

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 428 Session of
2023

INTRODUCED BY HOWARD, SANCHEZ, KINSEY, GUENST, SCHLOSSBERG,
MADDEN, PIELLI, FIEDLER, PROBST, HOHENSTEIN, DELLOSO, HILL-
EVANS, STURLA, KINKEAD, KIM, OTTEN, SHUSTERMAN AND O'MARA,
MARCH 15, 2023

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 2023

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 20 (Decedents, Estates
2 and Fiduciaries) and 35 (Health and Safety) of the
3 Pennsylvania Consolidated Statutes, in assault, further
4 providing for the offense of aggravated assault and for
5 probable cause arrests in domestic violence cases; repealing
6 provisions relating to abortion; in incapacitated persons,
7 further providing for provisions concerning powers, duties
8 and liabilities; providing for reproductive rights; imposing
9 duties on the Department of Health; and imposing penalties.

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

12 Section 1. Sections 2702(a) and (b) and 2711(a) of Title 18
13 of the Pennsylvania Consolidated Statutes are amended to read:

14 § 2702. Aggravated assault.

15 (a) Offense defined.--A person is guilty of aggravated
16 assault if he:

17 (1) attempts to cause serious bodily injury to another,
18 or causes such injury intentionally, knowingly or recklessly
19 under circumstances manifesting extreme indifference to the
20 value of human life;

1 (2) attempts to cause or intentionally, knowingly or
2 recklessly causes serious bodily injury to any of the
3 officers, agents, employees or other persons enumerated in
4 subsection (c) or to an employee of an agency, company or
5 other entity engaged in public transportation, while in the
6 performance of duty;

7 (3) attempts to cause or intentionally or knowingly
8 causes bodily injury to any of the officers, agents,
9 employees or other persons enumerated in subsection (c), in
10 the performance of duty;

11 (4) attempts to cause or intentionally or knowingly
12 causes bodily injury to another with a deadly weapon;

13 (5) attempts to cause or intentionally or knowingly
14 causes bodily injury to a teaching staff member, school board
15 member or other employee, including a student employee, of
16 any elementary or secondary publicly-funded educational
17 institution, any elementary or secondary private school
18 licensed by the Department of Education or any elementary or
19 secondary parochial school while acting in the scope of his
20 or her employment or because of his or her employment
21 relationship to the school;

22 (6) attempts by physical menace to put any of the
23 officers, agents, employees or other persons enumerated in
24 subsection (c), while in the performance of duty, in fear of
25 imminent serious bodily injury;

26 (7) uses tear or noxious gas as defined in section
27 2708(b) (relating to use of tear or noxious gas in labor
28 disputes) or uses an electric or electronic incapacitation
29 device against any officer, employee or other person
30 enumerated in subsection (c) while acting in the scope of his

employment;

(8) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older; [or]

(9) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older[.]; or

(10) attempts to coerce or threaten an individual to undergo or forgo an abortion.

(b) Grading.--Aggravated assault under subsection (a) (1), (2) and (9) is a felony of the first degree. Aggravated assault under subsection (a) (3), (4), (5), (6), [(7) and (8)] (7), (8) and (10) is a felony of the second degree.

* * *

§ 2711. Probable cause arrests in domestic violence cases.

(a) General rule.--A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a) (3), [(4) and (5)] (4), (5) and (10) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats), 2709.1 (relating to stalking) or 2718 (relating to strangulation) against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. For the purposes of this subsection, the term "family or household member" has the meaning given that term in 23 Pa.C.S. § 6102 (relating to

1 definitions).

2 * * *

3 Section 2. Chapter 32 of Title 18 is repealed:

4 [CHAPTER 32

5 ABORTION

6 § 3201. Short title of chapter.

7 This chapter shall be known and may be cited as the "Abortion
8 Control Act."

9 § 3202. Legislative intent.

10 (a) Rights and interests.--It is the intention of the
11 General Assembly of the Commonwealth of Pennsylvania to protect
12 hereby the life and health of the woman subject to abortion and
13 to protect the life and health of the child subject to abortion.
14 It is the further intention of the General Assembly to foster
15 the development of standards of professional conduct in a
16 critical area of medical practice, to provide for development of
17 statistical data and to protect the right of the minor woman
18 voluntarily to decide to submit to abortion or to carry her
19 child to term. The General Assembly finds as fact that the
20 rights and interests furthered by this chapter are not secure in
21 the context in which abortion is presently performed.

22 (b) Conclusions.--Reliable and convincing evidence has
23 compelled the General Assembly to conclude and the General
24 Assembly does hereby solemnly declare and find that:

25 (1) Many women now seek or are encouraged to undergo
26 abortions without full knowledge of the development of the
27 unborn child or of alternatives to abortion.

28 (2) The gestational age at which viability of an unborn
29 child occurs has been lowering substantially and steadily as
30 advances in neonatal medical care continue to be made.

1 (3) A significant number of late-term abortions result
2 in live births, or in delivery of children who could survive
3 if measures were taken to bring about breathing. Some
4 physicians have been allowing these children to die or have
5 been failing to induce breathing.

6 (4) Because the Commonwealth places a supreme value upon
7 protecting human life, it is necessary that those physicians
8 which it permits to practice medicine be held to precise
9 standards of care in cases where their actions do or may
10 result in the death of an unborn child.

11 (5) A reasonable waiting period, as contained in this
12 chapter, is critical to the assurance that a woman elect to
13 undergo an abortion procedure only after having the fullest
14 opportunity to give her informed consent thereto.

15 (c) Construction.--In every relevant civil or criminal
16 proceeding in which it is possible to do so without violating
17 the Federal Constitution, the common and statutory law of
18 Pennsylvania shall be construed so as to extend to the unborn
19 the equal protection of the laws and to further the public
20 policy of this Commonwealth encouraging childbirth over
21 abortion.

22 (d) Right of conscience.--It is the further public policy of
23 the Commonwealth of Pennsylvania to respect and protect the
24 right of conscience of all persons who refuse to obtain,
25 receive, subsidize, accept or provide abortions including those
26 persons who are engaged in the delivery of medical services and
27 medical care whether acting individually, corporately or in
28 association with other persons; and to prohibit all forms of
29 discrimination, disqualification, coercion, disability or
30 imposition of liability or financial burden upon such persons or

1 entities by reason of their refusing to act contrary to their
2 conscience or conscientious convictions in refusing to obtain,
3 receive, subsidize, accept or provide abortions.

4 § 3203. Definitions.

5 The following words and phrases when used in this chapter
6 shall have, unless the context clearly indicates otherwise, the
7 meanings given to them in this section:

8 "Abortion." The use of any means to terminate the clinically
9 diagnosable pregnancy of a woman with knowledge that the
10 termination by those means will, with reasonable likelihood,
11 cause the death of the unborn child except that, for the
12 purposes of this chapter, abortion shall not mean the use of an
13 intrauterine device or birth control pill to inhibit or prevent
14 ovulation, fertilization or the implantation of a fertilized
15 ovum within the uterus.

16 "Born alive." When used with regard to a human being, means
17 that the human being was completely expelled or extracted from
18 her or his mother and after such separation breathed or showed
19 evidence of any of the following: beating of the heart,
20 pulsation of the umbilical cord, definite movement of voluntary
21 muscles or any brain-wave activity.

22 "Complication." Includes but is not limited to hemorrhage,
23 infection, uterine perforation, cervical laceration and retained
24 products. The department may further define complication.

25 "Conscience." A sincerely held set of moral convictions
26 arising from belief in and relation to a deity or which, though
27 not so derived, obtains from a place in the life of its
28 possessor parallel to that filled by a deity among adherents to
29 religious faiths.

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

1 of Pennsylvania.

2 "Facility" or "medical facility." Any public or private
3 hospital, clinic, center, medical school, medical training
4 institution, health care facility, physician's office,
5 infirmary, dispensary, ambulatory surgical treatment center or
6 other institution or location wherein medical care is provided
7 to any person.

8 "Fertilization" and "conception." Each term shall mean the
9 fusion of a human spermatozoon with a human ovum.

10 "First trimester." The first 12 weeks of gestation.

11 "Gestational age." The age of the unborn child as calculated
12 from the first day of the last menstrual period of the pregnant
13 woman.

14 "Hospital." An institution licensed pursuant to the
15 provisions of the law of this Commonwealth.

16 "In vitro fertilization." The purposeful fertilization of a
17 human ovum outside the body of a living human female.

18 "Medical emergency." That condition which, on the basis of
19 the physician's good faith clinical judgment, so complicates the
20 medical condition of a pregnant woman as to necessitate the
21 immediate abortion of her pregnancy to avert her death or for
22 which a delay will create serious risk of substantial and
23 irreversible impairment of major bodily function.

24 "Medical personnel." Any nurse, nurse's aide, medical school
25 student, professional or any other person who furnishes, or
26 assists in the furnishing of, medical care.

27 "Physician." Any person licensed to practice medicine in
28 this Commonwealth. The term includes medical doctors and doctors
29 of osteopathy.

30 "Pregnancy" and "pregnant." Each term shall mean that female

1 reproductive condition of having a developing fetus in the body
2 and commences with fertilization.

3 "Probable gestational age of the unborn child." What, in the
4 judgment of the attending physician, will with reasonable
5 probability be the gestational age of the unborn child at the
6 time the abortion is planned to be performed.

7 "Unborn child" and "fetus." Each term shall mean an
8 individual organism of the species homo sapiens from
9 fertilization until live birth.

10 "Viability." That stage of fetal development when, in the
11 judgment of the physician based on the particular facts of the
12 case before him and in light of the most advanced medical
13 technology and information available to him, there is a
14 reasonable likelihood of sustained survival of the unborn child
15 outside the body of his or her mother, with or without
16 artificial support.

17 § 3204. Medical consultation and judgment.

18 (a) Abortion prohibited; exceptions.--No abortion shall be
19 performed except by a physician after either:

20 (1) he determines that, in his best clinical judgment,
21 the abortion is necessary; or

22 (2) he receives what he reasonably believes to be a
23 written statement signed by another physician, hereinafter
24 called the "referring physician," certifying that in this
25 referring physician's best clinical judgment the abortion is
26 necessary.

27 (b) Requirements.--Except in a medical emergency where there
28 is insufficient time before the abortion is performed, the woman
29 upon whom the abortion is to be performed shall have a private
30 medical consultation either with the physician who is to perform

1 the abortion or with the referring physician. The consultation
2 will be in a place, at a time and of a duration reasonably
3 sufficient to enable the physician to determine whether, based
4 on his best clinical judgment, the abortion is necessary.

5 (c) Factors.--In determining in accordance with subsection
6 (a) or (b) whether an abortion is necessary, a physician's best
7 clinical judgment may be exercised in the light of all factors
8 (physical, emotional, psychological, familial and the woman's
9 age) relevant to the well-being of the woman. No abortion which
10 is sought solely because of the sex of the unborn child shall be
11 deemed a necessary abortion.

12 (d) Penalty.--Any person who intentionally, knowingly or
13 recklessly violates the provisions of this section commits a
14 felony of the third degree, and any physician who violates the
15 provisions of this section is guilty of "unprofessional conduct"
16 and his license for the practice of medicine and surgery shall
17 be subject to suspension or revocation in accordance with
18 procedures provided under the act of October 5, 1978 (P.L.1109,
19 No.261), known as the Osteopathic Medical Practice Act, the act
20 of December 20, 1985 (P.L.457, No.112), known as the Medical
21 Practice Act of 1985, or their successor acts.

22 § 3205. Informed consent.

23 (a) General rule.--No abortion shall be performed or induced
24 except with the voluntary and informed consent of the woman upon
25 whom the abortion is to be performed or induced. Except in the
26 case of a medical emergency, consent to an abortion is voluntary
27 and informed if and only if:

28 (1) At least 24 hours prior to the abortion, the
29 physician who is to perform the abortion or the referring
30 physician has orally informed the woman of:

1 (i) The nature of the proposed procedure or
2 treatment and of those risks and alternatives to the
3 procedure or treatment that a reasonable patient would
4 consider material to the decision of whether or not to
5 undergo the abortion.

6 (ii) The probable gestational age of the unborn
7 child at the time the abortion is to be performed.

8 (iii) The medical risks associated with carrying her
9 child to term.

10 (2) At least 24 hours prior to the abortion, the
11 physician who is to perform the abortion or the referring
12 physician, or a qualified physician assistant, health care
13 practitioner, technician or social worker to whom the
14 responsibility has been delegated by either physician, has
15 informed the pregnant woman that:

16 (i) The department publishes printed materials which
17 describe the unborn child and list agencies which offer
18 alternatives to abortion and that she has a right to
19 review the printed materials and that a copy will be
20 provided to her free of charge if she chooses to review
21 it.

22 (ii) Medical assistance benefits may be available
23 for prenatal care, childbirth and neonatal care, and that
24 more detailed information on the availability of such
25 assistance is contained in the printed materials
26 published by the department.

27 (iii) The father of the unborn child is liable to
28 assist in the support of her child, even in instances
29 where he has offered to pay for the abortion. In the case
30 of rape, this information may be omitted.

1 (3) A copy of the printed materials has been provided to
2 the pregnant woman if she chooses to view these materials.

3 (4) The pregnant woman certifies in writing, prior to
4 the abortion, that the information required to be provided
5 under paragraphs (1), (2) and (3) has been provided.

6 (b) Emergency.--Where a medical emergency compels the
7 performance of an abortion, the physician shall inform the
8 woman, prior to the abortion if possible, of the medical
9 indications supporting his judgment that an abortion is
10 necessary to avert her death or to avert substantial and
11 irreversible impairment of major bodily function.

