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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 77 Session of  
2017

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INTRODUCED BY RAPP, KAVULICH, TURZAI, REED, CUTLER, OBERLANDER, BENNINGHOFF, SAYLOR, BAKER, KNOWLES, SCHEMEL, WARD, KLUNK, ZIMMERMAN, B. MILLER, ROE, KEEFER, RYAN, KORTZ, DIAMOND, PICKETT, READSHAW, TALLMAN, WARNER, RADER, GABLER, MCGINNIS, HAGGERTY, METZGAR, CAUSER, BARRAR, IRVIN, METCALFE, QUIGLEY, TOPPER, WHEELAND, GREINER, A. HARRIS, BLOOM, MILLARD, PHILLIPS-HILL, NELSON, DUSH, STAATS, GROVE, HICKERNELL, LAWRENCE, JAMES, MARSICO, COX, GILLEN, PEIFER, ROAE, WENTLING, DeLUCA, EVERETT, NESBIT, ORTITAY, HENNESSEY, SONNEY, NEILSON, KAUFFMAN, FEE, PYLE, TOOHL, HELM, SACCONI, SANKEY, ELLIS, BOBACK AND ROTHMAN, FEBRUARY 21, 2017

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 21, 2017

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

16 \* \* \*

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

8 \* \* \*

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

10 § 3204. Medical consultation and judgment.

11 \* \* \*

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

21 \* \* \*

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 Section 3209 of Title 18 is repealed:

23 [§ 3209. Spousal notice.

24 (a) Spousal notice required.--In order to further the  
25 Commonwealth's interest in promoting the integrity of the  
26 marital relationship and to protect a spouse's interests in  
27 having children within marriage and in protecting the prenatal  
28 life of that spouse's child, no physician shall perform an  
29 abortion on a married woman, except as provided in subsections  
30 (b) and (c), unless he or she has received a signed statement,

1 which need not be notarized, from the woman upon whom the  
2 abortion is to be performed, that she has notified her spouse  
3 that she is about to undergo an abortion. The statement shall  
4 bear a notice that any false statement made therein is  
5 punishable by law.

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

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

11 (2) Her spouse, after diligent effort, could not be  
12 located.

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

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

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

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

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

30 (e) Penalty; civil action.--Any physician who violates the

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

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

15 § 3211. Abortion on unborn child of [24] 20 or more weeks  
16 gestational age.

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

21 (b) Exceptions.--

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

1 major bodily function.

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

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

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

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

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

30 (4) The physician terminates the pregnancy in a manner

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

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

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

20 Section 5. Title 18 is amended by adding a section to read:  
21 § 3211.1. Dismemberment abortion ban.

22 (a) Prohibition for abortions at 20 or more weeks.--Except  
23 as provided for in subsection (b), an individual may not perform  
24 or attempt to perform a dismemberment abortion upon another  
25 individual when the gestational age of the unborn child is 20 or  
26 more weeks.

27 (b) Exception.--An individual may only perform or attempt to  
28 perform a dismemberment abortion upon an individual when the  
29 gestational age of the unborn child is 20 or more weeks if all  
30 the following apply:

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

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

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

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

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

1 child's life and health.

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

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

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

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

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

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

30 (3) A pharmacist or other individual who fills a



1 prescription or provides instruments or materials used in a  
2 dismemberment abortion at the direction of or to a physician.

3 (e) Penalty.--Any individual who violates subsection (a) or  
4 (c) commits a felony of the third degree.

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

6 § 3214. Reporting.

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

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

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

24 (3) The woman's age.

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

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

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

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

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

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

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

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

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

23 \* \* \*

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