

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1077 Session of 2011

INTRODUCED BY RAPP, KULA, TURZAI, STERN, DENLINGER, CUTLER, ADOLPH, AUMENT, BAKER, BARBIN, BARRAR, BEAR, BENNINGHOFF, BLOOM, BOBACK, BOYD, BROOKS, R. BROWN, CALTAGIRONE, CAUSER, CHRISTIANA, CLYMER, COX, CREIGHTON, DAY, DIGIROLAMO, DUNBAR, ELLIS, EMRICK, EVANKOVICH, J. EVANS, EVERETT, FLECK, GABLER, GEIST, GIBBONS, GILLEN, GILLESPIE, GINGRICH, GODSHALL, GRELL, GROVE, HACKETT, HAHN, HARHART, HARKINS, HARRIS, HEFFLEY, HELM, HENNESSEY, HESS, HICKERNELL, HORNAMAN, HUTCHINSON, KAUFFMAN, KAVULICH, F. KELLER, KILLION, KNOWLES, KOTIK, KRIEGER, LAWRENCE, LONGIETTI, MAHONEY, MAJOR, MALONEY, MARSHALL, MARSICO, MASSER, METCALFE, METZGAR, MICCARELLI, MICOZZIE, MILLARD, MOUL, MURT, MUSTIO, OBERLANDER, PAYNE, PEIFER, PERRY, PICKETT, PYLE, QUIGLEY, READSHAW, REED, REESE, REICHLEY, ROAE, ROCK, SACCONI, SANTONI, SAYLOR, SCAVELLO, CULVER, SCHRODER, SIMMONS, K. SMITH, S. H. SMITH, SONNEY, STEVENSON, SWANGER, TALLMAN, TAYLOR, THOMAS, TOBASH, TOEPEL, TOOHIL, TRUITT, VEREB, VULAKOVICH AND WATSON, OCTOBER 5, 2011

REFERRED TO COMMITTEE ON HEALTH, OCTOBER 5, 2011

AN ACT

1 Providing for ultrasound test requirements to determine
 2 gestational ages of unborn children; establishing the right
 3 to view ultrasound image and ultrasound video of unborn child
 4 and the right to observe or hear the fetal heartbeat;
 5 providing for powers and duties of the Department of Health
 6 and for duties of physicians performing abortions; requiring
 7 certain reports to be filed with the Department of Health;
 8 imposing administrative sanctions and criminal penalties; and
 9 providing for remedies.

10 The General Assembly of the Commonwealth of Pennsylvania
 11 hereby enacts as follows:

12 Section 1. Short title.

13 This act shall be known and may be cited as the Women's
 14 Right-to-Know Act.

1 Section 2. Findings.

2 The General Assembly finds and declares as follows:

3 (1) Many women are unaware of the state of development
4 of their unborn child.

5 (2) An ultrasound test is a medical procedure commonly
6 utilized during a woman's pregnancy to determine fetal
7 gestational age, fetal measurements, the progress of fetal
8 development and fetal health.

9 (3) The fetal heartbeat also provides useful information
10 on fetal health.

11 (4) The factual information provided by ultrasound
12 tests, including fetal heartbeat, is relevant to any decision
13 regarding a pregnancy and is relevant to the State's interest
14 in ensuring that informed consent is provided.

15 (5) Abortion is a medical procedure and, as such, it
16 requires the informed consent of the woman undergoing the
17 procedure.

18 (6) A woman considering an abortion has the right to
19 receive complete and accurate information regarding the
20 development and health of her unborn child.

21 (7) In recognition of the importance of a woman's
22 dignity in making an informed choice, the factual information
23 provided by an ultrasound test should be provided to a woman
24 as an integral part of the informed consent necessary to
25 undergo an abortion.

26 Section 3. Definitions.

27 The following words and phrases when used in this act shall
28 have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

30 "Abortion." The use of any means to terminate the clinically

1 diagnosable pregnancy of a woman with knowledge that the
2 termination by that means will, with reasonable likelihood,
3 cause the death of the unborn child.

