

2A:65A-5 to 2A:65A-7

LEGISLATIVE HISTORY CHECKLIST
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(Partial birth abortion)

NJSA: 2A:65A-5 to 2A:65A-7

LAWS OF: 1997 CHAPTER: 262

BILL NO: A2409

SPONSOR(S): Farragher and others

DATE INTRODUCED: October 7, 1996

COMMITTEE: ASSEMBLY: Health
SENATE: Women's Issues

AMENDED DURING PASSAGE: Yes Amendments during pasage denoted
First reprint enacted by superscrip numbers

DATE OF PASSAGE: ASSEMBLY: May 8, 1997
SENATE: June 23, 1997

DATE OF APPROVAL: December 15, 1997 without Governor's signature

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Late abortions banned...", 12-16-97, Home News, p. 27.

"New Jersey's Senate overrides Whitman veto," 12-16-97, New York Times, p. 37.

"Late term abortions ban enacted," 12-16-97, Asbury Park Press, p. 1.

"Senate restores abortion limits," 12-16-97, Courier News, p. 14

KBP:pp

§§1 - 3
C. 2A:65A-5
To
2A:65A-7

P.L. 1997, CHAPTER 262, *passed December 15, 1997*
Assembly No. 2409 (*First Reprint*)
(CORRECTED COPY)

1 AN ACT prohibiting the performance of partial-birth abortions and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Partial-Birth
8 Abortion Ban Act of ¹[1996] 1997¹."

9

10 2. a. No physician licensed in this State, other licensed health care
11 professional authorized to perform abortions in this State, or
12 ambulatory care facility licensed in this State shall perform a partial-
13 birth abortion and thereby kill a human fetus.

14 b. The provisions of subsection a. of this section shall not apply to
15 a partial-birth abortion that is necessary to save the life of the mother
16 whose life is endangered by a physical disorder, illness or injury
17 ¹[when no other medical procedure would suffice for that purpose]¹.

18 c. A physician or other health care professional licensed pursuant
19 to Title 45 of the Revised Statutes who knowingly performs a partial-
20 birth abortion in violation of this act shall be subject to immediate
21 revocation of his professional license by the appropriate licensing
22 board and subject to a penalty of \$25,000 for each incident.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SWF committee amendments adopted June 5, 1997.

1 d. An ambulatory health care facility licensed pursuant to
2 P.L.1971, c.136 (C.26:2H-1 et seq.) in which a partial-birth abortion
3 is performed in violation of this act shall be subject to immediate
4 revocation of its license by the Department of Health and Senior
5 Services.

6 e. As used in this act, "partial-birth abortion" means an abortion in
7 which the person performing the abortion partially vaginally delivers
8 a living human fetus before killing the fetus and completing the
9 delivery.

10 ¹f. As used in subsection e. of this section "vaginally delivers a
11 living human fetus before killing the fetus" means deliberately and
12 intentionally delivering into the vagina a living fetus, or a substantial
13 portion thereof, for the purpose of performing a procedure the
14 physician or other health care professional knows will kill the fetus,
15 and the subsequent killing of the human fetus.¹

16

17 3. A woman upon whom a partial-birth abortion is performed shall
18 be immune from civil or criminal liability for a violation of the
19 provisions of this act.

20

21 4. This act shall take effect immediately.

22

23

24

25

26 Prohibits partial-birth abortions except when necessary to save the life
27 of the mother.

1 3. A woman upon whom a partial-birth abortion is performed shall
2 be immune from civil or criminal liability for a violation of the
3 provisions of this act.

4
5 4. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill, the "Partial-Birth Abortion Ban Act of 1996," prohibits a
11 physician licensed in this State, other licensed health care professional
12 authorized to perform abortions in this State, or an ambulatory care
13 facility licensed in this State from performing a partial-birth abortion
14 and thereby killing a human fetus, except when such a procedure is
15 necessary to save the life of the mother whose life is endangered by a
16 physical disorder, illness or injury when no other medical procedure
17 would suffice for that purpose.

