

Regular Session, 2007

SENATE BILL NO. 161

BY SENATOR NEVERS AND REPRESENTATIVE FRITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION. Prohibits partial birth abortions. (gov sig)

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AN ACT

To enact R.S. 14:32.10 and R.S. 40:1299.35.17 and to repeal R.S. 14:32.9 and R.S. 40:1299.35.16, relative to abortion; to provide for the crime of partial birth abortion; to provide for penalties; to provide for the prohibition of the performance of partial birth abortions by a physician or any other person except where necessary to preserve the life of the mother; to provide for civil remedies; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:32.10 is hereby enacted to read as follows:

§32.10. Partial birth abortion

A. As used in this Section, the following definitions shall apply unless otherwise indicated:

(1) "Partial birth abortion" means an abortion in which:

(a) The person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the

1 mother, for the purpose of performing an overt act that the person knows will
2 kill the partially delivered living fetus.

3 (b) The person performing the abortion performs the overt act, other
4 than completion of delivery, that kills the partially delivered living fetus.

5 (2) "Physician" means a doctor of medicine or osteopathy legally
6 authorized to practice medicine and surgery by the state in which the doctor
7 performs such activity, or any other individual legally authorized by the state
8 to perform abortions, provided, however, any individual who is not a physician
9 or not otherwise legally authorized by the state to perform abortions, but who
10 nevertheless directly performs a partial birth abortion, shall be subject to the
11 provisions of this Section.

12 B. This Section does not apply to a partial birth abortion that is
13 necessary to save the life of the mother whose life is endangered by a physical
14 disorder, physical illness or physical injury, including a life-endangering
15 physical condition caused by or arising from the pregnancy itself.

16 C. A woman upon whom the partial birth abortion is performed shall
17 not be subject to prosecution for a violation of this Section as a principal,
18 accessory, or co-conspirator thereto.

19 D. Any physician who knowingly performs a partial birth abortion and
20 thereby kills a human fetus shall be imprisoned at hard labor for not less than
21 one nor more than ten years, fined not less than ten thousand nor more than one
22 hundred thousand dollars, or both.

23 E.(1) A defendant accused of an offense under this Section may seek a
24 hearing before the Louisiana State Board of Medical Examiners on whether the
25 physician's conduct was necessary to save the life of the mother whose life was
26 endangered by a physical disorder, physical illness, or physical injury, including
27 a life-endangering physical condition caused by or arising from the pregnancy
28 itself.

29 (2) The findings on that issue are admissible on that issue at the trial of

1 the defendant. Upon motion of the defendant, the court shall delay the
2 beginning of the trial for not more than thirty days to permit such hearing to
3 take place.

4 Section 2. R.S. 40:1299.35.17 is hereby enacted to read as follows:

5 **§1299.35.17. Partial birth abortion, civil action against abortionist**

6 **A. No licensed physician or any other person shall perform a partial**
7 **birth abortion on a female unless the procedure is performed is necessary to**
8 **save the life of the female because her life is endangered by a physical disorder,**
9 **physical illness or physical injury, including a life endangering physical**
10 **condition caused by or arising from the pregnancy itself.**

11 **B. As used in this Section, the following definitions shall apply unless**
12 **otherwise indicated:**

13 **(1) "Partial birth abortion" means an abortion in which:**

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

20 **(b) The person performing the abortion performs the overt act, other**
21 **than completion of delivery, that kills the partially delivered living fetus.**

22 **(2) "Physician" means a doctor of medicine or osteopathy legally**
23 **authorized to practice medicine and surgery by the state in which the doctor**
24 **performs such activity, or any other individual legally authorized by the state**
25 **to perform abortions, provided, however, any individual who is not a physician**
26 **or not otherwise legally authorized by the state to perform abortions, but who**
27 **nevertheless directly performs a partial birth abortion, shall be subject to the**
28 **provisions of this Section.**

29 **C. There is hereby created a cause of action for civil damages for**

1 survival and wrongful death as more fully set forth in Louisiana Civil Code
2 Articles 2315.1 and 2315.2, except that such causes of action shall only be
3 maintained by the following persons:

4 (1) The natural or biological father of the aborted infant or fetus, unless
5 such father's criminal conduct caused the pregnancy.

6 (2) The mother of the aborted infant or fetus, unless the mother is a
7 person of the full age of majority and consented to the partial birth abortion.

8 (3) The parents or guardian on behalf of the mother of the aborted infant
9 or fetus if the mother was a minor at the time of the abortion, unless the parents
10 or guardian consented to the partial birth abortion.

11 D.(1) A defendant accused of an offense under this Section may seek a
12 hearing before the Louisiana State Board of Medical Examiners on whether the
13 physician's conduct was necessary to save the life of the mother whose life was
14 endangered by a physical disorder, physical illness, or physical injury, including
15 a life-endangering physical condition caused by or arising from the pregnancy
16 itself.

17 (2) The findings on that issue are admissible on that issue at the trial of
18 the defendant. Upon motion of the defendant, the court shall delay the
19 beginning of the trial for not more than thirty days to permit such hearing to
20 take place.

21 Section 3. R.S. 14:32.9 and R.S. 40:1299.35.16 are hereby repealed.

22 Section 4. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Ducharme.

DIGEST

Nevers (SB 161)

Present law provides that partial birth abortion is a crime; however, this law was ruled unconstitutional by the federal courts in Causeway Medical Suite v. Foster, 43 F.Supp.2d 604 (E.D. La., 1999), affirmed 221 F3d 811. On March 18, 2007, the U.S. Supreme Court issued an opinion ruling that states and the federal government may outlaw partial birth abortion.

Proposed law provides for the definitions of "partial birth abortion" and "physician."

Proposed law exempts from the prohibition a partial birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Proposed law provides that any physician who knowingly commits the crime of partial birth abortion shall be imprisoned at hard labor for not less than one nor more than 10 years, fined not less than \$10,000 nor more than \$100,000, or both.

Proposed law provides that a defendant accused of committing a partial birth abortion may seek a hearing before the Louisiana State Board of Medical Examiners on whether the physician's conduct was necessary to save the life of the mother and provides that the findings on that issue are admissible at the defendant's trial.

Proposed law provides for a cause of action for civil damages for survival and wrongful death, except that such causes of action shall only be maintained by the following:

- (1) The natural or biological father of the aborted infant or fetus, unless such father's criminal conduct caused the pregnancy.
- (2) The mother of the aborted infant or fetus, unless the mother is a person of the full age of majority and consented to the partial birth abortion.
- (3) The parents or guardian on behalf of the mother of the aborted infant or fetus if the mother was a minor at the time of the abortion, unless such person consented to the partial birth abortion.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:32.10 and R.S. 40:1299.35.17; repeals R.S. 14:32.9 and R.S. 40:1299.35.16)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill.

1. Adds the definitions of "partial birth abortion" and "physician."
2. Limits the crime of abortion to any physician who knowingly performs a partial birth abortion.

3. Provides that the physician accused of performing a partial birth abortion may see a hearing before the Louisiana State Board of Medical Examiners on whether the physician's conduct was necessary to save the life of the mother whose life was endangered.
4. Provides that the findings by the Louisiana State Board of Medical Examiners are admissible at the defendant's trial.