4 "Auscultation." The act of listening for sounds made by
5 internal organs of the fetus, specifically for a fetal
6 heartbeat, utilizing an ultrasound transducer and fetal heart
7 rate monitor.

8 "Department." The Department of Health of the Commonwealth.

9 "DVD." A digital versatile disc.

10 "Digital versatile disc." A laser-encoded plastic medium
11 capable of storing a large amount of digital audio, video and
12 computer data.

13 "Fetus." An individual organism of the species homo sapiens
14 from fertilization until live birth.

15 "Gestational age." The age of an unborn child as calculated
16 from the first day of the last menstrual period of the pregnant
17 woman.

18 "Informed consent." The informed consent provided for under
19 18 Pa.C.S. § 3205 (relating to informed consent).

20 "Medical emergency." As defined in 18 Pa.C.S. § 3203
21 (relating to definitions).

22 "Patient." A pregnant woman who is seeking to have an
23 abortion.

24 "Physician." A person licensed to practice medicine in this
25 Commonwealth. The term includes a medical doctor and a doctor of
26 osteopathy.

27 "Pregnancy." The female reproductive condition of having a
28 developing fetus in the body, which commences with
29 fertilization.

30 "Pregnant." Being in the state of pregnancy.

1 "Ultrasound image." An image produced through the use of an
2 ultrasound machine which is of sufficient quality to be used in
3 determining gestational age.

4 "Unborn child." An individual organism of the species homo
5 sapiens from fertilization until live birth.

6 Section 4. Ultrasound test requirements.

7 (a) Test and waiting period.--Except as set forth in section
8 10, all of the following apply:

9 (1) At least 24 hours before an abortion is to be
10 performed, an ultrasound test which produces an ultrasound
11 image shall be performed upon the patient by or for the
12 physician who is to perform the abortion or the referring
13 physician.

14 (2) The time period under paragraph (1) may run
15 concurrently with the waiting period under 18 Pa.C.S. §
16 3205(a) (relating to informed consent).

17 (b) List.--The physician who is to perform the abortion or
18 the referring physician shall provide the patient with the list
19 under section 7(a)(3).

20 (c) Basis of determination.--The ultrasound test shall be
21 used to make an accurate determination of gestational age of the
22 unborn child. Determination of gestational age shall be based
23 upon measurement of the unborn child in a manner consistent with
24 standard medical practice in the community in determining
25 gestational age. When only the gestational sac is visible during
26 an ultrasound test, gestational age may be based upon
27 measurement of the gestational sac.

28 (d) Documentation of measurements.--

29 (1) A print of the ultrasound image shall be made to
30 document the measurements which have been taken to determine

1 the gestational age of the unborn child.

2 (2) A copy of the print shall be maintained in the
3 patient's medical file at the facility where the abortion is
4 performed for the longer of:

5 (i) seven years; or

6 (ii) the extent required by applicable Federal or
7 State law.

8 (e) Individuals who may perform test.--An ultrasound test
9 may only be performed by one of the following:

10 (1) A physician.

11 (2) An individual who meets all of the following:

12 (i) Regularly conducts ultrasound tests for medical
13 purposes.

14 (ii) Has documented evidence of satisfactory
15 completion of a course, including a period of direct
16 supervision, in the operation of ultrasound equipment.

17 (iii) Has documentary evidence of periodic
18 evaluation of proficiency.

19 (f) Physician instructions.--When the physician who orders
20 the ultrasound test refers the patient to another facility, the
21 physician or a licensed health care professional to whom the
22 physician has delegated responsibility shall, in a face-to-face
23 consultation, do all of the following:

24 (1) Personally furnish the patient with the following
25 materials to take to the person who will conduct that
26 ultrasound test:

27 (i) The ultrasound direction sheet prepared under
28 section 7(a)(4).

