

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
- 2 amended by inserting after section 12G the following sections: —
- 3 *Section 12H.* As used in sections twelve H through sections
- 4 twelve T the following words shall have the following meanings:
- 5 **ABORTION:** The knowing destruction of the life of an
- 6 unborn child or the intentional expulsion or removal of an
- 7 unborn child from the womb other than for the principal
- 8 purpose of producing a live birth or removing a dead fetus.
- 9 **UNBORN CHILD:** The individual human life in existence and
- 10 developing from fertilization until birth.
- 11 **PREGNANCY:** The condition of a mother carrying an unborn
- 12 child.
- 13 **HOSPITAL:** A hospital as defined in section fifty-two of
- 14 chapter one hundred and eleven of the General Laws, and duly
- 15 licensed under the provisions of section fifty-one of chapter one
- 16 hundred and eleven of the General Laws.
- 17 **PHYSICIAN:** An individual lawfully authorized to practice
- 18 medicine in the Commonwealth.
- 19 *Section 12I.* If a pregnancy has existed for less than twenty-
- 20 four weeks no abortion may be performed except by a physician
- 21 and only if, in the best medical judgment of a physician, the
- 22 abortion is necessary under all attendant circumstances.

23 *Section 12J.* If a pregnancy has existed for twenty-four
24 weeks or more, no abortion may be performed except by a
25 physician and only if it is necessary to save the life of the
26 mother, or if a continuation of her pregnancy will impose on her
27 a substantial risk of grave impairment of her physical or mental
28 health.

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

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

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

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

55 (1) the written informed consent of the proper person or
56 persons has been delivered to the physician performing the
57 abortion as set forth in section twelve P and

58 (2) if the abortion is during or after the thirteenth week of
59 pregnancy it is performed in a hospital duly authorized to
60 provide facilities for general surgery.

61 Except in an emergency requiring immediate action no
62 abortion may be performed under section twelve J unless
63 performed in a hospital duly authorized to provide facilities for
64 obstetrical services.

65 *Section 120.* If the physician performing the abortion is not
66 the physician who made the medical judgment required by
67 twelve J, before performing the abortion he shall obtain from the
68 physician making such judgment a written statement setting
69 forth the exception contained in twelve J that in his best medical
70 judgment permits the abortion and the specified reasons why the
71 abortion qualifies under that exception. The physician
72 performing the abortion shall retain this written statement as an
73 attachment to the file copy of his report required by this section.
74 Within thirty days after the performance of an abortion, the
75 physician performing such abortion shall file with the com-
76 missioner of public health on a form prescribed by him the
77 following information to the best of his knowledge: The date and
78 place of the abortion; if he was the physician making the medical
79 judgment required by twelve J, the exception contained in either
80 of those sections that in his best medical judgment permitted the
81 abortion and the specific reasons why the abortion qualified
82 under that exception; if he is not the physician who made such
83 medical judgment, (1) the name and address of the physician
84 from whom he received the written statement required by this
85 section and (2) the exception contained in either section twelve
86 J that permitted the abortion and a verbatim recitation of the
87 specific reasons why the abortion qualified under either ex-
88 ception as set forth in the written statement he received from
89 such physician; the age of the mother; the method used to
90 perform the abortion; whether the mother survived the abortion;
91 the details of any morbidity observed in the mother; the
92 gestational age of the child; the weight and crown-rump length of
93 the child if determinable; whether the unborn child was alive
94 when removed or expelled from the mother and if so, the steps
95 taken to preserve its life; and the length of time the child lived
96 after removal or expulsion from the mother. The physician
97 performing the abortion shall retain in his files for seven years
98 after the abortion a copy of the report to which he should attach

99 or otherwise add the name of the mother. The original of the
100 report filed with the commissioner shall not contain the name of
101 the mother and shall be maintained by the commissioner as a
102 public record. The commissioner shall prepare from these reports
103 such statistical tables with respect to maternal health, abortion
104 procedures, the unborn child and viability as he deems useful and
105 shall make an annual report thereof to the General Court.

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

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

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

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

128 *Section 12Q.* Any person who commits an act in violation of
129 sections twelve L or twelve M shall be punished by a fine of not
130 less than five hundred dollars nor more than two thousand
131 dollars, or by imprisonment of not less than three months nor
132 more than five years, or by both said fine and imprisonment.
133 Conduct which violates sections twelve L or twelve M which also
134 violates any other criminal laws of the commonwealth, may be
135 punished either under this section or under such other applicable
136 criminal laws. Any persons who willfully violates the provisions
137 of sections twelve N or twelve O shall be punished by a fine of
138 not less than one hundred dollars nor more than two thousand
139 dollars.

140 *Section 12R.* The attorney general or any person whose
141 consent is required either pursuant to section twelve P or under
142 common law, may petition the superior court for an order
143 enjoining the performance of any abortion that may be per-
144 formed contrary to the provisions of sections twelve I through
145 twelve Q.

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