12 (c) Penalty.--Any physician who violates the provisions of
13 this section is guilty of "unprofessional conduct" and his
14 license for the practice of medicine and surgery shall be
15 subject to suspension or revocation in accordance with
16 procedures provided under the act of October 5, 1978 (P.L.1109,
17 No.261), known as the Osteopathic Medical Practice Act, the act
18 of December 20, 1985 (P.L.457, No.112), known as the Medical
19 Practice Act of 1985, or their successor acts. Any physician who
20 performs or induces an abortion without first obtaining the
21 certification required by subsection (a)(4) or with knowledge or
22 reason to know that the informed consent of the woman has not
23 been obtained shall for the first offense be guilty of a summary
24 offense and for each subsequent offense be guilty of a
25 misdemeanor of the third degree. No physician shall be guilty of
26 violating this section for failure to furnish the information
27 required by subsection (a) if he or she can demonstrate, by a
28 preponderance of the evidence, that he or she reasonably
29 believed that furnishing the information would have resulted in
30 a severely adverse effect on the physical or mental health of

1 the patient.

2 (d) Limitation on civil liability.--Any physician who
3 complies with the provisions of this section may not be held
4 civilly liable to his patient for failure to obtain informed
5 consent to the abortion within the meaning of that term as
6 defined by the act of October 15, 1975 (P.L.390, No.111), known
7 as the Health Care Services Malpractice Act.

8 § 3206. Parental consent.

9 (a) General rule.--Except in the case of a medical
10 emergency, or except as provided in this section, if a pregnant
11 woman is less than 18 years of age and not emancipated, or if
12 she has been adjudged an incapacitated person under 20 Pa.C.S. §
13 5511 (relating to petition and hearing; independent evaluation),
14 a physician shall not perform an abortion upon her unless, in
15 the case of a woman who is less than 18 years of age, he first
16 obtains the informed consent both of the pregnant woman and of
17 one of her parents; or, in the case of a woman who is an
18 incapacitated person, he first obtains the informed consent of
19 her guardian. In deciding whether to grant such consent, a
20 pregnant woman's parent or guardian shall consider only their
21 child's or ward's best interests. In the case of a pregnancy
22 that is the result of incest where the father is a party to the
23 incestuous act, the pregnant woman need only obtain the consent
24 of her mother.

25 (b) Unavailability of parent or guardian.--If both parents
26 have died or are otherwise unavailable to the physician within a
27 reasonable time and in a reasonable manner, consent of the
28 pregnant woman's guardian or guardians shall be sufficient. If
29 the pregnant woman's parents are divorced, consent of the parent
30 having custody shall be sufficient. If neither any parent nor a

1 legal guardian is available to the physician within a reasonable
2 time and in a reasonable manner, consent of any adult person
3 standing in loco parentis shall be sufficient.

4 (c) Petition to court for consent.--If both of the parents
5 or guardians of the pregnant woman refuse to consent to the
6 performance of an abortion or if she elects not to seek the
7 consent of either of her parents or of her guardian, the court
8 of common pleas of the judicial district in which the applicant
9 resides or in which the abortion is sought shall, upon petition
10 or motion, after an appropriate hearing, authorize a physician
11 to perform the abortion if the court determines that the
12 pregnant woman is mature and capable of giving informed consent
13 to the proposed abortion, and has, in fact, given such consent.

14 (d) Court order.--If the court determines that the pregnant
15 woman is not mature and capable of giving informed consent or if
16 the pregnant woman does not claim to be mature and capable of
17 giving informed consent, the court shall determine whether the
18 performance of an abortion upon her would be in her best
19 interests. If the court determines that the performance of an
20 abortion would be in the best interests of the woman, it shall
21 authorize a physician to perform the abortion.

22 (e) Representation in proceedings.--The pregnant woman may
23 participate in proceedings in the court on her own behalf and
24 the court may appoint a guardian ad litem to assist her. The
25 court shall, however, advise her that she has a right to court
26 appointed counsel, and shall provide her with such counsel
27 unless she wishes to appear with private counsel or has
28 knowingly and intelligently waived representation by counsel.

29 (f) Proceedings.--

30 (1) Court proceedings under this section shall be

1 confidential and shall be given such precedence over other
2 pending matters as will ensure that the court may reach a
3 decision promptly and without delay in order to serve the
4 best interests of the pregnant woman. In no case shall the
5 court of common pleas fail to rule within three business days
6 of the date of application. A court of common pleas which
7 conducts proceedings under this section shall make in writing
8 specific factual findings and legal conclusions supporting
9 its decision and shall, upon the initial filing of the
10 minor's petition for judicial authorization of an abortion,
11 order a sealed record of the petition, pleadings,
12 submissions, transcripts, exhibits, orders, evidence and any
13 other written material to be maintained which shall include
14 its own findings and conclusions.

15 (2) The application to the court of common pleas shall
16 be accompanied by a non-notarized verification stating that
17 the information therein is true and correct to the best of
18 the applicant's knowledge, and the application shall set
19 forth the following facts:

20 (i) The initials of the pregnant woman.

21 (ii) The age of the pregnant woman.

22 (iii) The names and addresses of each parent,
23 guardian or, if the minor's parents are deceased and no
24 guardian has been appointed, any other person standing in
25 loco parentis to the minor.

26 (iv) That the pregnant woman has been fully informed
27 of the risks and consequences of the abortion.

28 (v) Whether the pregnant woman is of sound mind and
29 has sufficient intellectual capacity to consent to the
30 abortion.

1 (vi) A prayer for relief asking the court to either
2 grant the pregnant woman full capacity for the purpose of
3 personal consent to the abortion, or to give judicial
4 consent to the abortion under subsection (d) based upon a
5 finding that the abortion is in the best interest of the
6 pregnant woman.

7 (vii) That the pregnant woman is aware that any
8 false statements made in the application are punishable
9 by law.

10 (viii) The signature of the pregnant woman. Where
11 necessary to serve the interest of justice, the orphans'
12 court division, or, in Philadelphia, the family court
13 division, shall refer the pregnant woman to the
14 appropriate personnel for assistance in preparing the
15 application.

16 (3) The name of the pregnant woman shall not be entered
17 on any docket which is subject to public inspection. All
18 persons shall be excluded from hearings under this section
19 except the applicant and such other persons whose presence is
20 specifically requested by the applicant or her guardian.

21 (4) At the hearing, the court shall hear evidence
22 relating to the emotional development, maturity, intellect
23 and understanding of the pregnant woman, the fact and
24 duration of her pregnancy, the nature, possible consequences
25 and alternatives to the abortion and any other evidence that
26 the court may find useful in determining whether the pregnant
27 woman should be granted full capacity for the purpose of
28 consenting to the abortion or whether the abortion is in the
29 best interest of the pregnant woman. The court shall also
30 notify the pregnant woman at the hearing that it must rule on

1 her application within three business days of the date of its
2 filing and that, should the court fail to rule in favor of
3 her application within the allotted time, she has the right
4 to appeal to the Superior Court.

5 (g) Coercion prohibited.--Except in a medical emergency, no
6 parent, guardian or other person standing in loco parentis shall
7 coerce a minor or incapacitated woman to undergo an abortion.
8 Any minor or incapacitated woman who is threatened with such
9 coercion may apply to a court of common pleas for relief. The
10 court shall provide the minor or incapacitated woman with
11 counsel, give the matter expedited consideration and grant such
12 relief as may be necessary to prevent such coercion. Should a
13 minor be denied the financial support of her parents by reason
14 of her refusal to undergo abortion, she shall be considered
15 emancipated for purposes of eligibility for assistance benefits.

16 (h) Regulation of proceedings.--No filing fees shall be
17 required of any woman availing herself of the procedures
18 provided by this section. An expedited confidential appeal shall
19 be available to any pregnant woman whom the court fails to grant
20 an order authorizing an abortion within the time specified in
21 this section. Any court to which an appeal is taken under this
22 section shall give prompt and confidential attention thereto and
23 shall rule thereon within five business days of the filing of
24 the appeal. The Supreme Court of Pennsylvania may issue such
25 rules as may further assure that the process provided in this
26 section is conducted in such a manner as will ensure
27 confidentiality and sufficient precedence over other pending
28 matters to ensure promptness of disposition.

29 (i) Penalty.--Any person who performs an abortion upon a
30 woman who is an unemancipated minor or incapacitated person to

1 whom this section applies either with knowledge that she is a
2 minor or incapacitated person to whom this section applies, or
3 with reckless disregard or negligence as to whether she is a
4 minor or incapacitated person to whom this section applies, and
5 who intentionally, knowingly or recklessly fails to conform to
6 any requirement of this section is guilty of "unprofessional
7 conduct" and his license for the practice of medicine and
8 surgery shall be suspended in accordance with procedures
9 provided under the act of October 5, 1978 (P.L.1109, No.261),
10 known as the Osteopathic Medical Practice Act, the act of
11 December 20, 1985 (P.L.457, No.112), known as the Medical
12 Practice Act of 1985, or their successor acts, for a period of
13 at least three months. Failure to comply with the requirements
14 of this section is prima facie evidence of failure to obtain
15 informed consent and of interference with family relations in
16 appropriate civil actions. The law of this Commonwealth shall
17 not be construed to preclude the award of exemplary damages or
18 damages for emotional distress even if unaccompanied by physical
19 complications in any appropriate civil action relevant to
20 violations of this section. Nothing in this section shall be
21 construed to limit the common law rights of parents.

22 § 3207. Abortion facilities.

23 (a) Regulations.--The department shall have power to make
24 rules and regulations pursuant to this chapter, with respect to
25 performance of abortions and with respect to facilities in which
26 abortions are performed, so as to protect the health and safety
27 of women having abortions and of premature infants aborted
28 alive. These rules and regulations shall include, but not be
29 limited to, procedures, staff, equipment and laboratory testing
30 requirements for all facilities offering abortion services.

1 (b) Reports.--Within 30 days after the effective date of
2 this chapter, every facility at which abortions are performed
3 shall file, and update immediately upon any change, a report
4 with the department, containing the following information:

5 (1) Name and address of the facility.

6 (2) Name and address of any parent, subsidiary or
7 affiliated organizations, corporations or associations.

8 (3) Name and address of any parent, subsidiary or
9 affiliated organizations, corporations or associations having
10 contemporaneous commonality of ownership, beneficial
11 interest, directorship or officership with any other
12 facility.

13 The information contained in those reports which are filed
14 pursuant to this subsection by facilities which receive State-
15 appropriated funds during the 12-calendar-month period
16 immediately preceding a request to inspect or copy such reports
17 shall be deemed public information. Reports filed by facilities
18 which do not receive State-appropriated funds shall only be
19 available to law enforcement officials, the State Board of
20 Medicine and the State Board of Osteopathic Medicine for use in
21 the performance of their official duties. Any facility failing
22 to comply with the provisions of this subsection shall be
23 assessed by the department a fine of \$500 for each day it is in
24 violation hereof.

25 § 3208. Printed information.

26 (a) General rule.--The department shall cause to be
27 published in English, Spanish and Vietnamese, within 60 days
28 after this chapter becomes law, and shall update on an annual
29 basis, the following easily comprehensible printed materials:

30 (1) Geographically indexed materials designed to inform

1 the woman of public and private agencies and services
2 available to assist a woman through pregnancy, upon
3 childbirth and while the child is dependent, including
4 adoption agencies, which shall include a comprehensive list
5 of the agencies available, a description of the services they
6 offer and a description of the manner, including telephone
7 numbers, in which they might be contacted, or, at the option
8 of the department, printed materials including a toll-free,
9 24-hour a day telephone number which may be called to obtain,
10 orally, such a list and description of agencies in the
11 locality of the caller and of the services they offer. The
12 materials shall provide information on the availability of
13 medical assistance benefits for prenatal care, childbirth and
14 neonatal care, and state that it is unlawful for any
15 individual to coerce a woman to undergo abortion, that any
16 physician who performs an abortion upon a woman without
17 obtaining her informed consent or without according her a
18 private medical consultation may be liable to her for damages
19 in a civil action at law, that the father of a child is
20 liable to assist in the support of that child, even in
21 instances where the father has offered to pay for an abortion
22 and that the law permits adoptive parents to pay costs of
23 prenatal care, childbirth and neonatal care.

24 (2) Materials designed to inform the woman of the
25 probable anatomical and physiological characteristics of the
26 unborn child at two-week gestational increments from
27 fertilization to full term, including pictures representing
28 the development of unborn children at two-week gestational
29 increments, and any relevant information on the possibility
30 of the unborn child's survival; provided that any such

1 pictures or drawings must contain the dimensions of the fetus
2 and must be realistic and appropriate for the woman's stage
3 of pregnancy. The materials shall be objective, nonjudgmental
4 and designed to convey only accurate scientific information
5 about the unborn child at the various gestational ages. The
6 material shall also contain objective information describing
7 the methods of abortion procedures commonly employed, the
8 medical risks commonly associated with each such procedure,
9 the possible detrimental psychological effects of abortion
10 and the medical risks commonly associated with each such
11 procedure and the medical risks commonly associated with
12 carrying a child to term.

13 (b) Format.--The materials shall be printed in a typeface
14 large enough to be clearly legible.

15 (c) Free distribution.--The materials required under this
16 section shall be available at no cost from the department upon
17 request and in appropriate number to any person, facility or
18 hospital.

19 § 3208.1. Commonwealth interference prohibited.

20 The Commonwealth shall not interfere with the use of
21 medically appropriate methods of contraception or the manner in
22 which medically appropriate methods of contraception are
23 provided.

24 § 3209. Spousal notice.

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

1 (b) and (c), unless he or she has received a signed statement,
2 which need not be notarized, from the woman upon whom the
3 abortion is to be performed, that she has notified her spouse
4 that she is about to undergo an abortion. The statement shall
5 bear a notice that any false statement made therein is
6 punishable by law.