29 (ii) The statement to be signed by the patient after
30 her ultrasound test is completed.

1 (iii) The statement to be signed by the person
2 conducting the ultrasound test.

3 (2) Instruct the patient to furnish the information
4 under paragraph (1) to the individual who conducts the
5 ultrasound test.

6 (3) Advise the patient that she will need to take her
7 statement and the signed statement of the individual who
8 performed the ultrasound test to the physician who is to
9 perform the abortion.

10 (g) Fees.--

11 (1) The amount charged for an ultrasound test must be
12 billed separately from the fee for an abortion.

13 (2) The fee for an abortion must be fully refundable if
14 the abortion does not occur.

15 Section 5. Right to view ultrasound image and observe fetal
16 heartbeat of unborn child.

17 (a) Individual performing ultrasound test.--The individual
18 performing the ultrasound test required under section 4 shall do
19 all of the following:

20 (1) Conduct the ultrasound test, including fetal
21 heartbeat, in a manner which will enable accurate
22 determination of the gestational age and development of the
23 unborn child.

24 (2) Provide the patient with accurate answers to any
25 questions she may have during the performance of the
26 ultrasound. This paragraph includes the presence of external
27 members, internal organs, cardiac activity and the expected
28 norms for an unborn child of given size or gestational age.

29 (3) Inform the patient of her right to view the
30 ultrasound test in its entirety while that test is being

1 performed to determine gestational age.

2 (4) Inform the patient of her right to observe the fetal
3 heartbeat and, if she exercises that right, make observable
4 the live real-time heartbeat, when present, for the patient
5 to observe. If the auscultation is performed, the patient
6 must also be informed of her right to hear the fetal
7 heartbeat, when present, in live real time.

8 (5) Position the screen so that the patient is able to
9 view the ultrasound test in its entirety, with a view of her
10 unborn child, while that test is being conducted to determine
11 gestational age. The patient is not required to view the
12 screen.

13 (6) Provide two prints, in separate sealed envelopes, of
14 the ultrasound image to be used to accurately determine
15 gestational age. One print shall be provided to the patient,
16 and one print shall be provided to the physician who is to
17 perform the abortion.

18 (7) Sign and date a statement indicating the time of day
19 when the ultrasound test was performed. The statement must
20 read as follows:

21 I performed an ultrasound test including fetal heartbeat
22 on (insert name of patient) on (insert date) at (insert
23 name of facility where ultrasound test was performed). At
24 that time, the gestational age was determined to be
25 weeks and the heart rate was (not present or beats
26 per minute {mark one}). The ultrasound screen was
27 positioned so that the patient would be able to view the
28 screen in its entirety while the test was being
29 performed. I informed her of her right to view the
30 ultrasound screen in its entirety while the test was

1 being performed (which she "accepted" or "refused" {mark
2 one}). I provided her with a print of the ultrasound
3 image that will be used to determine gestational age. I
4 informed her of her right to observe or hear the fetal
5 heartbeat because auscultation was performed (which she
6 "accepted" or "refused" {mark one}). (Print and sign name
7 of person performing ultrasound test and insert date of
8 signature and the time of day the test was performed.)

9 (8) Maintain a copy of the statement under paragraph (7)
10 in the patient's medical file at the facility where the
11 abortion is performed.

12 (9) Instruct the patient to:

13 (i) sign and date her statement; and

14 (ii) take her statement and the signed and dated
15 statement of the individual who performed the ultrasound
16 test to the physician who will perform the abortion.

17 (b) Written statement from patient.--

18 (1) Except as set forth in section 10, the patient must
19 sign a statement which reads as follows:

20 I was provided with an opportunity to view the ultrasound
21 test in its entirety, while that test was being
22 performed. I was given a print of the ultrasound image. I
23 was provided the opportunity to observe the fetal
24 heartbeat. (Print and sign name of patient and insert
25 date of signature.)

