



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB5296

by Rep. Patrick Windhorst

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Partial-Birth Abortion Ban Act of 2020. Provides that any person who knowingly performs a partial-birth abortion and thereby kills a human fetus or infant is guilty of a Class 4 felony. Provides that a person shall only perform or induce a partial-birth abortion on a viable fetus if: (i) the person is a physician; (ii) the person has a documented referral from another physician not legally or financially affiliated with the person performing or inducing the abortion; (iii) both physicians determine that the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself; and (iv) there is no other medical procedure that would suffice for that purpose. Provides that the maternal grandparents of the fetus or infant, if the mother has not attained the age of 18 years at the time of the abortion, may obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Provides that a woman on whom a partial-birth abortion is performed may not be prosecuted under the Act, for a conspiracy to violate the Act, or for an offense under Article 31 of the Criminal Code of 2012, nor may she be held accountable under Article 5 of the Criminal Code of 2012. Effective immediately.

LRB101 18628 LNS 68083 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Partial-Birth Abortion Ban Act of 2020.

6 Section 5. Findings; purposes.

7 (a) The General Assembly finds that:

8 (1) Partial-birth abortion is a gruesome and inhumane  
9 procedure that is never medically necessary and, as such,  
10 should be prohibited.

11 (2) In 2003, the 108th United States Congress passed  
12 the Partial-Birth Abortion Ban Act of 2003 (18 U.S.C.  
13 1531), and President George W. Bush signed it into law.

14 (3) Later, on April 18, 2007, the U.S. Supreme Court  
15 upheld the Partial-Birth Abortion Ban Act of 2003 ("the  
16 federal ban") in *Gonzales v. Carhart*, 550 U.S. 124 (2007),  
17 specifically ruling that a ban on partial-birth abortion  
18 need not include a maternal "health" exception to be  
19 constitutional.

20 (4) This Act's language stems from and uses as its  
21 primary influence the language of the federal ban as upheld  
22 in *Gonzales v. Carhart*.

23 (5) This Act - a state ban on partial-birth abortion -

1 is needed to supplement the federal ban. Importantly, the  
2 federal ban was narrowly tailored to reach only those  
3 partial-birth abortion procedures that implicate Congress'  
4 power to regulate interstate or foreign commerce. U.S.  
5 CONST. art. 1, 8, cl. 3. Without this Act, partial-birth  
6 abortions performed, but not affecting these categories of  
7 commerce, are not prohibited under the federal ban.

8 (6) A partial-birth abortion poses serious risk to a  
9 woman's long-term health.

10 (7) There is a substantial evidentiary record upon  
11 which the General Assembly has based its conclusion that a  
12 maternal "health" exception is not constitutionality  
13 required in a State ban on partial-birth abortion.

14 (8) Moreover, the medical evidence clearly supports  
15 the informed judgment of this State that a partial-birth  
16 abortion is never medically necessary to preserve a woman's  
17 health and instead poses serious health risks to the woman.

18 (9) Specifically, partial-birth abortion poses serious  
19 risks, including, but not limited to: an increased risk of  
20 cervical incompetence, as a result of cervical dilation,  
21 that makes it difficult or impossible for a woman to  
22 successfully carry a subsequent pregnancy to term; an  
23 increased risk of uterine rupture, abruption, amniotic  
24 fluid embolus, and trauma to the uterus, as a result of  
25 converting the child to a footling breech position - a  
26 procedure which, according to a leading obstetrics

1 textbook, "there are very few, if any, indications for  
2 other than for delivery of a second twin"; and a risk of  
3 lacerations and secondary hemorrhaging, as a result of the  
4 physician blindly forcing a sharp instrument into the base  
5 of the unborn child's skull while he or she is lodged in  
6 the birth canal - an act that could result in severe  
7 bleeding and subsequent shock.

8 (10) There is no credible medical evidence that  
9 partial-birth abortions are safer than other abortion  
10 procedures. No controlled studies of partial-birth  
11 abortion have been conducted nor have any comparative  
12 studies been conducted to demonstrate its safety and  
13 efficacy compared to other abortion methods. Furthermore,  
14 there have been no articles published in peer-reviewed  
15 journals that establish that partial-birth abortions are  
16 superior in any way to established abortion procedures.

