

**SENATE BILL NO. 888**

February 17, 1998, Introduced by Senators GOUGEON, NORTH, HART, BENNETT, CISKY, STEIL, STILLE, GEAKE, HOFFMAN, ROGERS, SCHWARZ, SHUGARS, DE GROW, VAN REGENMORTER and JAYE and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 17016 and 17516 (MCL 333.17016 and  
333.17516), as added by 1996 PA 273.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 17016. (1) Except as otherwise provided in  
2 subsection (2), a physician or an individual performing an act,  
3 task, or function under the delegatory authority of a physician  
4 shall not perform a partial-birth abortion, even if the abortion  
5 is otherwise permitted by law.  
6       (2) A physician or an individual described in subsection (1)  
7 may perform a partial-birth abortion if the physician or other  
8 individual reasonably believes that performing the partial-birth  
9 abortion is necessary to save the life of a pregnant woman whose  
10 life is endangered by a physical disorder, physical illness, or

1 physical injury and that no other medical procedure will  
2 accomplish that purpose.

3 (3) This section does not create a right to abortion.

4 (4) Notwithstanding any other provision of this section, a  
5 person shall not perform an abortion that is prohibited by law.

6 (5) IF A PHYSICIAN OR OTHER INDIVIDUAL IS CRIMINALLY PROSE-  
7 CUTED UNDER SECTION 16299 FOR A VIOLATION OF SUBSECTION (1), THE  
8 PHYSICIAN OR OTHER INDIVIDUAL MAY PETITION THE BOARD FOR A HEAR-  
9 ING ON THE ISSUE OF WHETHER IT WAS REASONABLE FOR THE PHYSICIAN  
10 OR OTHER INDIVIDUAL TO BELIEVE THAT PERFORMING THE PARTIAL-BIRTH  
11 ABORTION WAS NECESSARY TO SAVE THE LIFE OF THE PREGNANT WOMAN  
12 UPON WHOM THE PARTIAL-BIRTH ABORTION WAS PERFORMED BECAUSE THE  
13 WOMAN'S LIFE WAS ENDANGERED BY A PHYSICAL DISORDER, PHYSICAL ILL-  
14 NESS, OR PHYSICAL INJURY, AND THAT NO OTHER MEDICAL PROCEDURE  
15 WOULD HAVE SAVED THE WOMAN'S LIFE. THE BOARD SHALL HOLD A HEAR-  
16 ING AS SOON AS POSSIBLE UPON RECEIPT OF A PETITION UNDER THIS  
17 SUBSECTION, AND SHALL RENDER AN OPINION ON THE ISSUE RAISED IN  
18 THE PETITION WITHIN 14 DAYS AFTER THE HEARING. THE OPINION OF  
19 THE BOARD IS ADMISSIBLE IN EVIDENCE IN THE CRIMINAL PROSECUTION.  
20 UPON MOTION OF THE DEFENDANT, THE COURT WITH JURISDICTION OVER  
21 THE CRIMINAL PROSECUTION SHALL POSTPONE THE TRIAL FOR NOT LESS  
22 THAN 30 DAYS IN ORDER TO GIVE THE DEFENDANT AN OPPORTUNITY TO  
23 FILE A PETITION UNDER THIS SUBSECTION.

24 (6) THE LEGISLATURE FINDS ALL OF THE FOLLOWING:

25 (A) THAT, AS OF 1997, THE AMERICAN MEDICAL ASSOCIATION HAD  
26 DETERMINED THAT NO MEDICAL CIRCUMSTANCES EXIST THAT NECESSITATE

1 THE PERFORMANCE OF A PARTIAL-BIRTH ABORTION, ALSO COMMONLY  
2 REFERRED TO AS AN "INTACT DILATION AND EXTRACTION".

3 (B) THAT SCIENTIFIC RESEARCH HAS SHOWN THAT A FETUS CAN FEEL  
4 PAIN AT 12 WEEKS OF GESTATION, AND THAT THE PARTIAL-BIRTH ABOR-  
5 TION PROCEDURE INVOLVES DELIVERING THE FETUS FEET FIRST UNTIL ALL  
6 BUT THE HEAD IS SHOWING, THEN THRUSTING SCISSORS OR ANOTHER SHARP  
7 OBJECT INTO THE FETUS'S SKULL AND SUCTIONING OUT THE BRAIN SO  
8 THAT THE SKULL COLLAPSES AND THE REST OF THE FETUS CAN BE  
9 REMOVED.