26 (2) The statement must be in bold print of at least ten-
27 point type and the paper containing such statement must only
28 include material which is necessary to carry out the purpose
29 of this subsection.

30 (3) A copy of the statement, signed and dated by the

1 patient and with the patient's name printed on it, shall be
2 maintained in the patient's medical file at the facility
3 where the abortion is performed.

4 Section 6. Ultrasound video.

5 (a) Scope.--This section applies if the abortion is not
6 performed within 14 days of the performance of the ultrasound
7 test under section 4.

8 (b) Physician duties.--

9 (1) The physician who performs the abortion shall, in
10 person, do all of the following:

11 (i) Inform the patient of the probable gestational
12 age of the unborn child at the time the abortion is
13 performed.

14 (ii) Record the fetal heart rate and note if the
15 heart rate is within a normal range for the estimated
16 gestational age.

17 (iii) Offer the patient an opportunity to view an
18 ultrasound video which accurately depicts an unborn child
19 at the stage in pregnancy when her abortion is performed.

20 (2) The duties under paragraph (1) are discharged by
21 providing the patient with:

22 (i) an opportunity to view, on site, an appropriate
23 ultrasound video approved by the department; or

24 (ii) the DVD or viewable electronic medium under
25 section 7(a) (5).

26 (c) Written statement.--

27 (1) The patient must sign a statement which reads as
28 follows:

29 I was informed of the probable gestational age of my
30 unborn child at the time the abortion was performed. I

1 was provided an opportunity to view an ultrasound video
2 approved and provided by the Department of Health. (Print
3 and sign name of pregnant woman and insert date of
4 signature.)

5 (2) The physician who performs the abortion shall
6 personally provide the patient with the information required
7 by this section and shall sign a statement which reads as
8 follows:

9 Prior to performing an abortion on (insert name of
10 pregnant woman) at (insert name of facility), I
11 personally informed her of the probable gestational age
12 of her unborn child and I provided her with an
13 opportunity to view an ultrasound video and observe or
14 hear a fetal heartbeat which accurately depicted an
15 unborn child at the same stage of pregnancy when the
16 abortion was performed and she (insert "accepted" or
17 "declined") this opportunity. (Print and sign name of
18 physician and insert date of signature.)

19 (d) Documentation.--A copy of the signed and dated
20 statements required under subsection (c) shall be maintained in
21 the patient's medical file at the facility where the abortion is
22 performed.

23 Section 7. Department.

24 (a) Duties.--The department shall do all of the following to
25 implement this act:

26 (1) Obtain from physicians information necessary to
27 prepare the report required under section 9.

28 (2) Prepare forms for statements and reports required
29 under this act and place the forms on a departmental Internet
30 website.

1 (3) Prepare a geographically indexed list of health care
2 providers, facilities and clinics that perform ultrasounds
3 which provide ultrasound images, including those that offer
4 ultrasound services free of charge. This paragraph requires
5 contact information for each provider, facility or clinic,
6 including telephone numbers and, if available, Internet
7 website addresses.

8 (4) Prepare an ultrasound direction sheet which sets
9 forth the requirements of section 5(a).

10 (5) Approve a DVD or other viewable electronic medium of
11 ultrasound videos which it determines provides accurate and
12 clear ultrasound video images of unborn children and audible
13 fetal heartbeats in weekly stages, or as close to those
14 stages as possible, for patients to view to learn what an
15 unborn child's development will be like at the time of the
16 scheduled abortion.

17 (6) Transmit a notice of approval under paragraph (5) to
18 the Legislative Reference Bureau for publication in the
19 Pennsylvania Bulletin.

20 (7) Submit an annual report to the Secretary of the
21 Senate and the Chief Clerk of the House of Representatives by
22 March 31 based upon the information obtained under this act
23 for the preceding calendar year. The report shall be
24 available for public inspection and copying. The report under
25 this paragraph shall not contain information which discloses
26 the identity of a patient. The report shall include the
27 following information:

28 (i) The gestational ages of unborn children:

29 (A) determined by ultrasound image under section

30 4; and

1 (B) set forth in categories beginning with those
2 at eight weeks and proceeding forward in two-week
3 increments.

