
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1948 Session of
2015

INTRODUCED BY RAPP, BARBIN, CUTLER, SNYDER, REED, TURZAI, MAJOR, KAVULICH, BAKER, KAUFFMAN, OBERLANDER, BENNINGHOFF, GREINER, SACCONI, WARD, TALLMAN, STEPHENS, MCGINNIS, ROAE, DUSH, METZGAR, WENTLING, ORTITAY, TOPPER, B. MILLER, SCHEMEL, COX, PETRARCA, MAHONEY, HARHAI, BURNS, SONNEY, KNOWLES, D. PARKER, GABLER, EVERETT, KLUNK, LEWIS, SANKEY, WARNER, CAUSER, STAATS, METCALFE, REESE, ZIMMERMAN, PICKETT, MARSHALL, GINGRICH, PAYNE, LAWRENCE, SAYLOR, DUNBAR, FEE, MAHER, EMRICK, PEIFER, READSHAW, CHRISTIANA, MALONEY, F. KELLER, NESBIT, DIAMOND, QUIGLEY, MUSTIO, BOBACK, BLOOM, HELM, JOZWIAK, GILLEN, HARPER, PHILLIPS-HILL, IRVIN, DAY, HENNESSEY, GROVE, MARSICO, TOOHIL, RADER, JAMES, HICKERNELL, EVANKOVICH, TOBASH, GIBBONS, HAHN, PYLE, WATSON, KORTZ, MOUL, A. HARRIS, MURT, ROTHMAN, MICCARELLI, SANTORA, REGAN, ELLIS, VEREB, KILLION, WHEELAND, KOTIK, BARRAR AND M. K. KELLER, APRIL 1, 2016

REFERRED TO COMMITTEE ON HEALTH, APRIL 1, 2016

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in abortion, further providing for
3 definitions and for medical consultation and judgment,
4 repealing provisions related to spousal notice, further
5 providing for the offense of abortion of unborn child of 24
6 or more weeks gestational age, providing for dismemberment
7 abortion ban and further providing for reporting.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 3203 of Title 18 of the Pennsylvania
11 Consolidated Statutes is amended by adding a definition to read:

12 § 3203. Definitions.

13 The following words and phrases when used in this chapter

1 shall have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

3 * * *

4 "Dismemberment abortion." The act of knowingly and
5 purposefully causing the death of an unborn child by means of
6 dismembering the unborn child and extracting the unborn child
7 one piece at a time from the uterus through the use of clamps,
8 grasping forceps, tongs, scissors or similar instruments. The
9 term does not include an abortion which is exclusively performed
10 through suction curettage.

11 * * *

12 Section 2. Section 3204(b) of Title 18 is amended to read:

13 § 3204. Medical consultation and judgment.

14 * * *

15 (b) Requirements.--Except in a medical emergency where there
16 is insufficient time before the abortion is performed, the woman
17 upon whom the abortion is to be performed shall have a private,
18 in-person medical consultation either with the physician who is
19 to perform the abortion or with the referring physician. The
20 consultation will be in a place, at a time and of a duration
21 reasonably sufficient to enable the physician to determine
22 whether, based on his best clinical judgment, the abortion is
23 necessary.

24 * * *

25 Section 3. Section 3209 of Title 18 is repealed:

26 [§ 3209. Spousal notice.

27 (a) Spousal notice required.--In order to further the
28 Commonwealth's interest in promoting the integrity of the
29 marital relationship and to protect a spouse's interests in
30 having children within marriage and in protecting the prenatal

1 life of that spouse's child, no physician shall perform an
2 abortion on a married woman, except as provided in subsections
3 (b) and (c), unless he or she has received a signed statement,
4 which need not be notarized, from the woman upon whom the
5 abortion is to be performed, that she has notified her spouse
6 that she is about to undergo an abortion. The statement shall
7 bear a notice that any false statement made therein is
8 punishable by law.

9 (b) Exceptions.--The statement certifying that the notice
10 required by subsection (a) has been given need not be furnished
11 where the woman provides the physician a signed statement
12 certifying at least one of the following:

13 (1) Her spouse is not the father of the child.

14 (2) Her spouse, after diligent effort, could not be
15 located.

16 (3) The pregnancy is a result of spousal sexual assault
17 as described in section 3128 (relating to spousal sexual
18 assault), which has been reported to a law enforcement agency
19 having the requisite jurisdiction.

20 (4) The woman has reason to believe that the furnishing
21 of notice to her spouse is likely to result in the infliction
22 of bodily injury upon her by her spouse or by another
23 individual.

24 Such statement need not be notarized, but shall bear a notice
25 that any false statements made therein are punishable by law.

26 (c) Medical emergency.--The requirements of subsection (a)
27 shall not apply in case of a medical emergency.

28 (d) Forms.--The department shall cause to be published forms
29 which may be utilized for purposes of providing the signed
30 statements required by subsections (a) and (b). The department

1 shall distribute an adequate supply of such forms to all
2 abortion facilities in this Commonwealth.