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

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

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

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

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

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

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

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

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

15 § 3210. Determination of gestational age.

16 (a) Requirement.--Except in the case of a medical emergency
17 which prevents compliance with this section, no abortion shall
18 be performed or induced unless the referring physician or the
19 physician performing or inducing it has first made a
20 determination of the probable gestational age of the unborn
21 child. In making such determination, the physician shall make
22 such inquiries of the patient and perform or cause to be
23 performed such medical examinations and tests as a prudent
24 physician would consider necessary to make or perform in making
25 an accurate diagnosis with respect to gestational age. The
26 physician who performs or induces the abortion shall report the
27 type of inquiries made and the type of examinations and tests
28 utilized to determine the gestational age of the unborn child
29 and the basis for the diagnosis with respect to gestational age
30 on forms provided by the department.

1 (b) Penalty.--Failure of any physician to conform to any
2 requirement of this section constitutes "unprofessional conduct"
3 within the meaning of the act of October 5, 1978 (P.L.1109,
4 No.261), known as the Osteopathic Medical Practice Act, the act
5 of December 20, 1985 (P.L.457, No.112), known as the Medical
6 Practice Act of 1985, or their successor acts. Upon a finding by
7 the State Board of Medicine or the State Board of Osteopathic
8 Medicine that any physician has failed to conform to any
9 requirement of this section, the board shall not fail to suspend
10 that physician's license for a period of at least three months.
11 Intentional, knowing or reckless falsification of any report
12 required under this section is a misdemeanor of the third
13 degree.

14 § 3211. Abortion on unborn child of 24 or more weeks
15 gestational age.

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

20 (b) Exceptions.--

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

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

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

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

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

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

28 (4) The physician terminates the pregnancy in a manner
29 which provides the best opportunity for the unborn child to
30 survive, unless the physician determines, in his or her good

1 faith medical judgment, that termination of the pregnancy in
2 that manner poses a significantly greater risk either of the
3 death of the pregnant woman or the substantial and
4 irreversible impairment of a major bodily function of the
5 woman than would other available methods.

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

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

18 § 3212. Infanticide.

19 (a) Status of fetus.--The law of this Commonwealth shall not
20 be construed to imply that any human being born alive in the
21 course of or as a result of an abortion or pregnancy
22 termination, no matter what may be that human being's chance of
23 survival, is not a person under the Constitution and laws of
24 this Commonwealth.

25 (b) Care required.--All physicians and licensed medical
26 personnel attending a child who is born alive during the course
27 of an abortion or premature delivery, or after being carried to
28 term, shall provide such child that type and degree of care and
29 treatment which, in the good faith judgment of the physician, is
30 commonly and customarily provided to any other person under

1 similar conditions and circumstances. Any individual who
2 intentionally, knowingly or recklessly violates the provisions
3 of this subsection commits a felony of the third degree.

4 (c) Obligation of physician.--Whenever the physician or any
5 other person is prevented by lack of parental or guardian
6 consent from fulfilling his obligations under subsection (b), he
7 shall nonetheless fulfill said obligations and immediately
8 notify the juvenile court of the facts of the case. The juvenile
9 court shall immediately institute an inquiry and, if it finds
10 that the lack of parental or guardian consent is preventing
11 treatment required under subsection (b), it shall immediately
12 grant injunctive relief to require such treatment.

13 § 3213. Prohibited acts.

14 (a) Payment for abortion.--Except in the case of a pregnancy
15 which is not yet clinically diagnosable, any person who intends
16 to perform or induce abortion shall, before accepting payment
17 therefor, make or obtain a determination that the woman is
18 pregnant. Any person who intentionally or knowingly accepts such
19 a payment without first making or obtaining such a determination
20 commits a misdemeanor of the second degree. Any person who makes
21 such a determination erroneously either knowing that it is
22 erroneous or with reckless disregard or negligence as to whether
23 it is erroneous, and who either:

24 (1) thereupon or thereafter intentionally relies upon
25 that determination in soliciting or obtaining any such
26 payment; or

27 (2) intentionally conveys that determination to any
28 person or persons with knowledge that, or with reckless
29 disregard as to whether, that determination will be relied
30 upon in any solicitation or obtaining of any such payment;

1 commits a misdemeanor of the second degree.

2 (b) Referral fee.--The payment or receipt of a referral fee
3 in connection with the performance of an abortion is a
4 misdemeanor of the first degree. For purposes of this section,
5 "referral fee" means the transfer of anything of value between a
6 physician who performs an abortion or an operator or employee of
7 a clinic at which an abortion is performed and the person who
8 advised the woman receiving the abortion to use the services of
9 that physician or clinic.

10 (c) Regulations.--The department shall issue regulations to
11 assure that prior to the performance of any abortion, including
12 abortions performed in the first trimester of pregnancy, the
13 maternal Rh status shall be determined and that anti-Rh
14 sensitization prophylaxis shall be provided to each patient at
15 risk of sensitization unless the patient refuses to accept the
16 treatment. Except when there exists a medical emergency or, in
17 the judgment of the physician, there exists no possibility of Rh
18 sensitization, the intentional, knowing, or reckless failure to
19 conform to the regulations issued pursuant to this subsection
20 constitutes "unprofessional conduct" and his license for the
21 practice of medicine and surgery shall be subject to suspension
22 or revocation in accordance with procedures provided under the
23 act of October 5, 1978 (P.L.1109, No.261), known as the
24 Osteopathic Medical Practice Act, the act of December 20, 1985
25 (P.L.457, No.112), known as the Medical Practice Act of 1985, or
26 their successor acts.

27 (d) Participation in abortion.--Except for a facility
28 devoted exclusively to the performance of abortions, no medical
29 personnel or medical facility, nor any employee, agent or
30 student thereof, shall be required against his or its conscience

1 to aid, abet or facilitate performance of an abortion or
2 dispensing of an abortifacient and failure or refusal to do so
3 shall not be a basis for any civil, criminal, administrative or
4 disciplinary action, penalty or proceeding, nor may it be the
5 basis for refusing to hire or admit anyone. Nothing herein shall
6 be construed to limit the provisions of the act of October 27,
7 1955 (P.L.744, No.222), known as the "Pennsylvania Human
8 Relations Act." Any person who knowingly violates the provisions
9 of this subsection shall be civilly liable to the person thereby
10 injured and, in addition, shall be liable to that person for
11 punitive damages in the amount of \$5,000.

12 (e) In vitro fertilization.--All persons conducting, or
13 experimenting in, in vitro fertilization shall file quarterly
14 reports with the department, which shall be available for public
15 inspection and copying, containing the following information:

16 (1) Names of all persons conducting or assisting in the
17 fertilization or experimentation process.

18 (2) Locations where the fertilization or experimentation
19 is conducted.

20 (3) Name and address of any person, facility, agency or
21 organization sponsoring the fertilization or experimentation
22 except that names of any persons who are donors or recipients
23 of sperm or eggs shall not be disclosed.

24 (4) Number of eggs fertilized.

25 (5) Number of fertilized eggs destroyed or discarded.

26 (6) Number of women implanted with a fertilized egg.

27 Any person required under this subsection to file a report, keep
28 records or supply information, who willfully fails to file such
29 report, keep records or supply such information or who submits a
30 false report shall be assessed a fine by the department in the

1 amount of \$50 for each day in which that person is in violation
2 hereof.

3 (f) Notice.--

4 (1) Except for a facility devoted exclusively to the
5 performance of abortions, every facility performing abortions
6 shall prominently post a notice, not less than eight and one-
7 half inches by eleven inches in size, entitled "Right of
8 Conscience," for the exclusive purpose of informing medical
9 personnel, employees, agents and students of such facilities
10 of their rights under subsection (d) and under section 5.2 of
11 the Pennsylvania Human Relations Act. The facility shall post
12 the notice required by this subsection in a location or
13 locations where notices to employees, medical personnel and
14 students are normally posted or, if notices are not normally
15 posted, in a location or locations where the notice required
16 by this subsection is likely to be seen by medical personnel,
17 employees or students of the facility. The department shall
18 prescribe a model notice which may be used by any facility,
19 and any facility which utilizes the model notice or
20 substantially similar language shall be deemed in compliance
21 with this subsection.

22 (2) The department shall have the authority to assess a
23 civil penalty of up to \$5,000 against any facility for each
24 violation of this subsection, giving due consideration to the
25 appropriateness of the penalty with respect to the size of
26 the facility, the gravity of the violation, the good faith of
27 the facility and the history of previous violations. Civil
28 penalties due under this subsection shall be paid to the
29 department for deposit in the State Treasury and may be
30 collected by the department in the appropriate court of

1 common pleas. The department shall send a copy of its model
2 notice to every facility which files a report under section
3 3207(b) (relating to abortion facilities). Failure to receive
4 a notice shall not be a defense to any civil action brought
5 pursuant to this subsection.

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 or
18 more weeks gestational age), the second physician as required
19 by section 3211(c) (5) and the facility where the abortion was
20 performed and of the referring physician, agency or service,
21 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).

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

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

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

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

21 (b) Completion of report.--The reports shall be completed by
22 the hospital or other licensed facility, signed by the physician
23 who performed the abortion and transmitted to the department
24 within 15 days after each reporting month.

25 (c) Pathological examinations.--When there is an abortion
26 performed during the first trimester of pregnancy, the tissue
27 that is removed shall be subjected to a gross or microscopic
28 examination, as needed, by the physician or a qualified person
29 designated by the physician to determine if a pregnancy existed
30 and was terminated. If the examination indicates no fetal

1 remains, that information shall immediately be made known to the
2 physician and sent to the department within 15 days of the
3 analysis. When there is an abortion performed after the first
4 trimester of pregnancy where the physician has certified the
5 unborn child is not viable, the dead unborn child and all tissue
6 removed at the time of the abortion shall be submitted for
7 tissue analysis to a board eligible or certified pathologist. If
8 the report reveals evidence of viability or live birth, the
9 pathologist shall report such findings to the department within
10 15 days and a copy of the report shall also be sent to the
11 physician performing the abortion. Intentional, knowing,
12 reckless or negligent failure of the physician to submit such an
13 unborn child or such tissue remains to such a pathologist for
14 such a purpose, or intentional, knowing or reckless failure of
15 the pathologist to report any evidence of live birth or
16 viability to the department in the manner and within the time
17 prescribed is a misdemeanor of the third degree.

18 (d) Form.--The department shall prescribe a form on which
19 pathologists may report any evidence of absence of pregnancy,
20 live birth or viability.

21 (e) Statistical reports; public availability of reports.--

22 (1) The department shall prepare a comprehensive annual
23 statistical report for the General Assembly based upon the
24 data gathered under subsections (a) and (h). Such report
25 shall not lead to the disclosure of the identity of any
26 person filing a report or about whom a report is filed, and
27 shall be available for public inspection and copying.

28 (2) Reports filed pursuant to subsection (a) or (h)
29 shall not be deemed public records within the meaning of that
30 term as defined by the act of June 21, 1957 (P.L.390,

1 No.212), referred to as the Right-to-Know Law, and shall
2 remain confidential, except that disclosure may be made to
3 law enforcement officials upon an order of a court of common
4 pleas after application showing good cause therefor. The
5 court may condition disclosure of the information upon any
6 appropriate safeguards it may impose.

7 (3) Original copies of all reports filed under
8 subsections (a), (f) and (h) shall be available to the State
9 Board of Medicine and the State Board of Osteopathic Medicine
10 for use in the performance of their official duties.

11 (4) Any person who willfully discloses any information
12 obtained from reports filed pursuant to subsection (a) or
13 (h), other than that disclosure authorized under paragraph
14 (1), (2) or (3) hereof or as otherwise authorized by law,
15 shall commit a misdemeanor of the third degree.

16 (f) Report by facility.--Every facility in which an abortion
17 is performed within this Commonwealth during any quarter year
18 shall file with the department a report showing the total number
19 of abortions performed within the hospital or other facility
20 during that quarter year. This report shall also show the total
21 abortions performed in each trimester of pregnancy. Any report
22 shall be available for public inspection and copying only if the
23 facility receives State-appropriated funds within the 12-
24 calendar-month period immediately preceding the filing of the
25 report. These reports shall be submitted on a form prescribed by
26 the department which will enable a facility to indicate whether
27 or not it is receiving State-appropriated funds. If the facility
28 indicates on the form that it is not receiving State-
29 appropriated funds, the department shall regard its report as
30 confidential unless it receives other evidence which causes it

1 to conclude that the facility receives State-appropriated funds.

2 (g) Report of maternal death.--After 30 days' public notice,
3 the department shall henceforth require that all reports of
4 maternal deaths occurring within the Commonwealth arising from
5 pregnancy, childbirth or intentional abortion in every case
6 state the cause of death, the duration of the woman's pregnancy
7 when her death occurred and whether or not the woman was under
8 the care of a physician during her pregnancy prior to her death
9 and shall issue such regulations as are necessary to assure that
10 such information is reported, conducting its own investigation
11 if necessary in order to ascertain such data. A woman shall be
12 deemed to have been under the care of a physician prior to her
13 death for the purpose of this chapter when she had either been
14 examined or treated by a physician, not including any
15 examination or treatment in connection with emergency care for
16 complications of her pregnancy or complications of her abortion,
17 preceding the woman's death at any time which is both 21 or more
18 days after the time she became pregnant and within 60 days prior
19 to her death. Known incidents of maternal mortality of
20 nonresident women arising from induced abortion performed in
21 this Commonwealth shall be included as incidents of maternal
22 mortality arising from induced abortions. Incidents of maternal
23 mortality arising from continued pregnancy or childbirth and
24 occurring after induced abortion has been attempted but not
25 completed, including deaths occurring after induced abortion has
26 been attempted but not completed as the result of ectopic
27 pregnancy, shall be included as incidents of maternal mortality
28 arising from induced abortion. The department shall annually
29 compile a statistical report for the General Assembly based upon
30 the data gathered under this subsection, and all such

1 statistical reports shall be available for public inspection and
2 copying.