4 (ii) The number of instances when the ultrasound
5 test referred to under section 4 was performed at the
6 facility where the abortion was performed.

7 (iii) The number of instances when exemptions were
8 claimed under section 10(b) and (c), listed separately by
9 the type of exemption.

10 (b) Powers.--The department may promulgate regulations to
11 implement this act.

12 Section 8. Duties of physicians performing abortion and
13 abortion facilities.

14 (a) Prerequisites.--Except as set forth in section 10, an
15 abortion may not be performed unless all of the following apply:

16 (1) The physician performing the abortion possesses a
17 copy of:

18 (i) the print of the ultrasound image under section
19 5(a)(6);

20 (ii) the statement under section 5(b); and

21 (iii) if applicable, the statement under section
22 6(c).

23 (2) The physician performing the abortion, in person,
24 informs the patient of the probable gestational age of the
25 unborn child.

26 (3) At least 24 hours have elapsed since the time when
27 the ultrasound test required under section 4 was performed,
28 as indicated in the statement required under section 5(b).

29 (b) Physician statement.--If an exemption under section 10
30 applies, the physician who performs the abortion shall sign and

1 date the statement set forth below:

2 The exemption set forth in section 10(insert "(a)", "(b)" or
3 "(c)") applies to the abortion that I performed upon (insert
4 name of patient). I made this determination on the basis of
5 the following: (insert medical factors dictating application
6 of exemption). (Print and sign physician's name and insert
7 date of signature.)

8 (c) Recordkeeping.--

9 (1) The physician statement required by subsection (b)
10 and the print of the ultrasound test or another method of
11 storing the ultrasound image shall be placed in the medical
12 file of the patient at the facility where the abortion is
13 performed.

14 (2) The items under paragraph (1) shall be maintained
15 for the longer of:

16 (i) seven years; or

17 (ii) the extent required by applicable Federal or
18 State law.

19 Section 9. Reports by physicians.

20 (a) Duty of physicians to file.--A physician who performs an
21 abortion shall file a signed report with the department. The
22 report shall not identify the patient by name and shall include
23 the following information:

24 (1) The name of the physician who caused the ultrasound
25 test to be performed, the name of the person who performed
26 the ultrasound test and the facility where the ultrasound
27 test was performed.

28 (2) The date the ultrasound test was performed.

29 (3) The name of the physician who performed the abortion
30 and the facility where the abortion was performed.

1 (4) The date the abortion was performed.

2 (5) The gestational age of the unborn child as
3 determined by the ultrasound image required under section 4.

4 (6) Whether the patient declined the opportunity to:

5 (i) view the ultrasound image; or

6 (ii) observe or hear the fetal heartbeat.

7 (7) The basis for the medical judgment of the physician
8 that a medical emergency existed.

9 (8) The basis for the medical judgment of the physician
10 that an exemption under section 10(b) applies.

11 (9) Whether section 6 applied to the patient and whether
12 she declined the opportunity to view the video.

13 (b) Filing deadline.--Reports under this section shall be
14 filed with the department within 15 days after the end of the
15 month.

16 (c) Confidentiality.--Reports under this section may not
17 contain information which discloses the identity of a patient.
18 Section 10. Exemptions.

19 (a) Medical emergencies.--Sections 4, 5 and 8 shall not
20 apply if a medical emergency exists.

21 (b) Gestational age.--Sections 4, 5 and 8 shall not apply
22 if, in the physician's reasonable medical opinion, the probable
23 gestational age of the unborn child is less than eight weeks.

24 (c) Rape or incest.--Sections 4, 5 and 8 shall not apply if
25 the patient's pregnancy is the result of rape or incest.

