

No. 209

AN ACT

SB 1318

Regulating abortions; providing requirements relating to consent, and protection of premature infants aborted alive; limiting the subsidizing of abortions; providing for the powers and duties of the Department of Health; and prescribing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Abortion Control Act.”

Section 2. Definitions.—As used in this act:

“Department” means the Department of Health of the Commonwealth of Pennsylvania.

“Facility” means a hospital, health care facility, physician’s office or other place in which an abortion is performed.

“Informed consent” means a written statement, voluntarily entered into by the person upon whom an abortion is to be performed, whereby she specifically consents thereto. Such consent shall be deemed to be an informed consent only if it affirmatively appears in the written statement signed by the person upon whom the abortion is to be performed that she has been advised (i) that there may be detrimental physical and psychological effects which are not foreseeable, (ii) of possible alternatives to abortion, including childbirth and adoption, and (iii) of the medical procedures to be used. Such statement shall be signed by the physician or by a counselor authorized by him and shall also be made orally in readily understandable terms in so far as practicable.

“Viable” means the capability of a fetus to live outside the mother’s womb albeit with artificial aid.

Section 3. Consent to Abortion; Limitations on Public Officials.—(a) No abortion shall be performed upon any person in the absence of informed consent thereto by such person. Notwithstanding the foregoing provisions of this subsection, an abortion may be performed on any person if, in the medical judgment of a licensed physician, an abortion is immediately necessary to preserve the life of the woman and the woman is unable to give consent.

(b) No abortion shall be performed upon any person in the absence of the written consent of (i) the spouse of such person provided that the whereabouts of such spouse can be learned from such person or from other readily available sources and he can be notified and that the abortion is not certified by a licensed physician to be necessary in order to preserve the life or health of the mother, (ii) one parent or person in loco parentis of such person if such person is under eighteen years of age

and unmarried, unless the abortion is certified by a licensed physician as necessary in order to preserve the life of the mother.

(c) No executive officer, administrative agency or public employee of the Commonwealth of Pennsylvania or of any local governmental body shall have power to issue any order requiring an abortion or shall coerce any person to have or not to have an abortion.

(d) No court, judge, executive officer, administrative agency or public employee of the Commonwealth of Pennsylvania or of any local governmental body shall withhold, reduce or suspend, or threaten to withhold, reduce or suspend, any benefits to which a person would otherwise be entitled on the ground that such person chooses to have or not to have an abortion.

(e) Whoever performs an abortion without consent as required in subsections (a) and (b) of this section shall be guilty of a misdemeanor of the first degree. Whoever orders an abortion in violation of subsection (c) or who withholds, reduces or suspends any benefits, or threatens to withhold, reduce or suspend any benefits in violation of subsection (d) shall be guilty of a misdemeanor in the first degree.

Section 4. Intentional Killing of Premature Infant Aborted Alive.—Whoever, with intent to do so, shall intentionally and wilfully take the life of a premature infant aborted alive, shall be guilty of murder of the second degree.

Section 5. Protection of Life of Fetus.—(a) Every person who performs or induces an abortion shall prior thereto have made a determination based on his experience, judgment or professional competence that the fetus is not viable, and if the determination is that the fetus is viable or if there is sufficient reason to believe that the fetus may be viable, shall exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted and the abortion technique employed shall be that which would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary in order to preserve the life or health of the mother.

(b) No person shall use any premature infant aborted alive for any type of scientific, research, laboratory, or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant aborted alive.

(c) The department shall make regulations to provide for the humane disposition of dead fetuses.

(d) Any person who fails to make the determination provided for in subsection (a) of this section, or who fails to exercise the degree of professional skill, care and diligence or to provide the abortion technique as provided for in subsection (a) of this section, or who

violates subsection (b) of this section, shall be subject to such civil or criminal liability as would pertain to him had the fetus been a child who was intended to be born and not aborted.

Section 6. Control of Practice of Abortion.—(a) Every person who intends to perform or induce an abortion shall first have made a determination of the pregnancy of the person to be aborted.

(b) No abortion shall be performed within the Commonwealth of Pennsylvania during the stage of a pregnancy subsequent to viability of the fetus except where necessary, in the judgment of a licensed physician, to preserve the life or health of the mother.

