

1 *Keenan Cole* *Wells* *Bishop Ellis* *Brainard*
 2 *McPherson* *BENEDICT* *Johnson* *Adams*
 3 INTRODUCED BY *McLee* *Rohlfson* *Clark* *Joe* *Carnett* *Mills*
 4 *Holland* *Bitney* *Wiseman* *Walter* *Hargre* *Thomas*
 5 "A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH
 6 ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING
 7 DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA."
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *ORR* *James*
 9 *Baugh* *Beaudry* *Propp* *Bergman* *Storal* *Festing* *M. Hanson*

NEW SECTION. Section 1. Offense of partial-birth abortion -- exception -- definitions -- penalties.

(1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

- (a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or
- (b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

- (a) "Knowingly" has the meaning provided in 45-2-101.
- (b) "Negligently" has the meaning provided in 45-2-101.
- (c) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.
- (d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

- (a) a fine of not more than \$50,000;
- (b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or
- (c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and
- (d) permanent revocation of the license of the physician performing the partial-birth abortion. The

1 provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this
2 section.

3

4 **Section 2.** Section 50-20-109, MCA, is amended to read:

5 **"50-20-109. Control of practice of abortion.** (1) Except as provided in [section 1], an abortion
6 may not be performed within the state of Montana:

7 (a) except by a licensed physician;

8 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

9 (c) after viability of the fetus, unless in appropriate medical judgment, the abortion is necessary
10 to preserve the life or health of the mother.

11 (2) An abortion under subsection (1)(c) may only be performed if:

12 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
13 writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

14 (b) two other licensed physicians have first examined the patient and concurred in writing with the
15 judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician
16 certifies that the abortion is necessary to preserve the life of the mother.

17 (3) The timing and procedure used in performing an abortion under subsection (1)(c) ~~of this section~~
18 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
19 "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if
20 necessary to preserve the life or health of the mother.

21 (4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or
22 other form of communication that has the purpose of inviting, inducing, or attracting a person to come to
23 the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

24 (5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

25 (6) Violation of subsections (1), ~~(2),~~ through (3), and (5) is a felony. Violation of subsection (4) is
26 a misdemeanor."

27

28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0365, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

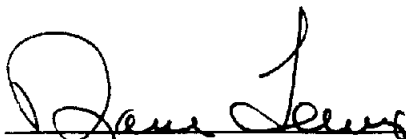
An act creating the offense of causing a partial-birth abortion; allowing a partial-birth abortion to save safe the life of a woman.

ASSUMPTIONS:

1. Based on the Department of Justice's experience, laws regulating the practice of abortion will be challenged in the courts.
2. If this act is passed and approved and a legal challenge is filed in court, the Department of Justice will represent the state in the case. The case would be handled by existing staff and, as with similar cases, costs would be paid from the major litigation appropriation included in the Executive Budget.

FISCAL IMPACT:

There is no fiscal impact as a result of HB 365.

 1-31-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DANIEL MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0365, as introduced

HB 365

1 *Keenan Cole* *Wells* *Bishop Ellis* *Braun*
 2 *McPherson* *Benedict* *Johnson* *Adams*
 3 *Holland* *Bitney* *Wiseman* *Walter* *Harper* *Thomas*
 4 *McLee* *Robinson* *Chap* *Jore* *Barnett* *Miller*
 5 *Smygoc* *Devlin* *Beck* *Foster* *ORR* *James*
 6 *Ball* *Beaudry* *Projele* *M. Hanson* *Storal* *Fitzroy*

INTRODUCED BY McLee Robinson Chap Jore Barnett Miller
 "A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH
 ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING
 DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Offense of partial-birth abortion -- exception -- definitions -- penalties.

(1) Except as provided in this section, a person commits an offense if the person purposely, knowingly,
 or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is
 endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or
 arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) "Partial-birth abortion" means an abortion in which the person performing the abortion partially
 vaginally delivers a living human fetus before killing the fetus and completing the delivery.

(d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall
 be punished by:

(a) a fine of not more than \$50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10
 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The

1 provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this
2 section.

3

4 **Section 2.** Section 50-20-109, MCA, is amended to read:

5 **"50-20-109. Control of practice of abortion.** (1) ~~An~~ Except as provided in [section 1], an abortion
6 may not be performed within the state of Montana:

7 (a) except by a licensed physician;

8 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

9 (c) after viability of the fetus, unless in appropriate medical judgment, the abortion is necessary
10 to preserve the life or health of the mother.

11 (2) An abortion under subsection (1)(c) may only be performed if:

12 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
13 writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

14 (b) two other licensed physicians have first examined the patient and concurred in writing with the
15 judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician
16 certifies that the abortion is necessary to preserve the life of the mother.