26 Section 11. Administrative sanctions.

27 A physician who knowingly violates this act shall be deemed
28 to have engaged in unprofessional conduct and shall be subject
29 to appropriate disciplinary action under:

30 (1) the act of October 5, 1978 (P.L.1109, No.261), known

1 as the Osteopathic Medical Practice Act; or

2 (2) the act of December 20, 1985 (P.L.457, No.112),

3 known as the Medical Practice Act of 1985.

4 Section 12. Criminal penalties.

5 (a) Specific violations.--

6 (1) A physician who knowingly violates section 4, 5, 6
7 or 8 and performs an abortion commits a misdemeanor of the
8 third degree.

9 (2) An individual who knowingly violates section 4
10 commits a misdemeanor of the third degree.

11 (3) An individual other than a patient who executes a
12 written statement required by this act with knowledge that
13 the statement is false commits a misdemeanor of the third
14 degree.

15 (b) Disclosure of patient's identity.--

16 (1) Except as set forth in paragraph (2), all of the
17 following apply:

18 (i) A health care provider that learns of the
19 identity of a patient may not disclose the identity of
20 the patient.

21 (ii) A public employee or official that learns of
22 the identity of a patient may not disclose the identity
23 of the patient.

24 (2) Paragraph (1) does not apply if disclosure:

25 (i) is appropriate to carry out the purposes of this
26 act; or

27 (ii) is made with the consent of the patient.

28 (3) A person that knowingly violates this subsection
29 commits a misdemeanor of the second degree.

30 Section 13. Civil remedies.

1 (a) Equity.--

2 (1) This subsection applies to any of the following that
3 knowingly performs an abortion in violation of this act:

4 (i) A physician.

5 (ii) A facility at which an abortion is performed.

6 (2) Any of the following may seek an injunction against
7 a person specified in paragraph (1):

8 (i) The woman who was a patient.

9 (ii) The district attorney in the county where an
10 abortion was performed.

11 (iii) The Attorney General.

12 (3) An injunction under this section shall prevent the
13 person from performing further abortions.

14 (b) Law.--If a physician or health care provider performs an
15 abortion in violation of this act, the physician or health care
16 provider shall be liable for actual damages as follows:

17 (1) Except as set forth in paragraph (2), to the
18 patient.

19 (2) To the parent or legal guardian of a patient who, at
20 the time of the abortion:

21 (i) is under 18 years of age and not emancipated; or

22 (ii) is incapacitated under 20 Pa.C.S. § 5512.1

23 (relating to determination of incapacity and appointment
24 of guardian).

25 (c) Attorney fees.--The court shall award attorney fees as
26 follows:

27 (1) To a successful petitioner under subsection (a)(2).

28 (2) To a successful plaintiff under subsection (b).

29 Section 14. Construction.

30 Nothing in this act shall be deemed to do any of the

1 following:

2 (1) Eliminate the application of the 24-hour waiting
3 period under 18 Pa.C.S. § 3205 (relating to informed
4 consent).

5 (2) Limit or repeal any provision of 18 Pa.C.S. Ch. 32
6 (relating to abortion).

7 Section 48. Severability.

8 The provisions of this act are severable. If any provision of
9 this act or its application to any person or circumstance is
10 held invalid, the invalidity shall not affect other provisions
11 or applications of this act which can be given effect without
12 the invalid provision or application.

13 Section 49. Applicability.

14 The requirements of this act shall not be deemed inoperative
15 prior to the preparation of forms by the department under
16 section 7(a)(2).

17 Section 50. Effective date.

18 This act shall take effect as follows:

19 (1) The following provisions shall take effect
20 immediately:

21 (i) Section 7.

22 (ii) Section 49.

23 (iii) This section.

24 (2) Section 6 shall take effect 30 days after the
25 publication of the notice under section 7(a)(6).

26 (3) The remainder of this act shall take effect in 90
27 days.