3 (h) Report of complications.--Every physician who is called
4 upon to provide medical care or treatment to a woman who is in
5 need of medical care because of a complication or complications
6 resulting, in the good faith judgment of the physician, from
7 having undergone an abortion or attempted abortion shall prepare
8 a report thereof and file the report with the department within
9 30 days of the date of his first examination of the woman, which
10 report shall be on forms prescribed by the department, which
11 forms shall contain the following information, as received, and
12 such other information except the name of the patient as the
13 department may from time to time require:

14 (1) Age of patient.

15 (2) Number of pregnancies patient may have had prior to
16 the abortion.

17 (3) Number and type of abortions patient may have had
18 prior to this abortion.

19 (4) Name and address of the facility where the abortion
20 was performed.

21 (5) Gestational age of the unborn child at the time of
22 the abortion, if known.

23 (6) Type of abortion performed, if known.

24 (7) Nature of complication or complications.

25 (8) Medical treatment given.

26 (9) The nature and extent, if known, of any permanent
27 condition caused by the complication.

28 (i) Penalties.--

29 (1) Any person required under this section to file a
30 report, keep any records or supply any information, who

1 willfully fails to file such report, keep such records or
2 supply such information at the time or times required by law
3 or regulation is guilty of "unprofessional conduct" and his
4 license for the practice of medicine and surgery shall be
5 subject to suspension or revocation in accordance with
6 procedures provided under the act of October 5, 1978
7 (P.L.1109, No.261), known as the Osteopathic Medical Practice
8 Act, the act of December 20, 1985 (P.L.457, No.112), known as
9 the Medical Practice Act of 1985, or their successor acts.

10 (2) Any person who willfully delivers or discloses to
11 the department any report, record or information known by him
12 to be false commits a misdemeanor of the first degree.

13 (3) In addition to the above penalties, any person,
14 organization or facility who willfully violates any of the
15 provisions of this section requiring reporting shall upon
16 conviction thereof:

17 (i) For the first time, have its license suspended
18 for a period of six months.

19 (ii) For the second time, have its license suspended
20 for a period of one year.

21 (iii) For the third time, have its license revoked.

22 § 3215. Publicly owned facilities; public officials and public
23 funds.

24 (a) Limitations.--No hospital, clinic or other health
25 facility owned or operated by the Commonwealth, a county, a city
26 or other governmental entity (except the government of the
27 United States, another state or a foreign nation) shall:

28 (1) Provide, induce, perform or permit its facilities to
29 be used for the provision, inducement or performance of any
30 abortion except where necessary to avert the death of the

woman or where necessary to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(2) Lease or sell or permit the subleasing of its facilities or property to any physician or health facility for use in the provision, inducement or performance of abortion, except abortion necessary to avert the death of the woman or to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(3) Enter into any contract with any physician or health facility under the terms of which such physician or health facility agrees to provide, induce or perform abortions, except abortion necessary to avert the death of the woman or to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(b) Permitted treatment.--Nothing in subsection (a) shall be construed to preclude any hospital, clinic or other health facility from providing treatment for post-abortion complications.

(c) Public funds.--No Commonwealth funds and no Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion, except:

(1) When abortion is necessary to avert the death of the mother on certification by a physician. When such physician will perform the abortion or has a pecuniary or proprietary interest in the abortion there shall be a separate certification from a physician who has no such interest.

1 (2) When abortion is performed in the case of pregnancy
2 caused by rape which, prior to the performance of the
3 abortion, has been reported, together with the identity of
4 the offender, if known, to a law enforcement agency having
5 the requisite jurisdiction and has been personally reported
6 by the victim.

7 (3) When abortion is performed in the case of pregnancy
8 caused by incest which, prior to the performance of the
9 abortion, has been personally reported by the victim to a law
10 enforcement agency having the requisite jurisdiction, or, in
11 the case of a minor, to the county child protective service
12 agency and the other party to the incestuous act has been
13 named in such report.

14 (d) Health plans.--No health plan for employees, funded with
15 any Commonwealth funds, shall include coverage for abortion,
16 except under the same conditions and requirements as provided in
17 subsection (c). The prohibition contained herein shall not apply
18 to health plans for which abortion coverage has been expressly
19 bargained for in any collective bargaining agreement presently
20 in effect, but shall be construed to preclude such coverage with
21 respect to any future agreement.

22 (e) Insurance policies.--All insurers who make available
23 health care and disability insurance policies in this
24 Commonwealth shall make available such policies which contain an
25 express exclusion of coverage for abortion services not
26 necessary to avert the death of the woman or to terminate
27 pregnancies caused by rape or incest.

28 (f) Public officers; ordering abortions.--Except in the case
29 of a medical emergency, no court, judge, executive officer,
30 administrative agency or public employee of the Commonwealth or

1 of any local governmental body shall have power to issue any
2 order requiring an abortion without the express voluntary
3 consent of the woman upon whom the abortion is to be performed
4 or shall coerce any person to have an abortion.

5 (g) Public officers; limiting benefits prohibited.--No
6 court, judge, executive officer, administrative agency or public
7 employee of the Commonwealth or of any local governmental body
8 shall withhold, reduce or suspend or threaten to withhold,
9 reduce or suspend any benefits to which a person would otherwise
10 be entitled on the ground that such person chooses not to have
11 an abortion.

12 (h) Penalty.--Whoever orders an abortion in violation of
13 subsection (f) or withholds, reduces or suspends any benefits or
14 threatens to withhold, reduce or suspend any benefits in
15 violation of subsection (g) commits a misdemeanor of the first
16 degree.

17 (i) Public funds for legal services.--No Federal or State
18 funds which are appropriated by the Commonwealth for the
19 provision of legal services by private agencies, and no public
20 funds generated by collection of interest on lawyer's trust
21 accounts, as authorized by statute previously or subsequently
22 enacted, may be used, directly or indirectly, to:

23 (1) Advocate the freedom to choose abortion or the
24 prohibition of abortion.

25 (2) Provide legal assistance with respect to any
26 proceeding or litigation which seeks to procure or prevent
27 any abortion or to procure or prevent public funding for any
28 abortion.

29 (3) Provide legal assistance with respect to any
30 proceeding or litigation which seeks to compel or prevent the

1 performance or assistance in the performance of any abortion,
2 or the provision of facilities for the performance of any
3 abortion.

4 Nothing in this subsection shall be construed to require or
5 prevent the expenditure of funds pursuant to a court order
6 awarding fees for attorney's services under the Civil Rights
7 Attorney's Fees Awards Act of 1976 (Public law 94-559, 90 Stat.
8 2641), nor shall this subsection be construed to prevent the use
9 of public funds to provide court appointed counsel in any
10 proceeding authorized under section 3206 (relating to parental
11 consent).

12 (j) Required statements.--No Commonwealth agency shall make
13 any payment from Federal or State funds appropriated by the
14 Commonwealth for the performance of any abortion pursuant to
15 subsection (c) (2) or (3) unless the Commonwealth agency first:

16 (1) receives from the physician or facility seeking
17 payment a statement signed by the physician performing the
18 abortion stating that, prior to performing the abortion, he
19 obtained a non-notarized, signed statement from the pregnant
20 woman stating that she was a victim of rape or incest, as the
21 case may be, and that she reported the crime, including the
22 identity of the offender, if known, to a law enforcement
23 agency having the requisite jurisdiction or, in the case of
24 incest where a pregnant minor is the victim, to the county
25 child protective service agency and stating the name of the
26 law enforcement agency or child protective service agency to
27 which the report was made and the date such report was made;

28 (2) receives from the physician or facility seeking
29 payment, the signed statement of the pregnant woman which is
30 described in paragraph (1). The statement shall bear the

1 notice that any false statements made therein are punishable
2 by law and shall state that the pregnant woman is aware that
3 false reports to law enforcement authorities are punishable
4 by law; and

5 (3) verifies with the law enforcement agency or child
6 protective service agency named in the statement of the
7 pregnant woman whether a report of rape or incest was filed
8 with the agency in accordance with the statement.

9 The Commonwealth agency shall report any evidence of false
10 statements, of false reports to law enforcement authorities or
11 of fraud in the procurement or attempted procurement of any
12 payment from Federal or State funds appropriated by the
13 Commonwealth pursuant to this section to the district attorney
14 of appropriate jurisdiction and, where appropriate, to the
15 Attorney General.

16 § 3216. Fetal experimentation.

17 (a) Unborn or live child.--Any person who knowingly performs
18 any type of nontherapeutic experimentation or nontherapeutic
19 medical procedure (except an abortion as defined in this
20 chapter) upon any unborn child, or upon any child born alive
21 during the course of an abortion, commits a felony of the third
22 degree. "Nontherapeutic" means that which is not intended to
23 preserve the life or health of the child upon whom it is
24 performed.

25 (b) Dead child.--The following standards govern the
26 procurement and use of any fetal tissue or organ which is used
27 in animal or human transplantation, research or experimentation:

28 (1) No fetal tissue or organs may be procured or used
29 without the written consent of the mother. No consideration
30 of any kind for such consent may be offered or given.

1 Further, if the tissue or organs are being derived from
2 abortion, such consent shall be valid only if obtained after
3 the decision to abort has been made.

4 (2) No person who provides the information required by
5 section 3205 (relating to informed consent) shall employ the
6 possibility of the use of aborted fetal tissue or organs as
7 an inducement to a pregnant woman to undergo abortion except
8 that payment for reasonable expenses occasioned by the actual
9 retrieval, storage, preparation and transportation of the
10 tissues is permitted.

11 (3) No remuneration, compensation or other consideration
12 may be paid to any person or organization in connection with
13 the procurement of fetal tissue or organs.

14 (4) All persons who participate in the procurement, use
15 or transplantation of fetal tissue or organs, including the
16 recipients of such tissue or organs, shall be informed as to
17 whether the particular tissue or organ involved was procured
18 as a result of either:

- 19 (i) stillbirth;
- 20 (ii) miscarriage;
- 21 (iii) ectopic pregnancy;
- 22 (iv) abortion; or
- 23 (v) any other means.

24 (5) No person who consents to the procurement or use of
25 any fetal tissue or organ may designate the recipient of that
26 tissue or organ, nor shall any other person or organization
27 act to fulfill that designation.

28 (6) The department may assess a civil penalty upon any
29 person who procures, sells or uses any fetal tissue or organs
30 in violation of this section or the regulations issued

1 thereunder. Such civil penalties may not exceed \$5,000 for
2 each separate violation. In assessing such penalties, the
3 department shall give due consideration to the gravity of the
4 violation, the good faith of the violator and the history of
5 previous violations. Civil penalties due under this paragraph
6 shall be paid to the department for deposit in the State
7 Treasury and may be enforced by the department in the
8 Commonwealth Court.

9 (c) Construction of section.--Nothing in this section shall
10 be construed to condone or prohibit the performance of
11 diagnostic tests while the unborn child is in utero or the
12 performance of pathological examinations on an aborted child.
13 Nor shall anything in this section be construed to condone or
14 prohibit the performance of in vitro fertilization and
15 accompanying embryo transfer.

16 § 3217. Civil penalties.

17 Any physician who knowingly violates any of the provisions of
18 section 3204 (relating to medical consultation and judgment) or
19 3205 (relating to informed consent) shall, in addition to any
20 other penalty prescribed in this chapter, be civilly liable to
21 his patient for any damages caused thereby and, in addition,
22 shall be liable to his patient for punitive damages in the
23 amount of \$5,000, and the court shall award a prevailing
24 plaintiff a reasonable attorney fee as part of costs.

25 § 3218. Criminal penalties.

26 (a) Application of chapter.--Notwithstanding any other
27 provision of this chapter, no criminal penalty shall apply to a
28 woman who violates any provision of this chapter solely in order
29 to perform or induce or attempt to perform or induce an abortion
30 upon herself. Nor shall any woman who undergoes an abortion be

1 found guilty of having committed an offense, liability for which
2 is defined under section 306 (relating to liability for conduct
3 of another; complicity) or Chapter 9 (relating to inchoate
4 crimes), by reason of having undergone such abortion.

5 (b) False statement, etc.--A person commits a misdemeanor of
6 the second degree if, with intent to mislead a public servant in
7 performing his official function under this chapter, such
8 person:

9 (1) makes any written false statement which he does not
10 believe to be true; or

11 (2) submits or invites reliance on any writing which he
12 knows to be forged, altered or otherwise lacking in
13 authenticity.

14 (c) Statements "under penalty".--A person commits a
15 misdemeanor of the third degree if such person makes a written
16 false statement which such person does not believe to be true on
17 a statement submitted as required under this chapter, bearing
18 notice to the effect that false statements made therein are
19 punishable.

20 (d) Perjury provisions applicable.--Section 4902(c) through
21 (f) (relating to perjury) apply to subsections (b) and (c).

22 § 3219. State Board of Medicine; State Board of Osteopathic
23 Medicine.

24 (a) Enforcement.--It shall be the duty of the State Board of
25 Medicine and the State Board of Osteopathic Medicine to
26 vigorously enforce those provisions of this chapter, violation
27 of which constitutes "unprofessional conduct" within the meaning
28 of the act of October 5, 1978 (P.L.1109, No.261), known as the
29 Osteopathic Medical Practice Act, the act of December 20, 1985
30 (P.L.457, No.112), known as the Medical Practice Act of 1985, or

1 their successor acts. Each board shall have the power to
2 conduct, and its responsibilities shall include, systematic
3 review of all reports filed under this chapter.