17 (3) The timing and procedure used in performing an abortion under subsection (1)(c) ~~of this section~~
18 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
19 "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if
20 necessary to preserve the life or health of the mother.

21 (4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or
22 other form of communication that has the purpose of inviting, inducing, or attracting a person to come to
23 the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

24 (5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

25 (6) Violation of subsections (1), ~~(2),~~ through (3), and (5) is a felony. Violation of subsection (4) is
26 a misdemeanor."

27

28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

30

-END-

1 Keenan Cole Wells Bishop Ellis Brinnard
 2 INTRODUCED BY Wells BENEDICT House House Bill No. 365
 3 Holland Bitney Wiseman Walter Harper Thomas
 4 "A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH
 5 ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING
 6 DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA."
 7 Surgeon Nevin Beck Foster ORR Crimes
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Bergman
 9 Baugh Beaudry Brigula M. Hanson Storal Feating

10 **NEW SECTION. Section 1. Offense of partial-birth abortion -- exception -- definitions -- penalties.**

11 (1) Except as provided in this section, a person commits an offense if the person purposely, knowingly,
 12 or negligently causes a partial-birth abortion.

13 (2) Subsection (1) does not apply to:

14 (a) a partial-birth abortion caused to save the life of a woman because the woman's life is
 15 endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or
 16 arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

17 (b) the woman upon whom a partial-birth abortion is performed.

18 (3) As used in this section, the following definitions apply:

19 (a) "Knowingly" has the meaning provided in 45-2-101.

20 (b) "Negligently" has the meaning provided in 45-2-101.

21 (c) "Partial-birth abortion" means an abortion in which the person performing the abortion partially
 22 vaginally delivers a living human fetus before killing the fetus and completing the delivery.

23 (d) "Purposely" has the meaning provided in 45-2-101.

24 (4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall
 25 be punished by:

26 (a) a fine of not more than \$50,000;

27 (b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10
 28 years; or

29 (c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

30 (d) permanent revocation of the license of the physician performing the partial-birth abortion. The

1 provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this
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16 certifies that the abortion is necessary to preserve the life of the mother.

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19 "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if
20 necessary to preserve the life or health of the mother.

21 (4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or
22 other form of communication that has the purpose of inviting, inducing, or attracting a person to come to
23 the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

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25 (6) Violation of subsections (1), ~~(2),~~ through (3), and (5) is a felony. Violation of subsection (4) is
26 a misdemeanor."

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28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

30 -END-

1 *Keenan Cole* *Wells* *Bishop Ellis* *Braun*
 2 *Wells* *Benedict* *House* *Bill No. 365* *Johnson* *Adams* *Chen*
 3 INTRODUCED BY *Wells* *Rubenstein* *Chen* *Jore* *Carnett* *Wells*
 4 *Halland Bitney* *Wiseman* *Walter* *Harper* *Thomas*
 5 "A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH
 6 ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING
 7 DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA."
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *ORR* *Pruned*
 9 *Baugh* *Beaudry* *Orjala* *M. Hanson* *Storall* *Teating*

NEW SECTION. Section 1. Offense of partial-birth abortion -- exception -- definitions -- penalties.

(1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

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(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

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20 necessary to preserve the life or health of the mother.

21 (4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or
22 other form of communication that has the purpose of inviting, inducing, or attracting a person to come to
23 the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

24 (5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

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26 a misdemeanor."

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28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

30 -END-

1 HOUSE BILL NO. 365

2 INTRODUCED BY MCGEE, REHBEIN, CLARK, JORE, BARNETT, MILLS, KEENAN, DEPRATU, COLE,
3 WELLS, BENEDICT, BISHOP, ELLIS, BAER, BRAINARD, ADAMS, OHS, MARSHALL, HOLLAND, BITNEY,
4 STORY, WISEMAN, WALTERS, HARGROVE, THOMAS, AHNER, SWYSGOOD, DEVLIN, BECK, FOSTER,
5 ORR, GRIMES, BANKHEAD, BEAUDRY, TROPILA, M. HANSON, BERGMAN, STOVALL, KEATING
6

7 "A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH
8 ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING
9 DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12

13 NEW SECTION. Section 1. Offense of partial-birth abortion -- exception -- definitions -- penalties.

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19 arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

20 (b) the woman upon whom a partial-birth abortion is performed.

21 (3) As used in this section, the following definitions apply:

22 (a) "Knowingly" has the meaning provided in 45-2-101.

23 (b) "Negligently" has the meaning provided in 45-2-101.

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1 years; or

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18 judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician
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29 a misdemeanor."

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1 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
2 integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

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