

By Mr. Knapik, a petition (accompanied by bill, Senate, No. 1069) of Michael R. Knapik, Robert L. Hedlund and Bruce E. Tarr for legislation to provide information to women prior to an abortion. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT RELATIVE TO A WOMAN'S RIGHT TO KNOW.

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. The General Court finds that:

2 (1) The commonwealth has an important interest in ensuring
3 that women seeking abortions are provided a fully informed choice
4 and a sufficient period of time to reflect on the information pro-
5 vided, "to reduce the risk that a woman may elect an abortion, only
6 to discover later, with devastating psychological consequences,
7 that her decision was not fully informed." Planned Parenthood of
8 Southeastern Pennsylvania v. Casey, 505 U.S. 833, 882 (1992)

9 (2) Key provisions of section 12S of Chapter 112 of the
10 General Laws are not being enforced due to the continued opera-
11 tion of an out-dated declaratory judgment of the federal district
12 court of Massachusetts issued before the United States Supreme
13 court upheld the constitutionality of informed consent and reflec-
14 tion period protections in its 1992 Casey decision, and other pro-
15 visions are being implemented in such a manner as to provide an
16 inadequate opportunity for women seeking abortion to make a
17 fully informed choice.

18 Thus, the purpose of the Woman's Right to Know Act is to
19 ensure that every woman considering an abortion receives complete
20 information on the procedure, the risks, the status of her unborn
21 child, and her alternatives, and sufficient reflection time, thereby
22 reducing the possibility of serious, lasting, or life threatening conse-
23 quences of a medical, emotional and psychological nature.

1 SECTION 2. Chapter 112 of the General Laws is hereby
2 amended by striking the first paragraph of section 12S, appearing
3 at lines 1 through 19 in the 2000 Official Edition of the General
4 Laws of Massachusetts, and inserting the following:

5 Section 12S. No physician may perform an abortion upon a
6 pregnant woman without first obtaining her written informed con-
7 sent in compliance with the following procedures, unless in a case
8 of a medical emergency, compliance would cause the pregnant
9 woman's death or the woman's substantial and irreversible impair-
10 ment of a major bodily function. The referring physician, the
11 physician performing the abortion, or either physician's agent must
12 provide in a manner enabling the pregnant woman to receive at
13 least twenty-four hours before the time an abortion is scheduled to
14 be performed a printed pamphlet, the internet address to a state-
15 sponsored website, or toll free number for an audio recording, all
16 of which are created and maintained by the commissioner of public
17 health, and which communicate the following general information:
18 a written notice of the patients' rights guaranteed by section 70E of
19 chapter 111 of the General Laws; a comprehensive list of the
20 names, addresses, and contact information of public and private
21 agencies and services available in the Commonwealth to provide
22 medical, financial and other assistance to a woman through preg-
23 nancy, upon childbirth, and while her child is dependent, with pre-
24 natal, childbirth, neonatal, childrearing, and adoption services; a
25 description of the probable anatomical and physiological character-
26 istics of the unborn child at two week gestational increments from
27 fertilization to full term, including color photographs or if a repre-
28 sentative photograph is not available, realistic drawings of the
29 developing unborn child at two week increments, and including
30 written information about brain and heart function and the pres-
31 ence of external members and internal organs at each stage of
32 development; a description of the various methods of abortion, and
33 the physical, psychological and emotional risks or medical compli-
34 cations commonly associated with each method; a description of
35 the physical, psychological and emotional risks or medical compli-
36 cations of pregnancy and delivery; a description of the support
37 obligations of the father of a child born alive; and statements that,
38 under the law of the commonwealth, a person's refusal to undergo
39 abortion does not constitute grounds for the denial of public assis-

40 tance, that the law permits adoptive parents to pay the cost of pre-
41 natal care, childbirth and neonatal care, that the father of the
42 unborn child is liable to assist in the support of the child, even in
43 instances where he has offered to pay for the abortion, that it is
44 unlawful for any individual to coerce a woman to undergo an abor-
45 tion, and that any physician who performs an abortion upon a
46 woman without obtaining her informed consent may be liable to
47 her for damages in a civil action at law. The texts of the pamphlet,
48 website and audio recording shall be identical in content, incorpo-
49 rate the definitions of abortion, pregnancy, and unborn child as set
50 out in Section 12K of this Chapter, be objective, nonjudgmental
51 and designed to convey only accurate scientific information when
52 discussing fetal development and medical risks, be written in a
53 manner designed to permit a person unfamiliar with medical termi-
54 nology to understand its purpose and content, and be published in
55 English, Spanish, and Portuguese, and in each other language
56 which is the primary language of 2% or more of the state's popula-
57 tion. Prior to the scheduled abortion and before the woman pro-
58 vides her written consent to the abortion, the referring physician or
59 the physician performing the abortion must orally inform the
60 woman of: the nature of the proposed abortion method and associ-
61 ated risks and alternatives that a reasonable patient in the woman's
62 position would consider material to the decision of whether to
63 undergo the abortion; the probable gestational age of the unborn
64 child at the time the abortion is to be performed; and the probable
65 anatomical and physiological characteristics of the unborn child at
66 the time the abortion is to be performed. Also prior to the sched-
67 uled abortion and before the woman provides her written consent
68 to the abortion, the referring physician, the physician performing
69 the abortion, or either physician's agent shall orally inform the
70 woman that alternatives to abortion are available, ask the woman if
71 she has seen the information, including the list of abortion alterna-
72 tive agencies, provided in the pamphlet, website or recorded tele-
73 phone message described in this section, give the woman a copy of
74 the pamphlet if she requests one at this time, and provide the
75 woman with an opportunity to contact abortion alternative agen-
76 cies at this time should she so desire. Before the scheduled abor-
77 tion but after she is provided with the opportunity to receive the
78 information described in this section, if she decides to obtain the

79 abortion, the woman shall sign a consent form. The form shall
80 indicate that she has been offered the information described in this
81 section and does provide her informed consent to the abortion. The
82 physician performing the abortion shall maintain the signed con-
83 sent form in the physician's files and destroy it seven years after
84 the date upon which the abortion is performed. The commissioner
85 of public health shall create and publish within ninety days after
86 the effective date of this act, and shall review on an annual basis
87 and update if necessary, the pamphlet, website, telephone record-
88 ings, and consent form required by this section. The commissioner
89 shall avail at no cost and in appropriate number to any institution,
90 clinic or physician's office providing abortions the printed mate-
91 rials required under this section.

1 SECTION 3. Chapter 111, section 70E is hereby amended by
2 adding "institution, clinic, or physician's office providing abor-
3 tions," immediately after the word "clinic," and before the word
4 "infirmary" appearing at line 2 of the 2000 Official Edition of the
5 General Laws of Massachusetts.

1 SECTION 4. If any one or more provision, section, sentence,
2 clause, phrase or word of this Act or the application thereof to any
3 person or circumstance is found by a court to be unconstitutional
4 or otherwise unenforceable, the same is hereby declared to be sev-
5 erable and the balance of this Act shall remain effective notwith-
6 standing. The General Court hereby declares that it would have
7 passed this Act, and each provision, section, sentence, clause,
8 phrase or word thereof, even if any one or more provision,
9 section, sentence, clause, phrase, or word would be found by a
10 court to be unconstitutional or otherwise unenforceable.

1 SECTION 5. This Act shall take effect immediately after its
2 passage by the General Court and approval by the Governor, or
3 upon its otherwise becoming a law.