4 (b) Penalties.--Except as otherwise herein provided, upon a
5 finding of "unprofessional conduct" under the provisions of this
6 chapter, the board shall, for the first such offense, prescribe
7 such penalties as it deems appropriate; for the second such
8 offense, suspend the license of the physician for at least 90
9 days; and, for the third such offense, revoke the license of the
10 physician.

11 (c) Reports.--The board shall prepare and submit an annual
12 report of its enforcement efforts under this chapter to the
13 General Assembly, which shall contain the following items:

14 (1) number of violations investigated, by section of
15 this chapter;

16 (2) number of physicians complained against;

17 (3) number of physicians investigated;

18 (4) penalties imposed; and

19 (5) such other information as any committee of the
20 General Assembly shall require.

21 Such reports shall be available for public inspection and
22 copying.

23 § 3220. Construction.

24 (a) Referral to coroner.--The provisions of section 503(3)
25 of the act of June 29, 1953 (P.L.304, No.66), known as the
26 "Vital Statistics Law of 1953," shall not be construed to
27 require referral to the coroner of cases of abortions performed
28 in compliance with this chapter.

29 (b) Other laws unaffected.--Apart from the provisions of
30 subsection (a) and section 3214 (relating to reporting) nothing

1 in this chapter shall have the effect of modifying or repealing
2 any part of the "Vital Statistics Law of 1953" or section 5.2 of
3 the act of October 27, 1955 (P.L.744, No.222), known as the
4 "Pennsylvania Human Relations Act."

5 (c) Required statement.--When any provision of this chapter
6 requires the furnishing or obtaining of a nonnotarized statement
7 or verification, the furnishing or acceptance of a notarized
8 statement or verification shall not be deemed a violation of
9 that provision.]

10 Section 3. Section 5521(d)(1) of Title 20 is amended to
11 read:

12 § 5521. Provisions concerning powers, duties and liabilities.

13 * * *

14 (d) Powers and duties only granted by court.--Unless
15 specifically included in the guardianship order after specific
16 findings of fact or otherwise ordered after a subsequent hearing
17 with specific findings of fact, a guardian or emergency guardian
18 shall not have the power and duty to:

19 (1) Consent on behalf of the incapacitated person to [an
20 abortion,] sterilization, psychosurgery, electroconvulsive
21 therapy or removal of a healthy body organ.

22 * * *

23 Section 4. Title 35 is amended by adding a part to read:

24 PART VII

25 REPRODUCTIVE RIGHTS

26 Chapter

27 91. Bodily Autonomy

28 CHAPTER 91

29 BODILY AUTONOMY

30 Sec.

1 9101. Short title of chapter.
2 9102. Legislative intent.
3 9103. Definitions.
4 9104. Informed consent.
5 9105. Incapacitated individuals, proceedings and coercion.
6 9106. Abortion facilities.
7 9107. Printed information.
8 9108. Commonwealth interference prohibited.
9 9109. Determination of gestational age.
10 9110. Abortion on pregnancy of 24 or more weeks gestational
11 age.
12 9111. Infanticide.
13 9112. Prohibited acts.
14 9113. Reporting.
15 9114. Insurance, public officers and public money.
16 9115. Fetal experimentation.
17 9116. Civil penalties.
18 9117. Criminal penalties.
19 9118. State Board of Medicine and State Board of Osteopathic
20 Medicine.
21 9119. Construction.
22 9120. Discrimination against providers.
23 9121. Telemedicine.
24 § 9101. Short title of chapter.
25 This chapter shall be known and may be cited as the Bodily
26 Autonomy Act.
27 § 9102. Legislative intent.
28 (a) Rights and interests.--
29 (1) It is the intention of the General Assembly to:
30 (i) Protect the life and health of an individual

1 subject to an abortion and to ensure the freedom of the
2 individual to choose the life that the individual wants.

3 (ii) Foster the development of standards of
4 professional conduct in a critical area of medical
5 practice.

6 (iii) Provide for development of statistical data.

7 (iv) Protect the right of individuals under 18 years
8 of age to voluntarily decide to submit to an abortion or
9 to carry a pregnancy to term, as well as protect the
10 right of nonconsenting individuals from being forced to
11 carry a pregnancy to term.

12 (2) It is assumed that an individual seeking an abortion
13 is aware of the longstanding debate regarding abortions and
14 that the individual is making an informed decision, having
15 already weighed the individual's own thoughts on the
16 practice.

17 (3) It is further assumed that an abortion should be
18 performed at the earliest opportunity by the least invasive
19 method available.

20 (4) The General Assembly finds as fact that the rights
21 and interests furthered by this chapter need to be codified
22 and protected by law.

23 (b) Construction.--In every relevant civil or criminal
24 proceeding in which it is possible to do so without violating
25 the Constitution of the United States, the common and statutory
26 law of Pennsylvania shall be construed so as to extend to
27 pregnant individuals the protection of their individual liberty
28 and to further the public policy of this Commonwealth of self-
29 determination, freedom and tolerance.

30 (c) Right of conscience.--It is the further public policy of

1 the Commonwealth to:

2 (1) Respect and protect the right of conscience of all
3 persons who refuse to obtain, receive, accept or provide
4 abortions, including persons who are engaged in the delivery
5 of medical services and medical care, whether acting
6 individually, corporately or in association with other
7 persons.

8 (2) Prohibit all forms of discrimination,
9 disqualification, coercion, disability or imposition of
10 liability or financial burden upon persons or entities by
11 reason of their refusing to act contrary to their conscience
12 or conscientious convictions in refusing to obtain, receive,
13 accept or provide abortions.

14 § 9103. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Abortion." As follows:

19 (1) The use of any means to terminate a clinically
20 diagnosable pregnancy.

21 (2) The term shall not include the use of an
22 intrauterine device or birth control pill to inhibit or
23 prevent ovulation, fertilization or the implantation of a
24 fertilized ovum within the uterus.

25 "Born alive." When used with regard to a human being, the
26 situation in which a human being was completely expelled or
27 extracted from the womb and after that separation breathed or
28 showed evidence of any of the following:

29 (1) The beating of the heart.

30 (2) Pulsation of the umbilical cord.

1 (3) Definite movement of voluntary muscles.

2 (4) Any brain-wave activity.

3 "Complication." Any of the following:

4 (1) Any hemorrhage, infection, uterine perforation,
5 cervical laceration and retained products.

6 (2) Any other medical issue that may, in the physician's
7 good faith professional judgment, result in:

8 (i) the death of the patient;

9 (ii) the substantial and irreversible impairment of
10 a major bodily function of the patient; or

11 (iii) the likelihood that the pregnancy will result
12 in a stillbirth.

13 "Conscience." A sincerely held set of moral convictions
14 arising from belief in and relation to a deity or which, though
15 not so derived, obtains from a place in the life of its
16 possessor parallel to that filled by a deity among adherents to
17 religious faiths.

18 "Counterparty." As follows:

19 (1) The individual who assisted in the fertilization of
20 an egg, resulting in the pregnancy of an individual.

21 (2) The term does not include the following:

22 (i) A sperm donor.

23 (ii) An employee of a fertility clinic.

24 (iii) A physician assisting in the process of in
25 vitro fertilization.

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

27 "Facility." A public or private hospital, clinic, center,
28 medical school, medical training institution, health care
29 facility, physician's office, infirmary, dispensary, ambulatory
30 surgical treatment center or other institution or location

1 wherein medical care is provided to a person.

2 "Fertilization." The fusion of a human spermatozoon with a
3 human ovum.

4 "Fetus." An organism of the species homo sapiens from
5 fertilization until birth.

6 "First trimester." The first 12 weeks of gestation.

7 "Gestational age." The age of the pregnancy as calculated
8 from the first day of the last known menstrual period.

9 "Hospital." An institution licensed pursuant to the
10 provisions of the laws of this Commonwealth.

11 "In vitro fertilization." The purposeful fertilization of a
12 human ovum outside a living body.

13 "Medical emergency." That condition which, on the basis of
14 the physician's good faith clinical judgment, so complicates the
15 medical condition of a pregnant patient as to necessitate the
16 immediate termination of the subject pregnancy to either avert
17 the individual's death or for which a delay will create any of
18 the following:

19 (1) A serious risk of substantial and irreversible
20 impairment of major bodily function.

21 (2) A substantial likelihood of stillbirth.

22 (3) A serious risk of substantial detriment to the
23 mental health of the patient.

24 "Medical personnel." A nurse, nurse's aide, medical school
25 student, professional or other person who furnishes or assists
26 in the furnishing of medical care.

27 "Physician." As follows:

28 (1) A person licensed to practice medicine in this
29 Commonwealth.

30 (2) The term includes the following professionals who

1 are eligible to perform abortions in this Commonwealth:

2 (i) Medical doctors and doctors of osteopathy.

3 (ii) Certified registered nurse anesthetists as
4 defined in section 2(16) of the act of May 22, 1951
5 (P.L.317, No.69), known as The Professional Nursing Law.

6 (iii) Certified registered nurse practitioners as
7 defined in section 2(12) of The Professional Nursing Law.

8 (iv) Physician assistants as defined in section 2 of
9 the act of October 5, 1978 (P.L.1109, No.261), known as
10 the Osteopathic Medical Practice Act.

11 "Pregnancy." As follows:

12 (1) The reproductive condition of having a developing
13 fetus in the body and that commences with fertilization.

14 (2) The process by which a fetal member of the species
15 homo sapiens is developing.

16 (3) A fetus itself.

17 "Pregnant." Experiencing a pregnancy.

18 "Probable gestational age of the pregnancy." In the judgment
19 of the attending physician, what will be, with reasonable
20 probability, the progress of the pregnancy at the time that the
21 abortion is planned to be performed.

22 "Viability." That stage of fetal development when, in the
23 judgment of a physician based on the particular facts of the
24 case before the physician and in light of the most advanced
25 medical technology and information available to the physician,
26 there is a reasonable likelihood of sustained survival of the
27 pregnancy outside the body of the individual in which it is
28 developing without artificial support.

29 § 9104. Informed consent.

30 (a) General rule.--No abortion shall be performed or induced

1 except with the voluntary and informed consent of the patient
2 upon whom the abortion is to be performed or induced.

3 (b) Emergency.--Where a medical emergency compels the
4 performance of an abortion, the physician shall inform the
5 patient, prior to the abortion if possible, of the medical
6 indications supporting the physician's judgment that an abortion
7 is necessary to avert the patient's death or to avert
8 substantial and irreversible impairment of major bodily
9 function.

10 (c) Penalty.--

11 (1) A physician who violates the provisions of this
12 section is guilty of unprofessional conduct and the
13 physician's license for the practice of medicine and surgery
14 shall be subject to suspension or revocation in accordance
15 with procedures provided under the act of October 5, 1978
16 (P.L.1109, No.261), known as the Osteopathic Medical Practice
17 Act, or the act of December 20, 1985 (P.L.457, No.112), known
18 as the Medical Practice Act of 1985, or their successor acts.

19 (2) A physician who performs or induces an abortion with
20 knowledge or reason to know that the consent of the patient
21 has not been obtained shall:

22 (i) For the first offense, be guilty of a summary
23 offense.

24 (ii) For each subsequent offense, be guilty of a
25 misdemeanor of the third degree.

26 (3) A physician shall not be guilty of violating this
27 section for failure to furnish the information required by
28 subsection (b) if the physician reasonably believed that
29 furnishing the information would be detrimental to the
30 physical or mental health of the patient.

1 (d) Limitation on civil liability.--A physician who complies
2 with the provisions of this section may not be held civilly
3 liable to the physician's patient for failure to obtain informed
4 consent, as defined in section 503 of the act of March 20, 2002
5 (P.L.154, No.13), known as the Medical Care Availability and
6 Reduction of Error (Mcare) Act, to the abortion.
7 § 9105. Incapacitated individuals, proceedings and coercion.

8 (a) Consent.--

9 (1) Notwithstanding any other provision of law, except
10 in the case of a medical emergency or except as otherwise
11 provided in this section, if an individual has been adjudged
12 an incapacitated person under 20 Pa.C.S. § 5511 (relating to
13 petition and hearing; independent evaluation), a physician
14 shall not perform an abortion upon the individual unless the
15 physician first obtains the informed consent of the
16 individual, if the individual is capable of providing
17 informed consent, or the individual's guardian of the person.

18 (2) In deciding whether to grant consent to the abortion
19 under paragraph (1), the individual's guardian of the person
20 shall only consider the individual's best interests.

21 (b) Petition and order.--

22 (1) If the individual's guardian of the person refuses
23 to consent to the abortion or makes a decision regarding the
24 abortion that conflicts with the judgment of the individual,
25 if the individual is capable of making a decision regarding
26 the abortion, the court of common pleas of the judicial
27 district in which the individual resides or in which the
28 abortion is sought shall, upon petition or motion, after an
29 appropriate hearing, issue an order regarding the abortion.

30 (2) If the court determines that the individual is

1 capable of giving informed consent to the proposed abortion
2 and has, in fact, given informed consent, the court shall
3 authorize a physician to perform the abortion.

4 (3) If the court determines that the individual is not
5 capable of giving informed consent or if the individual does
6 not claim to be capable of giving informed consent, the court
7 shall determine whether the performance of an abortion upon
8 the individual would be in the individual's best interests.
9 If the court determines that the performance of an abortion
10 would be in the best interests of the individual, it shall
11 authorize a physician to perform the abortion.

12 (c) Representation in proceedings.--

13 (1) The individual may participate in proceedings under
14 subsection (b) on the individual's own behalf.

