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HUMAN RESOURCES

HOUSE FILE

2098

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2/23/98
(p. 324)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act prohibiting the performance of partial-birth abortions,
2 establishing a cause of action for violation of the
3 prohibition, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 707.8A PARTIAL-BIRTH ABORTION
2 PROHIBITED -- EXCEPTIONS -- PENALTIES.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "Abortion" means abortion as defined in section 146.1.

6 b. "Partial-birth abortion" means an abortion in which a
7 person partially vaginally delivers a living fetus before
8 killing the fetus and completing the delivery.

9 c. "Vaginally delivers a living fetus before killing the
10 fetus" means deliberately and intentionally delivering into
11 the vagina a living fetus or a substantial portion of a living
12 fetus for the purpose of performing a procedure the person
13 knows will kill the fetus, and then killing the fetus.

14 2. A person shall not knowingly perform or attempt to
15 perform a partial-birth abortion. This prohibition shall not
16 apply to a partial-birth abortion that is necessary to prevent
17 the death of the mother whose life is endangered by a physical
18 disorder, physical illness, or physical injury, if no other
19 medical procedure will prevent the death of the mother.

20 3. This section shall not be construed to create a right
21 to an abortion.

22 4. a. The mother of the fetus, the father of the fetus,
23 or if the mother is less than eighteen years of age at the
24 time of the partial-birth abortion, a maternal grandparent of
25 the fetus, may bring an action against a person violating
26 subsection 2 to obtain appropriate relief, unless the
27 pregnancy resulted from the plaintiff's criminal conduct or
28 the plaintiff consented to the partial-birth abortion.

29 b. In an action brought under this subsection, appropriate
30 relief may include any of the following:

31 (1) Statutory damages which are equal to three times the
32 cost of the partial-birth abortion.

33 (2) Compensatory damages for all injuries, psychological
34 and physical, resulting from violation of this section.

35 5. A person who violates subsection 2 is guilty of a class

1 "C" felony.

2 6. A mother upon whom a partial-birth abortion is
3 performed shall not be prosecuted for violation of subsection
4 2 or for conspiracy to violate subsection 2.

5 7. a. A licensed physician subject to the authority of
6 the state board of medical examiners who is accused of a
7 violation of subsection 2 may seek a hearing before the board
8 on whether the physician's conduct was necessary to prevent
9 the death of the mother whose life was endangered by a
10 physical disorder, physical illness, or physical injury.

11 b. The board's findings concerning the physician's conduct
12 are admissible at the criminal trial of the physician. Upon a
13 motion of the physician, the court shall delay the beginning
14 of the trial for not more than thirty days to permit the
15 hearing before the board of medical examiners to take place.

16

EXPLANATION

17 This bill prohibits a person from performing a partial-
18 birth abortion. Notwithstanding the prohibition, the bill
19 provides that a person may perform a partial-birth abortion,
20 if the partial-birth abortion is necessary to prevent the
21 death of a mother whose life is endangered by a physical
22 disorder, physical illness, or physical injury and no other
23 medical procedure will prevent the death of the mother.

24 The bill defines "abortion", "partial-birth abortion", and
25 "vaginally delivers a living fetus before killing the fetus"
26 for the purposes of the bill. The bill also provides that the
27 provisions in the bill are not to be construed to create a
28 right to an abortion.

29 The bill provides that the mother, the father of the fetus,
30 or, if the mother is less than 18 years of age at the time of
31 the performance of the partial-birth abortion, a maternal
32 grandparent of the fetus may bring a civil action against a
33 person violating the criminal provisions of the bill for
34 relief which includes statutory and compensatory damages.

35 A person who performs a partial-birth abortion in violation

1 of the bill is guilty of a class "C" felony which carries a
2 maximum sentence of confinement not to exceed 10 years and a
3 fine of at least \$500 but not to exceed \$10,000.

4 If a licensed physician subject to the authority of the
5 board of medical examiners is accused of an offense under the
6 bill, the licensed physician may seek a hearing from the board
7 as to whether the physician's conduct was necessary in
8 preventing the mother's death. Upon the motion of an accused
9 licensed physician, the court is to delay the beginning of a
10 criminal trial for 30 days to permit the hearing before the
11 board.

12 The bill excludes the mother upon whom a partial-birth
13 abortion is performed from prosecution for violation of the
14 bill, or for conspiracy to violate the bill.

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