18 A physician or other licensed health care professional who
19 knowingly performs a partial-birth abortion in violation of this bill
20 shall be subject to immediate revocation of his professional license by
21 the appropriate licensing board and subject to a penalty of \$25,000 for
22 each incident. A licensed ambulatory health care facility in which a
23 partial-birth abortion is performed in violation of this bill shall be
24 subject to immediate revocation of its license by the Department of
25 Health and Senior Services.

26 The bill defines "partial-birth abortion" as an abortion in which the
27 person performing the abortion partially vaginally delivers a living
28 human fetus before killing the fetus and completing the delivery.

29 Finally, the bill provides that a woman upon whom a partial-birth
30 abortion is performed shall be immune from civil or criminal liability
31 for a violation of the provisions of the bill.

32
33
34 _____
35
36 Prohibits partial-birth abortions except when necessary to save the life
37 of the mother.

[Corrected Copy]

[First Reprint]

ASSEMBLY, No. 2409

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1996

By Assemblywoman FARRAGHER, Assemblyman KELLY,
Assemblywoman J.Smith, Assemblymen Rooney, Kavanaugh,
Felice, Bucco, Garrett, Gregg, Assemblywoman Wright,
Assemblymen Barnes, Arnone, Cottrell, Asselta, Carroll,
Assemblywoman Crecco, Assemblymen Rocco, Doria, Steele,
Corodemus, Malone, Gibson, Bodine, Augustine,
Assemblywoman Heck, Assemblymen Roberts, Talarico and
DiGaetano

1 AN ACT prohibiting the performance of partial-birth abortions and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Partial-Birth
8 Abortion Ban Act of ¹**[1996]** 1997¹."

9

10 2. a. No physician licensed in this State, other licensed health care
11 professional authorized to perform abortions in this State, or
12 ambulatory care facility licensed in this State shall perform a partial-
13 birth abortion and thereby kill a human fetus.

14 b. The provisions of subsection a. of this section shall not apply to
15 a partial-birth abortion that is necessary to save the life of the mother
16 whose life is endangered by a physical disorder, illness or injury
17 ¹**[when no other medical procedure would suffice for that purpose]**¹.

18 c. A physician or other health care professional licensed pursuant
19 to Title 45 of the Revised Statutes who knowingly performs a partial-
20 birth abortion in violation of this act shall be subject to immediate
21 revocation of his professional license by the appropriate licensing

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SWF committee amendments adopted June 5, 1997.

1 board and subject to a penalty of \$25,000 for each incident.

2 d. An ambulatory health care facility licensed pursuant to
3 P.L.1971, c.136 (C.26:2H-1 et seq.) in which a partial-birth abortion
4 is performed in violation of this act shall be subject to immediate
5 revocation of its license by the Department of Health and Senior
6 Services.

7 e. As used in this act, "partial-birth abortion" means an abortion in
8 which the person performing the abortion partially vaginally delivers
9 a living human fetus before killing the fetus and completing the
10 delivery.

11 ¹f. As used in subsection e. of this section "vaginally delivers a
12 living human fetus before killing the fetus" means deliberately and
13 intentionally delivering into the vagina a living fetus, or a substantial
14 portion thereof, for the purpose of performing a procedure the
15 physician or other health care professional knows will kill the fetus,
16 and the subsequent killing of the human fetus.¹

17

18 3. A woman upon whom a partial-birth abortion is performed shall
19 be immune from civil or criminal liability for a violation of the
20 provisions of this act.

21

22 4. This act shall take effect immediately.

23

24

25

26

27 Prohibits partial-birth abortions except when necessary to save the life
28 of the mother.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2409

STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Assembly Health Committee reports favorably Assembly Bill No. 2409.

This bill, which is designated the "Partial-Birth Abortion Ban Act of 1996," prohibits a physician licensed in this State, other licensed health care professional authorized to perform abortions in this State, or an ambulatory care facility licensed in this State, from performing a partial-birth abortion and thereby killing a human fetus, except when such a procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury when no other medical procedure would suffice for that purpose.

