

REFERENCE TITLE: **partial-birth abortions; definition.**

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1138

Introduced by

Senators Gray L, Burns, Gorman, Gould, Gray C, Harper, Huppenthal, Leff, Pearce, Verschoor, Waring; Representatives Antenori, Barnes, Barto, Biggs, Boone, Burges, Court, Crandall, Gowan, Jones, Kavanagh, Mason, Murphy, Seel, Stevens, Tobin, Weiers J, Yarbrough; Senators Allen S, Melvin, Nelson, Pierce, Tibshraeny; Representatives Crump, Driggs, Goodale, Lesko, McComish, McLain, Montenegro, Nichols, Pratt, Quelland, Weiers JP

AN ACT

AMENDING SECTION 13-3603.01, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3603.01, Arizona Revised Statutes, is amended to
3 read:

4 13-3603.01. Partial-birth abortions: classification: civil
5 action: definitions

6 A. ~~A person~~ ANY PHYSICIAN who knowingly performs a partial-birth
7 abortion and ~~who~~ THEREBY kills a human fetus is guilty of a class 6 felony
8 AND SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN TWO YEARS, OR
9 BOTH.

10 B. This section does not apply to a partial-birth abortion that is
11 necessary to save the life of a mother whose life is endangered by a physical
12 disorder, PHYSICAL illness or PHYSICAL injury ~~if no other medical procedure~~
13 ~~would save the mother's life~~, INCLUDING A LIFE-ENDANGERING PHYSICAL CONDITION
14 CAUSED BY OR ARISING FROM THE PREGNANCY ITSELF.

15 C. The father of the fetus if married to the mother at the time she
16 receives a partial-birth abortion PROCEDURE and the maternal grandparents of
17 the fetus if the mother is not at least eighteen years of age at the time of
18 the partial-birth abortion may bring a civil action to obtain appropriate
19 relief unless the pregnancy resulted from the plaintiff's criminal conduct or
20 the plaintiff consented to the partial-birth abortion. Relief pursuant to
21 this subsection includes the following:

22 1. ~~Monetary~~ MONEY damages for all injuries, PSYCHOLOGICAL AND
23 PHYSICAL, resulting from the ~~partial-birth abortion, including psychological~~
24 ~~and physical damages~~ VIOLATION OF THIS SECTION.

25 2. STATUTORY damages in an amount equal to three times the cost of the
26 partial-birth abortion.

27 D. This section ~~does~~ SHALL not subject a woman upon whom a
28 partial-birth abortion is performed to ANY criminal prosecution or civil
29 liability ~~under this section~~.

30 E. A DEFENDANT WHO IS ACCUSED OF AN OFFENSE UNDER THIS SECTION MAY
31 SEEK A HEARING BEFORE THE ARIZONA MEDICAL BOARD IF THE DEFENDANT IS LICENSED
32 PURSUANT TO TITLE 32, CHAPTER 13 OR THE ARIZONA BOARD OF OSTEOPATHIC
33 EXAMINERS IN MEDICINE AND SURGERY IF THE DEFENDANT IS LICENSED PURSUANT TO
34 TITLE 32, CHAPTER 17 ON WHETHER THE PHYSICIAN'S CONDUCT WAS NECESSARY TO SAVE
35 THE LIFE OF THE MOTHER WHOSE LIFE WAS ENDANGERED BY A PHYSICAL DISORDER,
36 PHYSICAL ILLNESS OR PHYSICAL INJURY, INCLUDING A LIFE-ENDANGERING PHYSICAL
37 CONDITION CAUSED BY OR ARISING FROM THE PREGNANCY ITSELF. THE FINDINGS ON
38 THAT ISSUE ARE ADMISSIBLE ON THAT ISSUE AT THE TRIAL OF THE DEFENDANT. ON A
39 MOTION OF THE DEFENDANT, THE COURT SHALL DELAY THE BEGINNING OF THE TRIAL FOR
40 NOT MORE THAN THIRTY DAYS TO PERMIT A HEARING TO TAKE PLACE.

41 ~~E.~~ F. For the purposes of this section:

42 1. "Partial-birth abortion" means an abortion in which the person
43 performing the abortion ~~partially vaginally delivers a living fetus before~~
44 ~~killing the fetus and completing the delivery~~ DOES BOTH OF THE FOLLOWING:

1 (a) DELIBERATELY AND INTENTIONALLY VAGINALLY DELIVERS A LIVING FETUS
2 UNTIL, IN THE CASE OF A HEADFIRST PRESENTATION, THE ENTIRE FETAL HEAD IS
3 OUTSIDE THE BODY OF THE MOTHER OR, IN THE CASE OF BREECH PRESENTATION, ANY
4 PART OF THE FETAL TRUNK PAST THE NAVAL IS OUTSIDE THE BODY OF THE MOTHER FOR
5 THE PURPOSE OF PERFORMING AN OVERT ACT THAT THE PERSON KNOWS WILL KILL THE
6 PARTIALLY DELIVERED LIVING FETUS.

7 (b) PERFORMS THE OVERT ACT, OTHER THAN COMPLETION OF DELIVERY, THAT
8 KILLS THE PARTIALLY DELIVERED LIVING FETUS.

9 2. ~~"Person" includes a physician~~ "PHYSICIAN" MEANS A DOCTOR OF
10 MEDICINE OR A DOCTOR OF OSTEOPATHY who is licensed pursuant to title 32,
11 chapter 13 or 17, ~~a person~~ OR ANY OTHER INDIVIDUAL ~~who is~~ legally authorized
12 by this state to perform abortions. ~~or a person~~ ANY INDIVIDUAL who is not A
13 PHYSICIAN OR WHO IS NOT OTHERWISE legally authorized by this state to perform
14 abortions but who NEVERTHELESS directly performs a partial-birth abortion
15 SHALL BE SUBJECT TO THIS SECTION.

16 Sec. 2. Severability

17 If a provision of this act or its application to any person or
18 circumstance is held invalid, the invalidity does not affect other provisions
19 or applications of the act that can be given effect without the invalid
20 provision or application, and to this end the provisions of the act are
21 severable.