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A. HARRIS, MURT, ROTHMAN, MCCAPELLI, SANTORA, REGAN, ELLIS,
VERSE, KILLION, WHEELAND, KOTIK, BARRAR AND M. K. KELLER,
APRIL 1, 2016

REFERRED TO COMMITTEE ON HEALTH, APRIL 1, 2016

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania
Consolidated Statutes, in abortion, further providing for
definitions and for medical consultation and judgment,
repealing provisions related to spousal notice, further
providing for the offense of abortion of unborn child of 24
or more weeks gestational age, providing for dismemberment
abortion ban and further providing for reporting.
The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

Section 1. Section 3203 of Title 18 of the Pennsylvania
Consolidated Statutes is amended by adding a definition to read:
§ 3203. Definitions.
The following words and phrases when used in this chapter
shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

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

* * *

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

§ 3204. Medical consultation and judgment.

* * *

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

* * *

Section 3. Section 3209 of Title 18 is repealed:

§ 3209. Spousal notice.

(a) Spousal notice required.--In order to further the Commonwealth's interest in promoting the integrity of the marital relationship and to protect a spouse's interests in having children within marriage and in protecting the prenatal
life of that spouse's child, no physician shall perform an
abortion on a married woman, except as provided in subsections
(b) and (c), unless he or she has received a signed statement,
which need not be notarized, from the woman upon whom the
abortion is to be performed, that she has notified her spouse
that she is about to undergo an abortion. The statement shall
bear a notice that any false statement made therein is
punishable by law.

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

(1) Her spouse is not the father of the child.
(2) Her spouse, after diligent effort, could not be
located.
(3) The pregnancy is a result of spousal sexual assault
as described in section 3128 (relating to spousal sexual
assault), which has been reported to a law enforcement agency
having the requisite jurisdiction.
(4) The woman has reason to believe that the furnishing
of notice to her spouse is likely to result in the infliction
of bodily injury upon her by her spouse or by another
individual.

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

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

(d) Forms.--The department shall cause to be published forms
which may be utilized for purposes of providing the signed
statements required by subsections (a) and (b). The department
shall distribute an adequate supply of such forms to all abortion facilities in this Commonwealth.

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

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

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

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

(b) Exceptions.--

(1) It shall not be a violation of subsection (a) if an abortion is performed by a physician and that physician reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. No abortion shall be deemed authorized under this 20160HB1948PN3056 - 4 -
paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of a major bodily function.

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

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

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

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

(3) The abortion is performed in a hospital.

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

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

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

Section 5. Title 18 is amended by adding a section to read:

§ 3211.1. Dismemberment abortion ban.

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

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

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

(3) The abortion is performed in a hospital.

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

(5) The physician performing the abortion arranges for
the attendance, in the same room in which the abortion is to
be completed, of a second physician who shall take control of
the child immediately after complete extraction from the
mother and shall provide immediate medical care for the
child, taking all reasonable steps necessary to preserve the
child's life and health.
(b) Prohibition before 20 weeks of gestational age.--An individual may not perform or attempt to perform a dismemberment abortion upon another individual when the gestational age of the unborn child is less than 20 weeks unless both of the following apply:

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

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

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

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

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

3. A pharmacist or other individual who fills a prescription or provides instruments or materials used in a
dismemberment abortion at the direction of or to a physician.

(d) Penalty.--Any individual who violates subsection (a) or
(b) commits a felony of the third degree.

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

§ 3214. Reporting.

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

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

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

(3) The woman's age.

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

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

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

(7) Pre-existing medical conditions of the woman which
would complicate pregnancy, if any, and, if known, any medical complication which resulted from the abortion itself.

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

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

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

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

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

* * *

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