15 (2) The court may appoint a guardian ad litem to assist
16 the individual.

17 (3) The court shall:

18 (i) Advise the individual that the individual has a
19 right to court-appointed counsel.

20 (ii) Provide the individual with court-appointed
21 counsel unless the individual wishes to appear with
22 private counsel or has knowingly and intelligently waived
23 representation by counsel.

24 (d) Proceedings.--The following apply to court proceedings
25 for an individual described under subsection (a)(1):

26 (1) The court proceedings shall be confidential and
27 shall be given precedence over other pending matters as will
28 ensure that the court may reach a decision promptly and
29 without delay in order to serve the best interests of the
30 individual.

1 (2) In no case shall the court of common pleas fail to
2 rule within three business days of the date of application
3 under this section.

4 (3) A court of common pleas that conducts proceedings
5 under this section shall make in writing specific factual
6 findings and legal conclusions supporting its decision and
7 shall, upon the initial filing of the individual's petition
8 for judicial authorization of an abortion, order a sealed
9 record of the petition, pleadings, submissions, transcripts,
10 exhibits, orders, evidence and any other written material to
11 be maintained, which shall include its own findings and
12 conclusions.

13 (4) The application to the court of common pleas shall
14 be accompanied by a non-notarized verification stating that
15 the information therein is true and correct to the best of
16 the knowledge of the individual or the individual's guardian
17 of the person.

18 (5) The application to the court of common pleas shall
19 specify the following:

20 (i) The initials of the individual.

21 (ii) The age of the individual.

22 (iii) The name and address of the individual's
23 guardian of the person.

24 (iv) That the individual has been fully informed of
25 the risks and consequences of the abortion.

26 (v) Whether the individual is of sound mind and has
27 sufficient intellectual capacity to consent to the
28 abortion.

29 (vi) A prayer for relief asking the court to either
30 grant the individual full capacity for the purpose of

1 personal consent to the abortion, or to give judicial
2 consent to the abortion under this section based upon a
3 finding that the abortion is in the best interest of the
4 individual.

5 (vii) That the individual is aware that any false
6 statements made in the application are punishable by law.

7 (viii) The signature of the individual or the
8 individual's guardian of the person.

9 (6) If necessary to serve the interest of justice, the
10 orphans' court division or, in Philadelphia, the family court
11 division, shall refer the individual or individual's guardian
12 of the person, to the appropriate personnel for assistance in
13 preparing the application.

14 (7) The following apply to confidentiality:

15 (i) The name of the individual shall not be entered
16 on any docket that is subject to public inspection.

17 (ii) All individuals shall be excluded from hearings
18 under this section except:

19 (A) The individual who is making the application
20 to the court or who is the subject of the application
21 to the court.

22 (B) The individual's guardian of the person.

23 (C) Any other individual whose presence is
24 specifically requested by the individual or the
25 individual's guardian of the person.

26 (8) At the hearing under this section, the court shall
27 hear evidence relating to:

28 (i) The emotional development, maturity, intellect
29 and understanding of the individual.

30 (ii) The fact and duration of the individual's

1 pregnancy.

2 (iii) The nature of, possible consequences of and
3 alternatives to the abortion.

4 (iv) Any other evidence that the court may find
5 useful in determining whether the individual should be
6 granted full capacity for the purpose of consenting to
7 the abortion or whether the abortion is in the best
8 interest of the individual.

9 (9) The court shall also notify the individual at the
10 hearing under this section that the court must rule on the
11 individual's application within three business days of the
12 date of its filing and that, should the court fail to rule in
13 favor of the individual's application within the allotted
14 time, the individual has the right to appeal to the Superior
15 Court.

16 (e) Coercion prohibited.--The following apply regarding
17 coercion:

18 (1) Except in a medical emergency, no person shall
19 coerce an individual to undergo or forgo an abortion.

20 (2) An individual who is threatened with coercion may
21 apply to a court of common pleas for relief.

22 (3) The court shall provide the individual under this
23 section with counsel, give the matter expedited consideration
24 and grant relief as may be necessary to prevent the coercion.

25 (f) Filing fees.--No filing fees shall be required of
26 individuals availing themselves of the procedures provided by
27 this section.

28 (g) Penalty.--

29 (1) A person is guilty of an offense under this section
30 if the person:

1 (i) Performs an abortion upon an incapacitated
2 individual to whom this section applies:

3 (A) with knowledge that the individual is an
4 incapacitated individual to whom this section
5 applies; or

6 (B) with reckless disregard or negligence as to
7 whether the individual is an incapacitated individual
8 to whom this section applies.

9 (ii) Intentionally, knowingly or recklessly fails to
10 conform to any requirement of this section.

11 (2) A person violating paragraph (1) is guilty of
12 unprofessional conduct and the person's license for the
13 practice of medicine and surgery shall be suspended in
14 accordance with procedures provided under the act of October
15 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical
16 Practice Act, or the act of December 20, 1985 (P.L.457,
17 No.112), known as the Medical Practice Act of 1985, or their
18 successor acts, for a period of at least three months.

19 (3) Failure to comply with the requirements of this
20 section is prima facie evidence of failure to obtain informed
21 consent and of interference with the relationship between the
22 individual and the individual's guardian of the person, which
23 may be the subject of an appropriate civil action.

24 (4) The law of this Commonwealth shall not be construed
25 to preclude the award of exemplary damages or damages for
26 emotional distress even if unaccompanied by physical
27 complications in an appropriate civil action relevant to a
28 violation of this section.

29 § 9106. Abortion facilities.

30 (a) Regulations.--

1 (1) The department may make rules and regulations
2 pursuant to this chapter, with respect to performance of
3 abortions and with respect to facilities in which abortions
4 are performed, so as to protect the health and safety of
5 patients having abortions.

6 (2) The rules and regulations under subsection (a) shall
7 include procedures, staff, equipment and laboratory testing
8 requirements for all facilities offering abortion services.

9 (b) Reports.--Every facility at which abortions are
10 performed shall file, and update immediately upon any change, a
11 report with the department, containing the following
12 information:

13 (1) The name and address of the facility.

14 (2) The name and address of any parent, subsidiary or
15 affiliated organizations, corporations or associations.

16 (3) The name and address of any parent, subsidiary or
17 affiliated organizations, corporations or associations having
18 contemporaneous commonality of ownership, beneficial
19 interest, directorship or officership with any other
20 facility.

21 (c) Public information.--

22 (1) The information contained in the reports that are
23 filed in accordance with this subsection by facilities that
24 receive State-appropriated funds during the 12-calendar-month
25 period immediately preceding a request to inspect or copy the
26 reports shall be deemed public information.

27 (2) Reports filed by facilities that do not receive
28 State-appropriated funds shall only be available to law
29 enforcement officials, the State Board of Medicine and the
30 State Board of Osteopathic Medicine for use in the

1 performance of their official duties.

2 (d) Penalties.--A facility failing to comply with the
3 provisions of this section shall be assessed by the department a
4 fine of \$500 for each day that the facility is in violation.

5 § 9107. Printed information.

6 (a) Publication and updates.--The department shall cause the
7 following easily comprehensible printed materials to be
8 published in English, Spanish, Vietnamese and other languages
9 deemed appropriate by the department:

10 (1) Subject to subsection (b), either of the following:

11 (i) Geographically indexed materials designed to
12 inform the public of public and private agencies and
13 services available to assist an individual through
14 pregnancy, upon childbirth and while the child is
15 dependent, including adoption agencies, which shall
16 include a comprehensive list of the agencies available, a
17 description of the services that they offer and a
18 description of the manner, including telephone numbers,
19 in which they might be contacted.

20 (ii) At the option of the department, printed
21 materials, including a toll-free, 24-hour-a-day telephone
22 number that may be called to obtain, orally, a list and a
23 description of agencies in the locality of the caller and
24 of the services that they offer.

25 (2) Materials that contain objective information
26 describing:

27 (i) The methods of abortion procedures commonly
28 employed.

29 (ii) The medical risks commonly associated with each
30 procedure.

1 (iii) The medical risks commonly associated with
2 carrying a pregnancy to term.

3 (b) Specific information.--The materials under subsection

4 (a) (1) shall:

5 (1) Provide information on the availability of medical
6 assistance benefits for prenatal care, childbirth and
7 neonatal care.

8 (2) State that:

9 (i) It is unlawful for an individual to coerce
10 another to undergo or forgo an abortion.

11 (ii) A physician who performs an abortion upon an
12 individual without obtaining the individual's informed
13 consent or without providing a private medical
14 consultation may be liable to the individual for damages
15 in a civil action at law.

16 (iii) The counterparty is liable to assist in the
17 support of that child, even in instances where the
18 counterparty has offered to pay for an abortion.

19 (iv) The law permits adoptive parents to pay costs
20 of prenatal care, childbirth and neonatal care.

21 (3) Be updated on an annual basis.

22 (4) Contain a publicly accessible Internet website
23 address.

24 (c) Format.--The materials required under this section shall
25 be printed in a typeface large enough to be clearly legible.

26 (d) Free distribution.--The materials required under this
27 section shall be available at no cost from the department upon
28 request and in appropriate number to any person, facility or
29 hospital.

30 § 9108. Commonwealth interference prohibited.

1 (a) Methods of contraception.--The Commonwealth shall not
2 interfere with the use of medically appropriate methods of
3 contraception or the manner in which medically appropriate
4 methods of contraception are provided.

5 (b) Other interference.--Notwithstanding any other provision
6 of this title or any other law or regulation, the Commonwealth
7 shall not interfere with the right of an individual to choose or
8 obtain an abortion if either of the following applies:

9 (1) The individual's pregnancy has not progressed beyond
10 24 weeks.

11 (2) The individual's physician reasonably believes that
12 an abortion at any point beyond 24 weeks of pregnancy is, in
13 the physician's good faith medical judgment, necessary to
14 prevent any of the following:

15 (i) The death of the individual.

16 (ii) The substantial and irreversible impairment of
17 a major bodily function of the individual.

18 (iii) An extreme risk to the individual's mental
19 health.

20 § 9109. Determination of gestational age.

21 (a) Requirement.--Except in the case of a medical emergency
22 which prevents compliance with this section, no abortion shall
23 be performed or induced unless the referring physician or the
24 physician performing or inducing it has first made a
25 determination of the probable gestational age of the pregnancy.
26 The following apply:

27 (1) In making the determination, the physician shall
28 make inquiries of the patient and perform or cause to be
29 performed medical examinations and tests as a prudent
30 physician would consider necessary to make or perform in

1 making an accurate diagnosis with respect to gestational age.

2 (2) The physician who performs or induces the abortion
3 shall report the type of inquiries made and the type of
4 examinations and tests utilized to determine the gestational
5 age of the pregnancy and the basis for the diagnosis with
6 respect to gestational age on forms provided by the
7 department.

8 (b) Penalties.--

9 (1) Failure of a physician to conform to a requirement
10 of this section constitutes unprofessional conduct within the
11 meaning of the act of October 5, 1978 (P.L.1109, No.261),
12 known as the Osteopathic Medical Practice Act, or the act of
13 December 20, 1985 (P.L.457, No.112), known as the Medical
14 Practice Act of 1985, or their successor acts.

15 (2) Intentional, knowing or reckless falsification of a
16 report required under this section is a misdemeanor of the
17 third degree.

18 § 9110. Abortion on pregnancy of 24 or more weeks gestational
19 age.

20 (a) Prohibition.--Except as provided in subsection (b), no
21 person shall perform or induce an abortion upon another
22 individual when the gestational age of the pregnancy is 24 or
23 more 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 the abortion is, in the physician's
28 good faith medical judgment, necessary to prevent any of the
29 following:

30 (i) The death of the individual.

1 (ii) The substantial and irreversible impairment of
2 a major bodily function of the individual.

3 (iii) An extreme risk to the individual's mental
4 health.

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 that, after making a determination of the
8 gestational age of the pregnancy in compliance with section
9 9109 (relating to determination of gestational age), the
10 pregnancy is less than 24 weeks gestational age.

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

17 (1) The physician performing the abortion certifies in
18 writing that, based upon the physician's medical examination
19 of the patient and the physician's medical judgment, the
20 abortion is necessary to prevent the death of the patient,
21 the substantial and irreversible impairment of a major bodily
22 function of the patient or an extreme risk to the patient's
23 mental health.

24 (2) The 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 the physician's separate personal medical examination of the
28 patient and the physician's medical judgment, the abortion
29 is, in the physician's good faith medical judgment, necessary
30 to prevent any of the following:

1 (i) The death of the individual.

2 (ii) The substantial and irreversible impairment of
3 a major bodily function of the individual.

4 (iii) An extreme risk to the individual's mental
5 health.

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

7 (4) The physician terminates the pregnancy in a manner
8 that provides the best opportunity for the pregnancy to
9 survive, unless the physician determines, in the physician's
10 good faith medical judgment, that termination of the
11 pregnancy in that manner poses a significantly greater risk
12 either of the death of the patient or the substantial and
13 irreversible impairment of a major bodily function of the
14 patient or will create a serious risk of substantial
15 detriment to the mental health of the patient than would
16 other available methods.

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

24 (d) Penalties.--

25 (1) A person who violates subsection (a) commits a
26 felony of the third degree.

27 (2) A person who violates subsection (c) commits a
28 misdemeanor of the second degree for the first offense and a
29 misdemeanor of the first degree for subsequent offenses.

30 § 9111. Infanticide.

1 (a) Status.--The laws of this Commonwealth shall not be
2 construed to imply that a human being born alive in the course
3 of or as a result of an abortion or pregnancy termination, no
4 matter what may be that human being's chance of survival, is not
5 a person under the Constitution of Pennsylvania and laws of this
6 Commonwealth.