A physician or other licensed health care professional who knowingly performs a partial-birth abortion in violation of this bill would be subject to immediate revocation of his professional license by the appropriate licensing board and subject to a penalty of \$25,000 for each incident. A licensed ambulatory health care facility in which a partial-birth abortion is performed in violation of this bill would be subject to immediate revocation of its license by the Department of Health and Senior Services.

The bill defines "partial-birth abortion" as an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

Finally, the bill provides that a woman upon whom a partial-birth abortion is performed would be immune from civil or criminal liability for a violation of the provisions of the bill.

This bill is identical to Senate Bill No. 1668 (Scott/Cardinale), which is currently pending in the Senate Women's Issues, Children and Family Services Committee.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO
ASSEMBLY, No. 2409

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Women's Issues, Children and Family Services Committee favorably reports Assembly Bill No. 2409 with committee amendments.

As amended by committee, this bill, the "Partial-Birth Abortion Ban Act of 1997," prohibits a physician licensed in this State, other licensed health care professional authorized to perform abortions in this State, or an ambulatory care facility licensed in this State from performing a partial-birth abortion and thereby killing a human fetus, except when such a procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury.

A physician or other licensed health care professional who knowingly performs a partial-birth abortion in violation of this bill shall be subject to immediate revocation of his professional license by the appropriate licensing board and subject to a penalty of \$25,000 for each incident. A licensed ambulatory health care facility in which a partial-birth abortion is performed in violation of this bill shall be subject to immediate revocation of its license by the Department of Health and Senior Services.

The bill defines "partial-birth abortion" as an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

Finally, the bill provides that a woman upon whom a partial-birth abortion is performed shall be immune from civil or criminal liability for a violation of the provisions of the bill.

The committee amended the bill to change the title of the bill to the "Partial-Birth Abortion Ban Act of 1997."

The committee also amended the bill to define the term "vaginally delivers a human fetus before killing the fetus" to mean the deliberate and intentional delivering into the vagina of a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician or other health care professional knows will kill the fetus and the subsequent killing of the fetus.

This bill is identical to Senate Bill No.1668 Sca (Scott/Cardinale), which was also released by this committee on June 5, 1997.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-004

CONTACT: PETE MCDONOUGH
609 777-2600

TRENTON, NJ 08625

RELEASE: MONDAY
DECEMBER 15, 1997

Statement of Gov. Christie Whitman Regarding the Override of Her Conditional Veto of A-2409/S-1668

From the outset, I indicated that the vote on this bill would be a matter of conscience. I respect the members of the Legislature on both sides of this difficult issue.

I have discussed this matter with the Attorney General and, in light of his previous legal opinion, he has declined to defend the statute against legal challenge. I agree with his decision.

Although the administration cannot defend the statute, we will take no steps to challenge it in court.

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June 23, 1997

ASSEMBLY BILL NO. 2409
(First Reprint)
(Corrected Copy)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2409 (First Reprint) (Corrected Copy), the "Partial-Birth Abortion Ban Act of 1997," with my recommendation that the bill be amended to prohibit all post-viability abortions, regardless of the procedure employed, except when the life of the mother is at stake or when there is a significant risk of serious physical injury or impairment to her. This recommendation is based upon advice from the Attorney General, the Office of Legislative Services, and my Chief Counsel that the bill in its current form is unconstitutional.

A. Summary of the Bill

This bill, known as the "Partial Birth Abortion Ban Act of 1997," purports to prohibit the performance at any time during a pregnancy of a medical procedure, which the bill calls "partial-birth abortion." The bill defines "partial-birth abortion" as an abortion "in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery." "Vaginally delivering," in turn, means "the deliberate and intentional delivering into the vagina of a living fetus, or a substantial portion thereof," for the purpose of performing a procedure that will kill the fetus. The bill provides severe civil penalties for physicians and health care professionals who perform "partial-birth abortions," and provides for immunity from civil or criminal liability for women upon whom such an abortion is performed. Finally, the bill provides that such abortions may be performed if necessary to save the life of the mother when her life is endangered by a physical disorder, illness or injury.

