

or imprisoned for not more than 10 years, or both.

(Added Pub. L. 110-177, title II, §201(a), Jan. 7, 2008, 121 Stat. 2535.)

CHAPTER 74—PARTIAL-BIRTH ABORTIONS

Sec.
1531. Partial-birth abortions prohibited.

§ 1531. Partial-birth abortions prohibited

(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a 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. This subsection takes effect 1 day after the enactment.

(b) As used in this section—

(1) the term “partial-birth abortion” means an abortion in which the person performing the abortion—

(A) 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 mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

(2) the term “physician” means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however*, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include—

(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(B) statutory damages equal to three times the cost of the partial-birth abortion.

(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician’s con-

duct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.

(Added Pub. L. 108-105, §3(a), Nov. 5, 2003, 117 Stat. 1206.)

REFERENCES IN TEXT

The enactment, referred to in subsec. (a), probably means the date of the enactment of Pub. L. 108-105, which enacted this section and was approved Nov. 5, 2003.

SHORT TITLE

Pub. L. 108-105, §1, Nov. 5, 2003, 117 Stat. 1201, provided that: “This Act [enacting this chapter and provisions set out as a note under this section] may be cited as the ‘Partial-Birth Abortion Ban Act of 2003.’”

FINDINGS

Pub. L. 108-105, §2, Nov. 5, 2003, 117 Stat. 1201, provided that: “The Congress finds and declares the following:

“(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child’s body until either the entire baby’s head is outside the body of the mother, or any part of the baby’s trunk past the navel is outside the body of the mother and only the head remains inside the womb, for the purpose of performing an overt act (usually the puncturing of the back of the child’s skull and removing the baby’s brains) that the person knows will kill the partially delivered infant, performs this act, and then completes delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

“(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

“(3) In *Stenberg v. Carhart*, 530 U.S. 914, 932 (2000), the United States Supreme Court opined ‘that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure’ for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska’s ban on partial-birth abortion procedures, concluding that it placed an ‘undue burden’ on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the ‘health’ of the mother.

“(4) In reaching this conclusion, the Court deferred to the Federal district court’s factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.