7 (b) Care required.--All physicians and licensed medical
8 personnel attending a child who is born alive during the course
9 of an abortion or premature delivery, or after being carried to
10 term, shall provide the child that type and degree of care and
11 treatment which, in the good faith judgment of the physician, is
12 commonly and customarily provided to any other person under
13 similar conditions and circumstances. An individual who
14 intentionally, knowingly or recklessly violates the provisions
15 of this subsection commits a felony of the third degree.

16 (c) Obligation of physician.--Whenever the physician or any
17 other person is prevented by lack of consent by an individual's
18 guardian of the person from fulfilling obligations under
19 subsection (b), the physician shall nonetheless fulfill the
20 obligations and immediately notify the court of the facts of the
21 case. The following apply:

22 (1) The court shall immediately institute an inquiry.

23 (2) If the court finds that the lack of consent by the
24 individual's guardian of the person is preventing treatment
25 required under subsection (b), the court shall immediately
26 grant injunctive relief to require treatment.

27 § 9112. Prohibited acts.

28 (a) Payment for abortion.--Except in the case of a pregnancy
29 that is not yet clinically diagnosable, a person who intends to
30 perform or induce an abortion shall, before accepting payment

1 for the abortion, make or obtain a determination that the
2 patient is pregnant. The following apply:

3 (1) A person who intentionally or knowingly accepts
4 payment without first making or obtaining the determination
5 commits a misdemeanor of the second degree.

6 (2) A person commits a misdemeanor of the second degree
7 if the person makes the determination erroneously either
8 knowing that the determination is erroneous or with reckless
9 disregard or negligence as to whether the determination is
10 erroneous and the person:

11 (i) thereupon or thereafter intentionally relies
12 upon the determination in soliciting or obtaining
13 payment; or

14 (ii) intentionally conveys the determination to
15 another person with knowledge that, or with reckless
16 disregard as to whether, the determination will be relied
17 upon in soliciting or obtaining payment.

18 (b) Referral fee.--

19 (1) The payment or receipt of a referral fee in
20 connection with the performance of an abortion is a
21 misdemeanor of the first degree.

22 (2) For purposes of this subsection, the term "referral
23 fee" means the transfer of anything of value between a
24 physician who performs an abortion or an operator or employee
25 of a clinic at which an abortion is performed and the person
26 who advised the patient receiving the abortion to use the
27 services of that physician or clinic.

28 (c) Regulations.--

29 (1) The department shall issue regulations to assure
30 that prior to the performance of an abortion, including an

1 abortion performed in the first trimester of pregnancy, the
2 maternal Rh status shall be determined and that anti-Rh
3 sensitization prophylaxis shall be provided to each patient
4 at risk of sensitization unless the patient refuses to accept
5 the treatment.

6 (2) Except when there exists a medical emergency or, in
7 the judgment of the physician, there exists no possibility of
8 Rh sensitization, the intentional failure to conform to the
9 regulations issued in accordance with this subsection
10 constitutes unprofessional conduct and the physician's
11 license for the practice of medicine and surgery shall be
12 subject to suspension or revocation in accordance with
13 procedures provided under the act of October 5, 1978
14 (P.L.1109, No.261), known as the Osteopathic Medical Practice
15 Act, or the act of December 20, 1985 (P.L.457, No.112), known
16 as the Medical Practice Act of 1985, or their successor acts.

17 (d) Participation in abortion.--Except for a facility
18 devoted exclusively to the performance of abortions, no medical
19 personnel or medical facility, nor any employee, agent or
20 student thereof, shall be required against the individual's or
21 facility's conscience to aid, abet or facilitate performance of
22 an abortion or dispensing of an abortifacient. The following
23 apply:

24 (1) Failure or refusal to do so shall not be a basis
25 for:

26 (i) Any civil, criminal, administrative or
27 disciplinary action, penalty or proceeding.

28 (ii) Refusing to hire or admit anyone.

29 (2) Nothing in this subsection shall be construed to
30 limit the provisions of the act of October 27, 1955 (P.L.744,

1 No.222), known as the Pennsylvania Human Relations Act.

2 (3) A person who knowingly violates the provisions of
3 this subsection shall be civilly liable to the person thereby
4 injured and, in addition, shall be liable to that person for
5 punitive damages in the amount of \$5,000.

6 (e) In vitro fertilization.--

7 (1) All persons conducting, or experimenting in, in
8 vitro fertilization shall file quarterly reports with the
9 department. The following apply:

10 (i) The reports shall be available for public
11 inspection and copying with the names and addresses of
12 persons sponsoring the fertilization or experimentation
13 redacted.

14 (ii) The reports shall contain the following
15 information:

16 (A) The names of all persons conducting or
17 assisting in the fertilization or experimentation
18 process.

19 (B) The locations where the fertilization or
20 experimentation is conducted.

21 (C) The name and address of any person,
22 facility, agency or organization sponsoring the
23 fertilization or experimentation, except that names
24 of any persons who are donors or recipients of sperm
25 or eggs shall not be disclosed.

26 (D) The number of eggs fertilized.

27 (E) The number of fertilized eggs destroyed or
28 discarded.

29 (F) The number of patients implanted with a
30 fertilized egg.

1 (2) If a person required under this subsection to file a
2 report, keep records or supply information willfully fails to
3 file the report, keep records or supply information or
4 submits a false report, the person shall be assessed a fine
5 by the department in the amount of \$50 for each day in which
6 that person is in violation of this subsection.

7 (f) Notice.--

8 (1) Except for a facility devoted exclusively to the
9 performance of abortions, every facility performing abortions
10 shall prominently post a notice, not less than eight and one-
11 half inches by eleven inches in size, entitled "Right of
12 Conscience," for the exclusive purpose of informing medical
13 personnel, employees, agents and students of the facility of
14 the rights under subsection (d) and under section 5.2 of the
15 Pennsylvania Human Relations Act. The following apply:

16 (i) The facility shall post the notice required by
17 this subsection in a location or locations where notices
18 to employees, medical personnel and students are normally
19 posted or, if notices are not normally posted, in a
20 location or locations where the notice required by this
21 subsection is likely to be seen by medical personnel,
22 employees or students of the facility.

23 (ii) The department shall prescribe a model notice
24 that may be used by a facility. A facility that utilizes
25 the model notice or substantially similar language shall
26 be deemed in compliance with this subsection.

27 (2) The department may assess a civil penalty of up to
28 \$5,000 against a facility for each violation of this
29 subsection. The following apply:

30 (i) The department shall give due consideration to

1 the appropriateness of the penalty with respect to the
2 size of the facility, the gravity of the violation, the
3 good faith of the facility and the history of previous
4 violations.

5 (ii) Civil penalties due under this subsection shall
6 be paid to the department for deposit in the State
7 Treasury and may be collected by the department in the
8 appropriate court of common pleas.

9 (iii) The department shall send a copy of its model
10 notice to every facility that files a report under
11 section 9106(b) (relating to abortion facilities).

12 (iv) Failure to receive a notice shall not be a
13 defense to a civil action brought in accordance with this
14 subsection.

15 § 9113. Reporting.

16 (a) Forms and information.--For the purpose of promotion of
17 maternal health and life by adding to the sum of medical and
18 public health knowledge through the compilation of relevant
19 data, a report of each abortion performed shall be made to the
20 department on forms prescribed by the department. The following
21 apply:

22 (1) The report forms shall not identify the individual
23 patient by name.

24 (2) The report forms shall include the following
25 information:

26 (i) Identification of the physician who performed
27 the abortion, the concurring physician as required by
28 section 9110(c)(2) (relating to abortion on pregnancy of
29 24 or more weeks gestational age), the second physician
30 as required by section 9110(c)(5) and the facility where

1 the abortion was performed and of the referring
2 physician, agency or service, if any.

3 (ii) The county and state in which the patient
4 resides.

5 (iii) The patient's age.

6 (iv) The gestational age of the pregnancy at the
7 time of the abortion.

8 (v) The type of procedure performed or prescribed
9 and the date of the abortion.

10 (vi) Preexisting medical conditions of the patient
11 which would complicate pregnancy, if any, and, if known,
12 any medical complication which resulted from the abortion
13 itself.

14 (vii) The basis for the medical judgment of the
15 physician who performed the abortion that the abortion
16 was necessary to prevent the death of the patient or the
17 substantial and irreversible impairment of a major bodily
18 function of the patient, where an abortion has been
19 performed in accordance with section 9110(b)(1).

20 (viii) The weight of the aborted pregnancy for any
21 abortion performed in accordance with section 9110(b)(1).

22 (ix) The basis for any medical judgment that a
23 medical emergency existed which excused the physician
24 from compliance with any provision of this chapter.

25 (x) The information required to be reported under
26 section 9109(a) (relating to determination of gestational
27 age).

28 (b) Completion of report.--The reports shall be completed by
29 the hospital or other licensed facility, signed by the physician
30 who performed the abortion and transmitted to the department

within 15 days after each reporting month.

(c) Form.--The department shall prescribe a form on which pathologists may report any evidence of absence of pregnancy, live birth or viability.

(d) Statistical reports and public availability of reports.--

(1) The department shall prepare a comprehensive annual statistical report for the General Assembly based upon the data gathered under subsections (a) and (g). The report shall not lead to the disclosure of the identity of any person filing a report or about whom a report is filed and shall be available for public inspection and copying.

(2) Reports filed in accordance with subsection (a) or (g) shall not be deemed public records, as defined in section 102 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court of common pleas after application showing good cause. The court may condition disclosure of the information upon any appropriate safeguards that it may impose.

(3) Original copies of all reports filed under subsections (a), (e) and (g) shall be available to the State Board of Medicine and the State Board of Osteopathic Medicine for use in the performance of their official duties.

(4) A person who willfully discloses information obtained from reports filed in accordance with subsection (a) or (g), other than that disclosure authorized under paragraph (1), (2) or (3) or as otherwise authorized by law commits a misdemeanor of the third degree.

1 (e) Report by facility.--Every facility in which an abortion
2 is performed in this Commonwealth during any quarter year shall
3 file with the department a report showing the total number of
4 abortions performed in the hospital or other facility during
5 that quarter year. The following apply:

6 (1) The report shall also show the total abortions
7 performed in each trimester of pregnancy.

8 (2) A report shall be available for public inspection
9 and copying only if the facility receives State-appropriated
10 funds within the 12-calendar-month period immediately
11 preceding the filing of the report.

12 (3) The reports shall be submitted on a form prescribed
13 by the department that will enable a facility to indicate
14 whether or not it is receiving State-appropriated funds. If
15 the facility indicates on the form that it is not receiving
16 State-appropriated funds, the department shall regard its
17 report as confidential unless it receives other evidence that
18 causes it to conclude that the facility receives State-
19 appropriated funds.

20 (f) Report of death.--

21 (1) The department shall require that all reports of
22 deaths occurring within this Commonwealth arising from
23 pregnancy, childbirth or intentional abortion in every case
24 state the following:

25 (i) The cause of death.

26 (ii) The duration of the patient's pregnancy when
27 the patient's death occurred.

28 (iii) Whether or not the patient was under the care
29 of a physician during the pregnancy prior to the
30 patient's death.

1 (2) The department shall issue regulations as are
2 necessary to assure that the information under paragraph (1)
3 is reported and shall conduct its own investigation if
4 necessary in order to ascertain the data.

5 (3) A patient shall be deemed to have been under the
6 care of a physician prior to the patient's death for the
7 purpose of this chapter when the patient had either been
8 examined or treated by a physician, not including any
9 examination or treatment in connection with emergency care
10 for complications of the patient's pregnancy or abortion,
11 preceding the patient's death at any time that is both 21 or
12 more days after the time that the patient became pregnant and
13 within 60 days prior to the patient's death.

14 (4) Known incidents of mortality of nonresident patients
15 arising from induced abortion performed in this Commonwealth
16 shall be included as incidents of mortality arising from
17 induced abortions.

18 (5) Incidents of mortality arising from continued
19 pregnancy or childbirth and occurring after induced abortion
20 has been attempted but not completed, including deaths
21 occurring after induced abortion has been attempted but not
22 completed as the result of ectopic pregnancy, shall be
23 included as incidents of mortality arising from induced
24 abortion.

25 (6) The department shall annually compile a statistical
26 report for the General Assembly based upon the data gathered
27 under this subsection, and all such statistical reports shall
28 be available for public inspection and copying.

29 (g) Report of complications.--Every physician who is called
30 upon to provide medical care or treatment to a patient who is in

1 need of medical care because of a complication resulting, in the
2 good faith judgment of the physician, from having undergone an
3 abortion or attempted abortion shall prepare a report regarding
4 the complication. The following apply:

5 (1) The physician shall file the report with the
6 department within 30 days of the date of the physician's
7 first examination of the patient.

8 (2) The report shall be on forms prescribed by the
9 department.

10 (3) The forms shall contain the following information,
11 as received, and other information, except the name of the
12 patient, as the department may require:

13 (i) The age of the patient.

14 (ii) The name and address of the facility where the
15 abortion was performed, if known.

16 (iii) The gestational age of the pregnancy at the
17 time of the abortion, if known.

18 (iv) The type of abortion performed, if known.

19 (v) The nature of the complication.

20 (vi) The medical treatment given.

21 (vii) The nature and extent, if known, of any
22 permanent condition caused by the complication.

23 (h) Penalties.--

24 (1) A person required under this section to file a
25 report, keep records or supply information who willfully
26 fails to file the report, keep records or supply information
27 at the time required by law or regulation is guilty of
28 unprofessional conduct and the person's license for the
29 practice of medicine and surgery shall be subject to
30 suspension or revocation in accordance with procedures

1 provided under the act of October 5, 1978 (P.L.1109, No.261),
2 known as the Osteopathic Medical Practice Act, or the act of
3 December 20, 1985 (P.L.457, No.112), known as the Medical
4 Practice Act of 1985, or their successor acts.