B. Analysis

The debate over "partial-birth abortion" is the latest chapter in one of the most divisive controversies in our history: the issue of the extent to which government should regulate a woman's decisions with respect to pregnancy. Proponents of this bill have presented compelling evidence to support their opposition to "partial-birth abortion." I have listened to their arguments, heard their evidence, and understand the intense passion that those seeking to outlaw this procedure feel. I respect their courage in following the dictates of their consciences.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

The procedure commonly known as "partial-birth abortion" is clearly horrific. I oppose it. No woman who has carried a child in her womb could fail to appreciate the value of a quickening life; no mother could fail to feel diminished when pregnancy is ended, especially in this manner.

It simply does not follow, however, as a matter of constitutional law or personal conscience, that opposition to abortion requires an extension of governmental oversight into the most intimate sanctum of human life. Limiting government's reach into people's everyday lives is a cornerstone of our state and federal constitutions, and has been a guiding principle of my public career and administration; we discard that principle in this most personal of contexts at our peril. Furthermore, I am firmly opposed to politicians substituting their judgment for a medical decision best left to a physician.

I am advised by the Office of the Attorney General, the Office of Legislative Services, and my Chief Counsel that the "Partial-Birth Abortion Ban Act of 1997" is unconstitutional in several respects. First, the conduct that the bill purports to prohibit is defined so broadly as to sweep within its ambit not a single clearly identified procedure but, potentially, several commonly practiced medical procedures. Because the Act imposes severe penalties on physicians or health care professionals who violate it (immediate loss of license and \$25,000 fine per violation), those physicians or health care professionals are entitled as a matter of due process under the federal and state constitutions to adequate notice of which conduct will trigger the penalties. State v. Maldonado, 137 N.J. 536, 562 (1994); Connally v. General Const. Co., 269 U.S. 385 (1926). The Act fails to provide such notice.

Second, because the ban applies throughout pregnancy, and severely restricts medical options by applying to several distinct procedures, it is unconstitutional under United States Supreme Court precedent narrowly circumscribing the authority of the State to "place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." Casey v. Planned Parenthood of Southeastern Pennsylvania, 505 U.S. 833, 846 (1992).

Third, because the sole exception to the ban is for cases in which a partial-birth abortion is necessary "to save the life of the mother," the ban violates settled precedent holding that even when a fetus is viable, the state must permit abortions that are "necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." Id. At 879 (quoting Roe v. Wade, 410 U.S. 113, 164-65 (1973)). This bill makes no allowance for cases in which the

proscribed procedure(s) are medically indicated to preserve maternal health; accordingly, it is unconstitutional.

As a matter of public policy, moreover, I believe that the bill's purported focus on a single method of abortion is misplaced. First, the difficulty in defining the procedure for purposes of this bill illustrates the futility of attempting to substitute a legislative hearing room for a physician's examining room. To the extent that the definition purports to reach a single procedure, it fails: to the extent that the definition is intended to reach several procedures, and to apply throughout pregnancy, it is a pretext for a broader and clearly unconstitutional agenda. More important, by focusing on a single method of abortion, the bill shifts attention away from the fundamental issue raised by its proponents: whether this State should regulate late-term abortions.

C. Recommended Action

A woman's right to determine the course of her pregnancy is not absolute. The Supreme Court has recognized that the State may prohibit abortion once a fetus is "viable," i.e., "there is a realistic possibility of maintaining and nourishing a life outside the womb," Casey, 505 U.S. at 870, provided that "the law contains exceptions for pregnancies which endanger the woman's life or health." *Id.* at 846.