(c) No abortion shall be performed within the Commonwealth of Pennsylvania except by a licensed physician and in a facility approved to do so by the Department of Health in accordance with its rules and regulations.

(d) Every facility in which an abortion is performed pursuant to this act within the Commonwealth of Pennsylvania shall currently make and keep on file upon forms prescribed by the Department of Health a verified statement signed by the person who performed the abortion setting forth the following information with respect to such abortion: the name, address and age of the woman upon whom the abortion was performed; the date on which the abortion was performed; the date upon which the determination of pregnancy as required by this section was made; the name and address, if known, of the spouse of the woman; the name and address, if known, of the parent or person in loco parentis if the woman is under eighteen years of age and unmarried; the approximate age, in months, of the fetus; a full statement of those facts upon which the person performing the abortion relied as establishing that the abortion was necessary to preserve the life or health of the mother. Affixed to such statement shall be a copy of each of the documents showing consent to abortion as required by section 3 of this act. All information and documents required by this subsection shall be treated with confidentiality customarily accorded to medical records.

(e) Every facility in which an abortion is performed within the Commonwealth of Pennsylvania during any quarter year shall file with the Department of Health a report showing the total number of abortions performed within such hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy.

(f) No physician, clinic or other person or agency shall engage in solicitation or advertising having the purpose of inviting, inducing or attracting members of the public to come to such physician, clinic or other person or agency to have abortions or to purchase abortifacients.

(g) No physician, clinic, facility or other person or agency shall charge or receive any remuneration either directly or indirectly for the referral of a person to another physician, clinic, facility or person for the purpose of obtaining an abortion.

(h) Nothing contained in this subsection or in section 5 of this act shall have the effect of repealing any part of the act of June 29, 1953 (P.L.304, No.66), known as the "Vital Statistics Law of 1953," Article I, § 101 et seq., or section 5.2 of the act of October 27, 1955 (P.L.744, No.222), as amended, known as the "Pennsylvania Human Relations Act."

(i) Any person or agency who violates any of the provisions of subsection (a), (b), (c) or (g) of this section is guilty of a misdemeanor of the first degree and any person or agency who violates any of the provisions of subsection (d), (e) or (f) of this section is guilty of a misdemeanor of the third degree.

Section 7. Subsidizing of Abortions.—Since it is the public policy of the Commonwealth not to use public funds to pay for unneeded and unnecessary abortions, no abortion shall be subsidized by any State or local governmental agency in the absence of a certificate of a physician, filed with such body, stating that such abortion is necessary in order to preserve the life or health of the mother. Nothing contained in this section shall be interpreted to restrict or limit in any way, appropriations, made by the Commonwealth or a local governmental agency to hospitals for their maintenance and operation, or, for reimbursement to hospitals for services performed.

Section 8. Regulations.—The Department of Health shall have power to make rules and regulations pursuant to this act, with respect to performance of abortions and with respect to facilities in which abortions are performed, so as to protect the health and safety of women having abortions and of premature infants aborted alive. Said rules and regulations shall include, but not be limited to procedures, staff, equipment, and laboratory testing requirements for all facilities offering abortion services.

Section 9. Severability.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 10. Repeals.—Sections 718 and 719, act of June 24, 1939 (P.L.872, No.375), known as "The Penal Code," are repealed.

Section 11. Effective Date.—This act shall take effect in thirty days.

We certify that this bill, Senate Bill No. 1318, Printer's No. 2311, having passed both Houses, vetoed by the Governor, was returned to the Senate where the Senate proceeded to reconsider and again pass the bill by more than a two-thirds majority of the members elected to the Senate, the objections of the Governor to the contrary notwithstanding. Upon notification by the Senate as to their action the House of Representatives proceeded to reconsider and again pass the bill by more than a two-thirds majority of the members elected to the House of

Representatives, the objections of the Governor to the contrary notwithstanding.

Given under our hand and seal this tenth day of September, one thousand nine hundred and seventy-four.

Martin L. Murray
President, Senate

Kenneth B. Lee
Speaker, House of Representatives

Thomas J. Kalman
Chief Clerk, Senate

Robert M. Scheipe
Chief Clerk, House of Representatives