

JAN 26 2011

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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that partial-birth  
2 abortion is an inhumane procedure currently being practiced in  
3 Hawaii that is not medically necessary and should be prohibited.  
4 The State of Hawaii has recognized the need to limit abortions,  
5 as the preservation of life is of paramount concern to the  
6 State.

7       The purpose of this Act is to codify in state statute the  
8 federal Partial-Birth Abortion Ban Act of 2003 (18 U.S.C. 1531).

9       SECTION 2. Chapter 453, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12       "§453-       Partial-birth abortion; prohibition; penalties.

13       (a) No partial-birth abortion shall be performed in this State  
14 whether by a physician or other person.

15       (b) For the purposes of this section:

16       "Partial-birth abortion" means an operation to  
17 intentionally terminate a fetus by vaginally delivering a living  
18 fetus until, in the case of a head-first presentation, the



1 entire fetal head is outside the body of the mother or, in the  
2 case of breech presentation, any part of the fetal trunk past  
3 the navel is outside the body of the mother, for the purpose of  
4 performing an overt act that the person knows will kill the  
5 partially delivered living fetus and performing the overt act,  
6 other than completion of delivery, that kills the partially  
7 delivered living fetus.

8 "Physician" means a doctor of medicine or osteopathy  
9 legally authorized to practice medicine and surgery by the State  
10 of Hawaii, or any other individual legally authorized by the  
11 State of Hawaii to perform abortions; provided that any  
12 individual who is not a physician or not otherwise legally  
13 authorized by the State of Hawaii to perform abortions, but who  
14 nevertheless directly performs a partial-birth abortion, shall  
15 be subject to the provisions of this section.

16 (c) The State shall not deny or interfere with the  
17 performance of a partial-birth abortion that is necessary to  
18 protect the life of a female whose life is endangered by a  
19 physical disorder, physical illness, or physical injury,  
20 including a life-endangering physical condition by or arising  
21 from the pregnancy itself.



1        (d) Any person who knowingly violates subsection (a) shall  
2 be fined not more than \$1,000, imprisoned not more than two  
3 years, or both. In addition to the penalties under this  
4 subsection, the following individuals may sue the physician or  
5 individual performing the partial-birth abortion for civil  
6 damages, including damages for all psychological and physical  
7 injuries occasioned by the violation of this section and  
8 statutory damages equal to three times the cost of the  
9 partial-birth abortion:

10        (1) The father, if married to the mother at the time she  
11        receives a partial-birth abortion procedure; and

12        (2) The maternal grandparents of the fetus, if the mother  
13        had not yet attained the age of eighteen years at the  
14        time of the partial-birth abortion;

15 provided that the plaintiff did not consent to the partial-birth  
16 abortion and the pregnancy did not result from the plaintiff's  
17 criminal conduct.

18        (e) A defendant accused of an offense under this section  
19 may seek a hearing before the Hawaii medical board on whether  
20 the physician's conduct was necessary to save the life of the  
21 female due to a physical disorder, physical illness, or physical  
22 injury, including a life-endangering physical condition caused



1 by or arising from the pregnancy itself. The findings on that  
2 issue are admissible on that issue at the trial of the  
3 defendant. Upon a motion of the defendant, the court shall  
4 delay the beginning of the trial for not more than thirty days  
5 to permit such a hearing to take place.

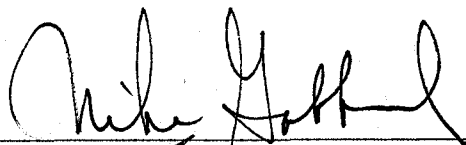
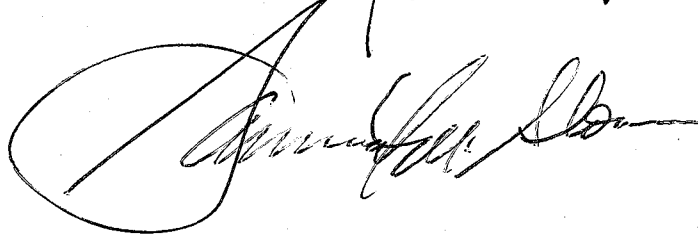
6 (f) A woman upon whom a partial-birth abortion is  
7 performed may not be prosecuted under this section or for  
8 conspiracy to violate this section."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



**Report Title:**

Health; Partial-Birth Abortion Prohibited

**Description:**

Prohibits partial-birth abortions, with exceptions. Provides for penalties.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

