

SENATE BILL NO. 106

March 01, 2023, Introduced by Senators DALEY, ALBERT, WEBBER, VICTORY, LAUWERS, OUTMAN, BELLINO, RUNESTAD, THEIS and LINDSEY and referred to the Committee on Government Operations.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 90h and 213a (MCL 750.90h and 750.213a),
section 90h as added by 2011 PA 168 and section 213a as added by
2016 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 90h. (1) This section ~~shall be known and~~ may be cited as
2 the "partial-birth abortion ban act".

3 (2) Except as provided in subsection (3), a physician, an
4 individual performing an act, task, or function under the

1 delegatory authority of a physician, or any other individual who is
2 not a physician or not otherwise legally authorized to perform an
3 abortion who knowingly performs a partial-birth abortion and kills
4 a human fetus is guilty of a felony punishable by imprisonment for
5 not more than ~~2~~4 years or a fine of not more than \$50,000.00, or
6 both.

7 (3) It is not a violation of subsection (2) if in the
8 physician's reasonable medical judgment a partial-birth abortion is
9 necessary to save the life of a mother whose life is endangered by
10 a physical disorder, physical illness, or physical injury.

11 (4) The spouse of the mother at the time of the partial-birth
12 abortion or either parent of the mother if the mother had not
13 attained the age of 18 at the time of the partial-birth abortion
14 may file a civil action against the physician or individual
15 described in subsection (2) for a violation of this section unless
16 the pregnancy is a result of the plaintiff's criminal conduct or
17 the plaintiff consented to the partial-birth abortion. A plaintiff
18 who prevails in a civil action brought under this section may
19 recover both of the following:

20 (a) Actual damages, including damages for emotional distress.

21 (b) Treble damages for the cost of the partial-birth abortion.

22 (5) A woman who obtains or seeks to obtain a partial-birth
23 abortion is not a conspirator to commit a violation of this
24 section.

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

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

28 (8) Nothing in this section shall be construed to repeal or
29 amend, explicitly or by implication, any provision of law

1 prohibiting or regulating abortion, including, but not limited to,
2 section 14, 15, 322, or 323.

3 (9) As used in this section:

4 (a) "Partial-birth abortion" means an abortion in which the
5 physician, an individual acting under the delegatory authority of
6 the physician, or any other individual performing the abortion
7 deliberately and intentionally vaginally delivers a living fetus
8 until, in the case of a headfirst presentation, the entire fetal
9 head is outside the body of the mother, or in the case of breech
10 presentation, any part of the fetal trunk past the naval is outside
11 the body of the mother, for the purpose of performing an overt act
12 that the person knows will kill the partially delivered living
13 fetus, and performs the overt act, other than completion of
14 delivery, that kills the partially delivered living fetus.

15 (b) "Physician" means an individual licensed by this state to
16 engage in the practice of medicine or the practice of osteopathic
17 medicine and surgery under article 15 of the public health code,
18 1978 PA 368, MCL 333.16101 to 333.18838.

19 Sec. 213a. (1) A person having actual knowledge that a female
20 individual is pregnant shall not do any of the following with the
21 intent to coerce her to have an abortion against her will:

22 (a) Commit, attempt to commit, or threaten to commit any of
23 the following violations against her or any other person:

24 (i) A violation of section 411h or section 411i.

25 (ii) An assaultive crime. As used in this subparagraph,
26 "assaultive crime" means that term as defined in section 9a of
27 chapter X of the code of criminal procedure, 1927 PA 175, MCL
28 770.9a.

29 (b) After being informed by a pregnant female that she does

1 not want to obtain an abortion, engage in coercion as that term is
2 defined in section 462a.

3 (2) For purposes of subsection (1)(b), information that a
4 pregnant female does not want to obtain an abortion includes any
5 fact that would clearly demonstrate to a reasonable person that she
6 is unwilling to comply with a request or demand to have an
7 abortion.

8 (3) A person who violates this section is guilty of a crime as
9 follows:

10 (a) For a violation of subsection (1)(a), the person is guilty
11 of a crime punishable in the same manner as for the underlying
12 offense committed, attempted, or threatened.

13 (b) Except as provided in subdivision (c), for a violation of
14 subsection (1)(b), the person is guilty of a ~~misdemeanor~~**felony**
15 punishable by **imprisonment for not more than 4 years or** a fine of
16 not more than ~~\$5,000.00~~**\$10,000.00, or both.**

17 (c) If the person is the father or putative father of the
18 unborn child, the pregnant ~~individual~~**woman** is less than 18 years
19 of age at the time of the violation, and the person is 18 years of
20 age or older at the time of the violation, the person is guilty of
21 a ~~misdemeanor~~**felony** punishable by **imprisonment for not more than 5**
22 **years or** a fine of not more than ~~\$10,000.00~~**\$20,000.00, or both.**

23 (4) This section does not prohibit the person from being
24 charged with, convicted of, or punished for any other violation of
25 law committed while violating this section.

26 (5) As used in this section:

27 (a) "Course of conduct" means a pattern of conduct composed of
28 a series of 2 or more separate noncontinuous acts evidencing a
29 continuity of purpose.

1 (b) "Threaten" means to make 2 or more statements or to engage
2 in a course of conduct that would cause a reasonable person to
3 believe that the individual is likely to act in accordance with the
4 statements or the course of conduct. Threaten does not include
5 constitutionally protected speech or any generalized statement
6 regarding a lawful pregnancy option.

7 (c) "Unborn child" means a live human being in utero
8 regardless of his or her gestational stage of development.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.