I am persuaded that New Jersey law should conform to these constitutional parameters. Once a pregnancy has progressed to such a point that there is "a realistic possibility of maintaining and nourishing a life outside the womb," common sense counsels what constitutional doctrine allows: protection of that potential life. At the same time, a pregnant woman is more than a mere birthing vessel; she is a human being, whose liberty, life and health also deserve protection.

Accordingly, I recommend that the bill be amended to ban all abortions once a fetus has attained viability, except those performed to protect the life or health of the mother. The determination of both viability and the necessity of the medical procedure is to be made by the attending physician, in accordance with regulations to be promulgated by the Commissioner of Health and Senior Services. I further recommend that "health" be defined to refer only to situations where there is "a significant risk of serious physical injury or impairment" to the mother.

This recommendation strikes the appropriate constitutional balance. It ends the misguided debate over ill-defined medical procedures by addressing the core concern: unregulated late-term abortions. By prohibiting such abortions except in cases implicating the mother's life and health, it

abortion was necessary to save the life of or to avoid a significant risk of serious physical injury or impairment to the mother, and to describe the medical indications supporting the physician's judgment. Such regulations shall also include provisions to ensure the confidentiality of all information submitted pursuant to a certification required under this section."

Page 1, Section 2, Lines 19-20:

After "performs" insert "or assists in"; delete "a partial-birth" insert "an"

Page 1, Section 2, Line 21:

After "his" insert "or her"

Page 2, Section 2, Line 3:

Delete "a partial-birth" insert "an"

Page 2, Section 2, Line 5:

Delete "revocation" insert "review"

Page 2, Section 2, Line 6:

After "Services" insert "and may be subject to penalties, including, but not limited to, revocation of its license"

Page 2, Section 2, Lines 7-16:

Delete in entirety

Page 2, Section 3, Line 18:

Delete "a partial-birth" insert "an"

Page 2, Section 4, Line 22:

Delete "immediately" insert "60 days after enactment"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor

allows governmental oversight only where such oversight is appropriate: to protect a potentially independent but otherwise helpless life. At the same time, by refusing to intrude in any way on a woman's pre-viability decision with respect to her pregnancy, it commits the decision in the first instance to her conscience. Under our Constitution, that is where the fundamental choice should be made.

I appeal, finally, to the good will of individuals on both sides of this issue to join together to prevent unwanted pregnancies. The only way to resolve this issue is to avoid having to face it. We must remind ourselves, and teach our children, to be guided in our lives, as in our politics, not by unthinking and transitory alliances, but by love. Working together, we can make it less likely that any woman will confront the heart-wrenching choice that ending a pregnancy brings.

Therefore, I herewith return Assembly Bill No. 2409 (First Reprint) and recommend that it be amended as follows:

Page 1, Title, Line 1:

Delete "partial-birth" insert "post-viability"

Page 1, Section 1, Line 7:

Delete "Partial-Birth" insert "Post-Viability"

Page 1, Section 2, Lines 12-13:

Delete "a partial-birth" insert "an" ; delete "kill" insert "terminate"; after "a" insert "viable"; after "fetus." insert "For the purposes of this section, prior to the performance of an abortion, determination of viability shall be made by a physician based upon the physician's own best medical judgment. The physician shall determine whether, based on the particular facts of a woman's pregnancy that are known to the physician, and in light of medical technology and information reasonably available to the physician, there is a realistic possibility of maintaining and nourishing a life outside of the womb, with or without temporary, artificial life-sustaining support."

Page 1, Section 2, Line 15:

Delete "a partial-birth" insert "an"; after "of" insert "or avoid a significant risk of serious physical injury or impairment to"

Page 1, Section 2, Line 16:

Delete "whose life is endangered by a physical disorder, illness or injury" insert "when no other medical procedure would suffice for that purpose. Not later than 60 days after the date of enactment of this act, the Commissioner of Health and Senior Services shall establish regulations requiring a physician who performs an abortion of a viable fetus to certify that, in the best medical judgment of the physician, the