5 (2) A person who willfully delivers or discloses to the
6 department a report, a record or information known by the
7 person to be false commits a misdemeanor of the first degree.

8 (3) In addition to the penalties under paragraphs (1)
9 and (2), a person, organization or facility that willfully
10 violates any of the provisions of this section requiring
11 reporting shall upon conviction:

12 (i) For the first violation, have the person's
13 license suspended for a period of six months.

14 (ii) For the second violation, have the person's
15 license suspended for a period of one year.

16 (iii) For the third offense, have the person's
17 license revoked.

18 § 9114. Insurance, public officers and public money.

19 (a) Insurance policies.--All insurers who make available
20 health care and disability insurance policies in this
21 Commonwealth shall make available the policies that contain an
22 express exclusion of coverage for abortion services not
23 necessary to:

24 (1) avert the death of the patient, the substantial and
25 irreversible impairment of a major bodily function of the
26 patient or an extreme risk to the patient's mental health; or

27 (2) terminate a pregnancy initiated by an act of rape or
28 incest.

29 (b) Public officers and ordering abortions.--Except in the
30 case of a medical emergency, no court, judge, executive officer,

administrative agency or public employee of the Commonwealth or of any local governmental body shall have the power to:

(1) issue an order requiring an abortion without the express voluntary consent of the individual upon whom the abortion is to be performed; or

(2) coerce an individual to undergo or forgo an abortion.

(c) Public officers and limiting benefits prohibited.--No court, judge, executive officer, administrative agency or public employee of the Commonwealth or of any local governmental body shall withhold, reduce or suspend, or threaten to withhold, reduce or suspend, any benefits to which an individual would otherwise be entitled on the ground that the individual chooses to undergo or forgo an abortion.

(d) Penalty.--Whoever orders an abortion in violation of subsection (b) or withholds, reduces or suspends any benefits or threatens to withhold, reduce or suspend any benefits in violation of subsection (c) commits a misdemeanor of the first degree.

(e) Public money for legal services.--

(1) No Federal or State money that is appropriated by the Commonwealth for the provision of legal services by private agencies, and no public money generated by collection of interest on lawyer's trust accounts, as authorized by statute previously or subsequently enacted, may be used, directly or indirectly, to:

(i) Advocate the freedom to choose abortion or the prohibition of abortion.

(ii) Provide legal assistance with respect to a proceeding or litigation which seeks to procure or

1 prevent an abortion or to procure or prevent public
2 funding for an abortion.

3 (iii) Provide legal assistance with respect to a
4 proceeding or litigation which seeks to compel or prevent
5 the performance or assistance in the performance of an
6 abortion, or the provision of facilities for the
7 performance of an abortion.

8 (2) Nothing in this subsection shall be construed to:

9 (i) Require or prevent the expenditure of money
10 pursuant to a court order awarding fees for attorney's
11 services under the Civil Rights Attorney's Fees Award Act
12 of 1976 (Public Law 94-559, 90 Stat. 2641).

13 (ii) Prevent the use of public money to provide
14 court-appointed counsel in a proceeding authorized under
15 this chapter.

16 § 9115. Fetal experimentation.

17 (a) Fetus or live child.--

18 (1) A person who knowingly performs any type of
19 nontherapeutic experimentation or nontherapeutic medical
20 procedure, except an abortion as defined in this chapter,
21 upon a fetus, or upon a child born alive during the course of
22 an abortion, commits a felony of the third degree, unless
23 necessary to preserve the life and health of the patient
24 during an abortion.

25 (2) For purposes of paragraph (1), the term
26 "nontherapeutic" means that which is not intended to preserve
27 the life or health of the fetus or child upon whom it is
28 performed.

29 (b) Fetal remains.--The following standards govern the
30 procurement and use of any fetal tissue or organ that is used in

1 animal or human transplantation, research or experimentation:

2 (1) No fetal tissue or organ may be procured or used
3 without the written consent of the patient. The following
4 apply:

5 (i) No consideration of any kind for the consent may
6 be offered or given.

7 (ii) If the fetal tissue or organ is being derived
8 from an abortion, the consent shall be valid only if
9 obtained after the decision to abort has been made.

10 (2) No person who provides the information required by
11 section 9104 (relating to informed consent) shall employ the
12 possibility of the use of any aborted fetal tissue or organ
13 as an inducement to a pregnant individual to undergo an
14 abortion, except that payment for reasonable expenses
15 occasioned by the actual retrieval, storage, preparation and
16 transportation of the tissue is permitted.

17 (3) No remuneration, compensation or other consideration
18 may be paid to a person or organization in connection with
19 the procurement of any fetal tissue or organ.

20 (4) All persons who participate in the procurement, use
21 or transplantation of any fetal tissue or organ, including
22 the recipients of the fetal tissue or organ, shall be
23 informed as to whether the particular fetal tissue or organ
24 involved was procured as a result of any of the following:

25 (i) Stillbirth.

26 (ii) Miscarriage.

27 (iii) Ectopic pregnancy.

28 (iv) Abortion.

29 (v) Any other means.

30 (5) No person who consents to the procurement or use of

1 any fetal tissue or organ may designate the recipient of that
2 fetal tissue or organ, nor shall any other person or
3 organization act to fulfill that designation.

4 (6) The department may assess a civil penalty upon a
5 person who procures, sells or uses any fetal tissue or organ
6 in violation of this section or the regulations issued
7 thereunder. The following apply:

8 (i) The civil penalties may not exceed \$5,000 for
9 each separate violation.

10 (ii) In assessing the civil penalties, the
11 department shall give due consideration to the gravity of
12 the violation, the good faith of the violator and the
13 history of previous violations.

14 (iii) The civil penalties due under this paragraph
15 shall be paid to the department for deposit in the State
16 Treasury and may be enforced by the department in
17 Commonwealth Court.

18 (c) Construction of section.--Nothing in this section shall
19 be construed to:

20 (1) Prohibit the performance of:

21 (i) diagnostic tests during pregnancy; or

22 (ii) pathological examinations on an aborted
23 pregnancy.

24 (2) Prohibit the performance of in vitro fertilization
25 and accompanying embryo transfer.

26 § 9116. Civil penalties.

27 (a) Damages.--A physician who knowingly violates any of the
28 provisions of section 9104 (relating to informed consent) shall,
29 in addition to any other penalty prescribed in this chapter, be
30 civilly liable to the physician's patient for:

1 (1) Damages caused by the violation.

2 (2) Punitive damages in the amount of \$5,000.

3 (b) Attorney fees.--The court shall award a prevailing
4 plaintiff under this section reasonable attorney fees as part of
5 costs.

6 § 9117. Criminal penalties.

7 (a) Application of chapter.--

8 (1) Except as otherwise provided in this chapter, no
9 criminal penalty shall apply to a person who performs or
10 induces, or attempts to perform or induce, an abortion upon
11 an individual.

12 (2) An individual who undergoes an abortion shall not be
13 found guilty of having committed an offense, liability for
14 which is defined under 18 Pa.C.S. § 306 (relating to
15 liability for conduct of another; complicity) or 18 Pa.C.S.
16 Ch. 9 (relating to inchoate crimes), by reason of having
17 undergone the abortion.

18 (3) An individual who assists in an abortion within the
19 individual's own residence or at the residence of the
20 individual receiving the abortion and who is not expecting or
21 contracted to receive payment shall not be found guilty of
22 having committed an offense, liability for which is defined
23 under 18 Pa.C.S. § 306 or 18 Pa.C.S. Ch. 9, or any other
24 crime by reason of having participated in the abortion.

25 (b) False statement or writing.--A person commits a
26 misdemeanor of the second degree if, with intent to mislead a
27 public servant in performing an official function under this
28 chapter, the person:

29 (1) makes a written false statement that the person does
30 not believe to be true; or

1 (2) submits or invites reliance on a writing that the
2 person knows to be forged, altered or otherwise lacking in
3 authenticity.

4 (c) Statements under penalty.--A person commits a
5 misdemeanor of the third degree if the person makes a written
6 false statement that the person does not believe to be true on a
7 statement submitted as required under this chapter, bearing
8 notice to the effect that false statements made therein are
9 punishable.

10 (d) Perjury provisions applicable.--The provisions of 18
11 Pa.C.S. § 4902(c), (d), (e) and (f) (relating to perjury) apply
12 to subsections (b) and (c).

13 § 9118. State Board of Medicine and State Board of Osteopathic
14 Medicine.

15 (a) Enforcement.--It shall be the duty of the State Board of
16 Medicine and the State Board of Osteopathic Medicine to
17 vigorously enforce those provisions of this chapter, violations
18 of which constitute unprofessional conduct within the meaning of
19 the act of October 5, 1978 (P.L.1109, No.261), known as the
20 Osteopathic Medical Practice Act, or the act of December 20,
21 1985 (P.L.457, No.112), known as the Medical Practice Act of
22 1985, or their successor acts. Each board shall have the power
23 to conduct, and its responsibilities shall include, systematic
24 review of all reports filed under this chapter.

25 (b) Penalties.--Except as otherwise herein provided, upon a
26 finding of unprofessional conduct under the provisions of this
27 chapter, the board shall:

28 (1) For the first offense, prescribe penalties as it
29 deems appropriate.

30 (2) For the second offense, suspend the license of the

1 physician for at least 90 days.

2 (3) For the third offense, revoke the license of the
3 physician.

4 (c) Reports.--

5 (1) Each board under this section shall prepare and
6 submit an annual report of its enforcement efforts under this
7 chapter to the General Assembly.

8 (2) Each report under this subsection shall contain the
9 following items:

10 (i) The number of violations investigated, by
11 section of this chapter.

12 (ii) The number of physicians complained against.

13 (iii) The number of physicians investigated.

14 (iv) The penalties imposed.

15 (v) Any other information as any committee of the
16 General Assembly shall require.

17 (3) Each report under this subsection shall be available
18 for public inspection and copying.

19 § 9119. Construction.

20 (a) Referral to coroner.--The provisions of section 503(3)
21 of the act of June 29, 1953 (P.L.304, No.66), known as the Vital
22 Statistics Law of 1953, shall not be construed to require
23 referral to the coroner of cases of abortions performed in
24 compliance with this chapter.

25 (b) Other laws unaffected.--Apart from the provisions of
26 subsection (a) and section 9113 (relating to reporting), nothing
27 in this chapter shall have the effect of modifying or repealing
28 any part of the Vital Statistics Law of 1953 or section 5.2 of
29 the act of October 27, 1955 (P.L.744, No.222), known as the
30 Pennsylvania Human Relations Act.

1 (c) Required statement.--When any provision of this chapter
2 requires the furnishing or obtaining of a non-notarized
3 statement or verification, the furnishing or acceptance of a
4 notarized statement or verification shall not be deemed a
5 violation of that provision.

6 § 9120. Discrimination against providers.

7 (a) Right of operation.--A medical facility licensed to
8 perform abortion services within this Commonwealth shall not be
9 obstructed in offering abortion services or denied the right to
10 operate in a municipality as a result of the abortion services
11 offered by the medical facility.

12 (b) Right to action.--An owner of a medical facility
13 offering abortion services within this Commonwealth whose
14 facility is allegedly the subject of a violation of subsection
15 (a) shall have a cause of action for all damages resultant
16 therefrom, including actual and punitive damages.

17 (c) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this
19 subsection unless the context clearly indicates otherwise:

20 "Municipality." A county, city, borough, incorporated town
21 or township.

22 § 9121. Telemedicine.

23 (a) Requirement.--A patient may meet with a physician
24 electronically via telemedicine to satisfy the requirements of
25 section 9109 (relating to determination of gestational age), as
26 well as for nonsurgical medical abortions if the abortion is to
27 be performed in the first trimester of pregnancy. The following
28 apply:

29 (1) In making the determination of gestational age, the
30 physician shall make inquiries of the patient necessary to

1 determine an accurate diagnosis with respect to gestational
2 age.

3 (2) As follows:

4 (i) The physician who performs or induces the
5 abortion shall report the type of inquiries made and the
6 type of examinations and tests utilized to determine the
7 gestational age of the pregnancy and the basis for the
8 diagnosis with respect to gestational age on forms
9 provided by the department.

10 (ii) The physician who prescribes the nonsurgical
11 medical abortion shall report all inquiries made and
12 tests or examinations utilized to determine the
13 gestational age of the pregnancy on forms provided by the
14 department.

15 (3) In the course of providing for nonsurgical abortions
16 via telemedicine, the Rh testing requirements of section
17 9112(c) (relating to prohibited acts) are waived.

18 (b) Penalties.--

19 (1) Failure of a physician to conform to a requirement
20 of this section constitutes unprofessional conduct within the
21 meaning of the act of October 5, 1978 (P.L.1109, No.261),
22 known as the Osteopathic Medical Practice Act, or the act of
23 December 20, 1985 (P.L.457, No.112), known as the Medical
24 Practice Act of 1985, or their successor acts.

25 (2) Intentional, knowing or reckless falsification of a
26 report required under this section is a misdemeanor of the
27 third degree.

28 Section 5. The following apply:

29 (1) Nothing in 35 Pa.C.S. Ch. 91 shall retroactively
30 prohibit the implementation or execution of contracts, orders

1 or cases pending prior to the effective date of this section.

2 (2) The addition of 35 Pa.C.S. Ch. 91 shall only apply
3 to contracts, orders and cases entered into or commenced on
4 or after the effective date of this section.

5 Section 6. This act shall take effect in 60 days.