Substituted by the House, on motion of Mr. Murphy of Peabody, for a bill with the same title (House, No. 5933). July 10.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Four.

AN ACT TO PROTECT UNBORN CHILDREN AND MATERNAL HEALTH WITHIN PRESENT CONSTITUTIONAL LIMITS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws is hereby amended by inserting after section 12G the following sections: —

Section 12H. As used in sections twelve H through sections twelve T the following words shall have the following meanings: —

ABORTION: The knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus.

UNBORN CHILD: The individual human life in existence and developing from fertilization until birth.

PREGNANCY: The condition of a mother carrying an unborn child.

HOSPITAL: A hospital as defined in section fifty-two of chapter one hundred and eleven of the General Laws, and duly licensed under the provisions of section fifty-one of chapter one hundred and eleven of the General Laws.

PHYSICIAN: An individual lawfully authorized to practice medicine in the Commonwealth.

Section 12I. If a pregnancy has existed for less than twenty-four weeks no abortion may be performed except by a physician and only if, in the best medical judgment of a physician, the abortion is necessary under all attendant circumstances.
Section 12J. If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

Section 12K. Any person who violates the provisions of sections twelve I or twelve J shall be punished by imprisonment for not less than one year nor more than five years. Conduct which violates the provisions of this act, which also violates any other criminal laws of the commonwealth, may be punished either under the provisions of this act or under such other applicable criminal laws.

Section 12L. If an abortion is performed pursuant to section twelve J, no abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother's womb may be used unless, in the physician's best medical judgment, all other available procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than the one being used.

Section 12M. If an abortion is performed pursuant to section twelve J, the physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the Department of Public Health, in the room where the abortion is to be performed.

Section 12N. Except in an emergency requiring immediate action no abortion may be performed under sections twelve T or twelve J unless

1. the written informed consent of the proper person or persons has been delivered to the physician performing the abortion as set forth in section twelve P and
2. if the abortion is during or after the thirteenth week of pregnancy it is performed in a hospital duly authorized to provide facilities for general surgery.
Except in an emergency requiring immediate action no abortion may be performed under section twelve J unless performed in a hospital duly authorized to provide facilities for obstetrical services.

Section 120. If the physician performing the abortion is not the physician who made the medical judgment required by twelve J, before performing the abortion he shall obtain from the physician making such judgment a written statement setting forth the exception contained in twelve J that in his best medical judgment permits the abortion and the specified reasons why the abortion qualifies under that exception. The physician performing the abortion shall retain this written statement as an attachment to the file copy of his report required by this section.

Within thirty days after the performance of an abortion, the physician performing such abortion shall file with the commissioner of public health on a form prescribed by him the following information to the best of his knowledge: The date and place of the abortion; if he was the physician making the medical judgment required by twelve J, the exception contained in either of those sections that in his best medical judgment permitted the abortion and the specific reasons why the abortion qualified under that exception; if he is not the physician who made such medical judgment, (1) the name and address of the physician from whom he received the written statement required by this section and (2) the exception contained in either section twelve J that permitted the abortion and a verbatim recitation of the specific reasons why the abortion qualified under either exception as set forth in the written statement he received from such physician; the age of the mother; the method used to perform the abortion; whether the mother survived the abortion; the details of any morbidity observed in the mother; the gestational age of the child; the weight and crown-rump length of the child if determinable; whether the unborn child was alive when removed or expelled from the mother and if so, the steps taken to preserve its life; and the length of time the child lived after removal or expulsion from the mother. The physician performing the abortion shall retain in his files for seven years after the abortion a copy of the report to which he should attach.
or otherwise add the name of the mother. The original of the report filed with the commissioner shall not contain the name of the mother and shall be maintained by the commissioner as a public record. The commissioner shall prepare from these reports such statistical tables with respect to maternal health, abortion procedures, the unborn child and viability as he deems useful and shall make an annual report thereof to the General Court.

Section 12P. (1) If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents is required. If one or both of the mother’s parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother.

If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother’s guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient.

(2) The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files.

Nothing in this section shall be construed as abolishing or limiting any common law right of any other person or persons relative to consent to the performance of an abortion for purposes of any civil action or any injunctive relief under section twelve R.

Section 12Q. Any person who commits an act in violation of sections twelve L or twelve M shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, or by imprisonment of not less than three months nor more than five years, or by both said fine and imprisonment. Conduct which violates sections twelve L or twelve M which also violates any other criminal laws of the commonwealth, may be punished either under this section or under such other applicable criminal laws. Any persons who willfully violates the provisions of sections twelve N or twelve O shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars.
Section 12R. The attorney general or any person whose consent is required either pursuant to section twelve P or under common law, may petition the superior court for an order enjoining the performance of any abortion that may be performed contrary to the provisions of sections twelve I through twelve Q.

SECTION 2. If any section, subsection, sentence or clause of this act is held to be unconstitutional, such holding shall not affect the remaining portions of this act.