introduced 2/7/2023, by Rep. Adam M. Niemerg

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Partial-Birth Abortion Ban Act of 2023. 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; 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.

LRB103 25998 LNS 52352 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 2023.

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 has a compelling interest in prohibiting partial-birth  
20 abortion. *Planned Parenthood v. Casey*, 505 U.S. 833  
21 (1992), recognized a governmental interest in protecting  
22 the life of a child during the birth process. This  
23 interest is specifically implicated during a partial-birth  
24 abortion because labor is induced and the birth process is  
25 begun before an abortion is attempted or the child is  
26 actually aborted.

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

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

10          (14) Partial-birth abortion is disturbingly similar to  
11 the killing of a newborn infant and blurs the legal and  
12 moral lines between infanticide and abortion. This Act  
13 reinforces that line at birth while also preserving the  
14 integrity of the medical profession and promoting respect  
15 for human life.

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

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

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

5           (2) clearly define the line between abortion and  
6           infanticide; and

7           (3) safeguard the role of a physician during  
8           childbirth.

9           Section 10. Definitions; terms.

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

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

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

23          (b) The terms "fetus" and "infant" are used  
24          interchangeably to refer to the biological offspring of human  
25          parents.

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

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

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

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