10 (C) THAT BY ENACTING THIS SECTION AND THE AMENDATORY ACT  
11 THAT ADDED THIS SUBSECTION, THE LEGISLATURE INTENDS TO PROHIBIT  
12 ONLY THE PARTIAL-BIRTH ABORTION PROCEDURE, ALSO COMMONLY KNOWN AS  
13 AN "INTACT DILATION AND EXTRACTION".

14 (D) THAT TESTIMONY FROM PHYSICIANS INDICATES THAT SUFFI-  
15 CIENT, SAFE ALTERNATIVE ABORTION PROCEDURES, OTHER THAN  
16 PARTIAL-BIRTH ABORTION, EXIST FOR WOMEN SEEKING PREVIABILITY  
17 ABORTIONS.

18 (7) ~~-(5)-~~ As used in this section:

19 (a) "Abortion" means the intentional use of an instrument,  
20 drug, or other substance or device to terminate a woman's preg-  
21 nancy for a purpose other than to increase the probability of a  
22 live birth, to preserve the life or health of the child after  
23 live birth, or to remove a dead fetus. Abortion does not include  
24 a procedure to complete a spontaneous abortion or the use or pre-  
25 scription of a drug or device intended as a contraceptive.

1 (b) "Fetus" means an individual organism of the species homo  
2 sapiens at any time before complete delivery from a pregnant  
3 woman.

4 (c) "Partial-birth abortion" means an abortion in which the  
5 physician PERFORMING THE ABORTION or AN individual acting under  
6 the delegatory authority of the physician ~~performing the~~  
7 ~~abortion~~ partially vaginally delivers a living fetus before kil-  
8 ling the fetus and completing the delivery. AS USED IN THIS SUB-  
9 DIVISION, "PARTIALLY VAGINALLY DELIVERS A LIVING FETUS BEFORE  
10 KILLING THE FETUS" MEANS THE DELIBERATE AND INTENTIONAL DELIVERY  
11 INTO THE VAGINA OF A LIVING FETUS OR A SUBSTANTIAL PORTION OF THE  
12 LIVING FETUS FOR THE PURPOSE OF PERFORMING A PROCEDURE THAT THE  
13 PHYSICIAN OR OTHER INDIVIDUAL KNOWS WILL KILL THE FETUS, AND SUB-  
14 SEQUENTLY KILLING THE FETUS.

15 Sec. 17516. (1) Except as otherwise provided in  
16 subsection (2), a physician or an individual performing an act,  
17 task, or function under the delegatory authority of a physician  
18 shall not perform a partial-birth abortion, even if the abortion  
19 is otherwise permitted by law.

20 (2) A physician or an individual described in subsection (1)  
21 may perform a partial-birth abortion if the physician or other  
22 individual reasonably believes that performing the partial-birth  
23 abortion is necessary to save the life of a pregnant woman whose  
24 life is endangered by a physical disorder, physical illness, or  
25 physical injury and that no other medical procedure will accom-  
26 plish that purpose.

1 (3) This section does not create a right to abortion.

2 (4) Notwithstanding any other provision of this section, a  
3 person shall not perform an abortion that is prohibited by law.

4 (5) IF A PHYSICIAN OR OTHER INDIVIDUAL IS CRIMINALLY PROSE-  
5 CUTED UNDER SECTION 16299 FOR A VIOLATION OF SUBSECTION (1), THE  
6 PHYSICIAN OR OTHER INDIVIDUAL MAY PETITION THE BOARD FOR A HEAR-  
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8 PERFORMING THE PARTIAL-BIRTH ABORTION WAS NECESSARY TO SAVE THE  
9 LIFE OF THE PREGNANT WOMAN UPON WHOM THE PARTIAL-BIRTH ABORTION  
10 WAS PERFORMED BECAUSE THE WOMAN'S LIFE WAS ENDANGERED BY A PHYSI-  
11 CAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY, AND THAT NO  
12 OTHER MEDICAL PROCEDURE WOULD HAVE SAVED THE WOMAN'S LIFE. THE  
13 BOARD SHALL HOLD A HEARING AS SOON AS POSSIBLE UPON RECEIPT OF A  
14 PETITION UNDER THIS SUBSECTION, AND SHALL RENDER AN OPINION ON  
15 THE ISSUE RAISED IN THE PETITION WITHIN 14 DAYS AFTER THE  
16 HEARING. THE OPINION OF THE BOARD IS ADMISSIBLE IN EVIDENCE IN  
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