17 (11) In light of this overwhelming evidence, the State  
18 of Illinois has a compelling interest in prohibiting  
19 partial-birth abortion. Both *Roe v. Wade*, 410 U.S. 113  
20 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833  
21 (1992), recognized a governmental interest in protecting  
22 the life of a child during the birth process. This interest  
23 is specifically implicated during a partial-birth abortion  
24 because labor is induced and the birth process is begun  
25 before an abortion is attempted or the child is actually  
26 aborted.

1           (12) In fact, partial-birth abortion kills a child who  
2 is mere inches away from birth and being considered a  
3 "person" under Roe. Thus, this State clearly has a  
4 heightened interest in protecting the life of the  
5 partially-born child.

6           (13) The public's perception of the appropriate role of  
7 a physician during a child's birth is undermined by  
8 aborting a child in the manner that purposefully seeks to  
9 kill the child inches from birth.

10          (14) Partial-birth abortion is disturbingly similar to  
11 the killing of a newborn infant and blurs the legal and  
12 moral lines between infanticide and abortion. This Act  
13 reinforces that line at birth - just as the Supreme Court  
14 established in Roe v. Wade - while also preserving the  
15 integrity of the medical profession and promoting respect  
16 for human life.

17          (15) The vast majority of infants killed during  
18 partial-birth abortions are alive until the very end of the  
19 procedure. Medical science has established that an unborn  
20 child can feel pain when subjected to painful stimuli like  
21 that inflicted during a partial-birth abortion procedure.  
22 Moreover, fetal pain experts believe that an unborn child's  
23 perception of pain can be even more intense than that of  
24 newborn infants and older children subjected to the same  
25 stimuli.

26          (b) Based on the findings in subsection (a), the purposes

1 of the General Assembly are to:

2 (1) conclusively establish that partial-birth abortion  
3 is never medically indicated to preserve the health of the  
4 mother and instead poses significant maternal health  
5 risks;

6 (2) clearly define the line between abortion and  
7 infanticide; and

8 (3) safeguard the role of a physician during  
9 childbirth.

10 Section 10. Definitions; terms.

11 (a) As used in this Act, "partial-birth abortion" means an  
12 abortion in which the person performing the abortion:

13 (1) deliberately and intentionally vaginally delivers  
14 a living fetus until, in the case of a head-first  
15 presentation, the entire fetal head is outside the body of  
16 the mother, or, in the case of breech presentation, any  
17 part of the fetal trunk past the navel is outside the body  
18 of the mother, for the purpose of performing an overt act  
19 that the person knows will kill the partially delivered  
20 living fetus; and

21 (2) performs the overt act, other than completion of  
22 delivery, which kills the partially delivered living  
23 fetus.

24 (b) The terms "fetus" and "infant" are used interchangeably  
25 to refer to the biological offspring of human parents.

1           Section 15. Partial-birth abortions prohibited.  
2   Notwithstanding any other law to the contrary, any person who  
3   knowingly performs a partial-birth abortion and thereby kills a  
4   human fetus or infant is guilty of a Class 4 felony. A person  
5   shall only perform or induce a partial-birth abortion on a  
6   viable fetus if: (i) the person is a physician; (ii) the person  
7   has a documented referral from another physician not legally or  
8   financially affiliated with the person performing or inducing  
9   the abortion; (iii) both physicians determine that the life of  
10   the mother is endangered by a physical disorder, physical  
11   illness, or physical injury, including a life-endangering  
12   condition caused by or arising from the pregnancy itself; and  
13   (iv) there is no other medical procedure that would suffice for  
14   that purpose.

15           Section 20. Civil action. The maternal grandparents of the  
16   fetus or infant, if the mother has not attained the age of 18  
17   years at the time of the abortion, may, in a civil action,  
18   obtain appropriate relief unless the pregnancy resulted from  
19   the plaintiff's criminal conduct or the plaintiff consented to  
20   the abortion. The relief shall include money damages for all  
21   injuries, psychological and physical, occasioned by the  
22   violation of this Act and statutory damages equal to 3 times  
23   the cost of the partial-birth abortion.

1           Section 25. Prosecution of woman prohibited. A woman on  
2           whom a partial-birth abortion is performed may not be  
3           prosecuted under this Act, for a conspiracy to violate this  
4           Act, or for an offense under Article 31 of the Criminal Code of  
5           2012 based on a violation of this Act, nor may she be held  
6           accountable under Article 5 of the Criminal Code of 2012 for an  
7           offense based on a violation of this Act.

8           Section 99. Effective date. This Act takes effect upon  
9           becoming law.