3 (e) Penalty; civil action.--Any physician who violates the
4 provisions of this section is guilty of "unprofessional
5 conduct," and his or her license for the practice of medicine
6 and surgery shall be subject to suspension or revocation in
7 accordance with procedures provided under the act of October 5,
8 1978 (P.L.1109, No.261), known as the Osteopathic Medical
9 Practice Act, the act of December 20, 1985 (P.L.457, No.112),
10 known as the Medical Practice Act of 1985, or their successor
11 acts. In addition, any physician who knowingly violates the
12 provisions of this section shall be civilly liable to the spouse
13 who is the father of the aborted child for any damages caused
14 thereby and for punitive damages in the amount of \$5,000, and
15 the court shall award a prevailing plaintiff a reasonable
16 attorney fee as part of costs.]

17 Section 4. Section 3211 of Title 18 is amended to read:

18 § 3211. Abortion on unborn child of [24] 20 or more weeks
19 gestational age.

20 (a) Prohibition.--Except as provided in subsection (b), no
21 person shall perform or induce an abortion upon another person
22 when the gestational age of the unborn child is [24] 20 or more
23 weeks.

24 (b) Exceptions.--

25 (1) It shall not be a violation of subsection (a) if an
26 abortion is performed by a physician and that physician
27 reasonably believes that it is necessary to prevent either
28 the death of the pregnant woman or the substantial and
29 irreversible impairment of a major bodily function of the
30 woman. No abortion shall be deemed authorized under this

1 paragraph if performed on the basis of a claim or a diagnosis
2 that the woman will engage in conduct which would result in
3 her death or in substantial and irreversible impairment of a
4 major bodily function.

5 (2) It shall not be a violation of subsection (a) if the
6 abortion is performed by a physician and that physician
7 reasonably believes, after making a determination of the
8 gestational age of the unborn child in compliance with
9 section 3210 (relating to determination of gestational age),
10 that the unborn child is less than [24] 20 weeks gestational
11 age.

12 (c) Abortion regulated.--Except in the case of a medical
13 emergency which, in the reasonable medical judgment of the
14 physician performing the abortion, prevents compliance with a
15 particular requirement of this subsection, no abortion which is
16 authorized under subsection (b)(1) shall be performed unless
17 each of the following conditions is met:

18 (1) The physician performing the abortion certifies in
19 writing that, based upon his medical examination of the
20 pregnant woman and his medical judgment, the abortion is
21 necessary to prevent either the death of the pregnant woman
22 or the substantial and irreversible impairment of a major
23 bodily function of the woman.

24 (2) Such physician's judgment with respect to the
25 necessity for the abortion has been concurred in by one other
26 licensed physician who certifies in writing that, based upon
27 his or her separate personal medical examination of the
28 pregnant woman and his or her medical judgment, the abortion
29 is necessary to prevent either the death of the pregnant
30 woman or the substantial and irreversible impairment of a

1 major bodily function of the woman.

2 (3) The abortion is performed in a hospital.

3 (4) The physician terminates the pregnancy in a manner
4 which provides the best opportunity for the unborn child to
5 survive, unless the physician determines, in his or her good
6 faith medical judgment, that termination of the pregnancy in
7 that manner poses a significantly greater risk either of the
8 death of the pregnant woman or the substantial and
9 irreversible impairment of a major bodily function of the
10 woman than would other available methods.

11 (5) The physician performing the abortion arranges for
12 the attendance, in the same room in which the abortion is to
13 be completed, of a second physician who shall take control of
14 the child immediately after complete extraction from the
15 mother and shall provide immediate medical care for the
16 child, taking all reasonable steps necessary to preserve the
17 child's life and health.

18 (d) Penalty.--Any person who violates subsection (a) commits
19 a felony of the third degree. Any person who violates subsection
20 (c) commits a misdemeanor of the second degree for the first
21 offense and a misdemeanor of the first degree for subsequent
22 offenses.

23 Section 5. Title 18 is amended by adding a section to read:
24 § 3211.1. Dismemberment abortion ban.

25 (a) Prohibition for abortions at 20 or more weeks.--An
26 individual may not perform or attempt to perform a dismemberment
27 abortion upon another individual when the gestational age of the
28 unborn child is 20 or more weeks unless all of the following
29 apply:

30 (1) The individual performing or attempting to perform

1 the dismemberment abortion is a physician and certifies in
2 writing that, based upon the physician's medical examination
3 of the pregnant woman and the physician's medical judgment,
4 the abortion is necessary to prevent either the death of the
5 pregnant woman or the substantial and irreversible impairment
6 of a major bodily function of the woman.

7 (2) Such physician's judgment with respect to the
8 necessity for the abortion has been concurred in by one other
9 licensed physician who certifies in writing that, based upon
10 his or her separate personal medical examination of the
11 pregnant woman and his or her medical judgment, the abortion
12 is necessary to prevent either the death of the pregnant
13 woman or the substantial and irreversible impairment of a
14 major bodily function of the woman.

15 (3) The abortion is performed in a hospital.

16 (4) The physician terminates the pregnancy in a manner
17 which provides the best opportunity for the unborn child to
18 survive, unless the physician determines, in his or her good
19 faith medical judgment, that termination of the pregnancy in
20 that manner poses a significantly greater risk either of the
21 death of the pregnant woman or the substantial and
22 irreversible impairment of a major bodily function of the
23 woman than would other available methods.

24 (5) The physician performing the abortion arranges for
25 the attendance, in the same room in which the abortion is to
26 be completed, of a second physician who shall take control of
27 the child immediately after complete extraction from the
28 mother and shall provide immediate medical care for the
29 child, taking all reasonable steps necessary to preserve the
30 child's life and health.

1 (b) Prohibition before 20 weeks of gestational age.--An
2 individual may not perform or attempt to perform a dismemberment
3 abortion upon another individual when the gestational age of the
4 unborn child is less than 20 weeks unless both of the following
5 apply:

6 (1) The individual performing or attempting to perform
7 the dismemberment abortion is a physician and certifies in
8 writing that, based upon the physician's medical examination
9 of the pregnant woman and the physician's medical judgment,
10 the abortion is necessary to prevent either the death of the
11 pregnant woman or the substantial and irreversible impairment
12 of a major bodily function of the woman.

13 (2) The physician's judgment with respect to the
14 necessity for the abortion has been concurred in by one other
15 licensed physician who certifies in writing that, based
16 upon his or her separate personal medical examination of
17 the pregnant woman and his or her medical judgment, the
18 abortion is necessary to prevent either the death of the
19 pregnant woman or the substantial and irreversible
20 impairment of a major bodily function of the woman.

21 (c) Liability.--The following individuals shall not be
22 liable for performing or attempting to perform a dismemberment
23 abortion:

24 (1) The female patient upon whom the dismemberment
25 abortion is performed or attempted to be performed.

26 (2) A nurse, technician, secretary or receptionist who
27 is not a physician but is acting at the direction of a
28 physician.

29 (3) A pharmacist or other individual who fills a
30 prescription or provides instruments or materials used in a

1 dismemberment abortion at the direction of or to a physician.

2 (d) Penalty.--Any individual who violates subsection (a) or

3 (b) commits a felony of the third degree.

4 Section 6. Section 3214(a) of Title 18 is amended to read:

5 § 3214. Reporting.

6 (a) General rule.--For the purpose of promotion of maternal
7 health and life by adding to the sum of medical and public
8 health knowledge through the compilation of relevant data, and
9 to promote the Commonwealth's interest in protection of the
10 unborn child, a report of each abortion performed shall be made
11 to the department on forms prescribed by it. The report forms
12 shall not identify the individual patient by name and shall
13 include the following information:

14 (1) Identification of the physician who performed the
15 abortion, the concurring physician as required by section
16 3211(c)(2) (relating to abortion on unborn child of [24] 20
17 or more weeks gestational age) or 3211.1(a)(2) or (b)(2)
18 (relating to dismemberment abortion ban), the second
19 physician as required by section 3211(c)(5) or 3211.1(a)(2)
20 or (b)(2) and the facility where the abortion was performed
21 and of the referring physician, agency or service, if any.

22 (2) The county and state in which the woman resides.

23 (3) The woman's age.

24 (4) The number of prior pregnancies and prior abortions
25 of the woman.

26 (5) The gestational age of the unborn child at the time
27 of the abortion.

28 (6) The type of procedure performed or prescribed and
29 the date of the abortion.

30 (7) Pre-existing medical conditions of the woman which

1 would complicate pregnancy, if any, and, if known, any
2 medical complication which resulted from the abortion itself.

3 (8) The basis for the medical judgment of the physician
4 who performed the abortion that the abortion was necessary to
5 prevent either the death of the pregnant woman or the
6 substantial and irreversible impairment of a major bodily
7 function of the woman, where an abortion has been performed
8 pursuant to section 3211(b)(1) or 3211.1(a)(1) or (b)(1).

9 (9) The weight of the aborted child for any abortion
10 performed pursuant to section 3211(b)(1) or 3211.1(a)(1) or
11 (b)(1).

12 (10) Basis for any medical judgment that a medical
13 emergency existed which excused the physician from compliance
14 with any provision of this chapter.

15 (11) The information required to be reported under
16 section 3210(a) (relating to determination of gestational
17 age).

18 [(12) Whether the abortion was performed upon a married
19 woman and, if so, whether notice to her spouse was given. If
20 no notice to her spouse was given, the report shall also
21 indicate the reason for failure to provide notice.]

22 * * *

23 Section 7. This act shall take effect in 60 days.