HOUSE DOCKET, NO. 491 FILED ON: 1/11/2019

HOUSE . . . . . No. 3433

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Poirier

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to unborn children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Elizabeth A. Poirier	*14th Bristol*	*1/4/2019*

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HOUSE . . . . . No. 3433

By Mrs. Poirier of North Attleborough, a petition (accompanied by bill, House, No. 3433) of Elizabeth A. Poirier for legislation to prohibit certain abortions. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *934* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to unborn children.

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

SECTION 1. Chapter 112 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 12L the following:

Section 12L ½. Protection of unborn child capable of feeling pain from abortion.

(a) For the purpose of preventing fetal pain, no person may perform or induce, or attempt to perform or induce, an abortion of an unborn child capable of feeling pain unless such abortion is the unintended consequence of preventing or treating serious health risk to the unborn child's mother.

10

11 (b) An unborn child shall be deemed capable of feeling pain when it has been determined
12 by the physician performing or inducing or attempting to perform or induce the abortion, or by
13 another physician upon whose determination that physician relies, that the probable gestational
14 age of the unborn child is twenty or more weeks.

15

16 (c) Except in the case of a medical emergency, no abortion may be performed or induced
17 or attempted to be performed or induced unless the physician performing or inducing it has first
18 made a determination of the probable gestational age of the unborn child or relied upon such a
19 determination made by another physician. In making this determination, the physician shall make
20 such inquiries of the pregnant woman and perform or cause to be performed such medical
21 examinations and tests as a reasonably prudent physician, knowledgeable about the case and the
22 medical conditions involved, would consider necessary to perform in making an accurate
23 diagnosis with respect to gestational age.

24

25 SECTION 2. Section 12N of Chapter 112 of the General Laws, as appearing in the 2016
26 Official Edition, is hereby amended by adding the following reference to Section 12L½:

27

28 Section 12 N. Any person who violates the provisions of sections twelve L, twelve L½,
29 or twelve M shall be punished by imprisonment for not less than one year nor more than five
30 years. Conduct which violates the provisions of this act, which also violates any other criminal

31 laws of the commonwealth, may be punished either under the provisions of sections 12K to 12U,
32 inclusive, or under such other applicable criminal laws.

33

34 SECTION 3. Section 12O of Chapter 112 of the General Laws, as appearing in the 2016
35 Official Edition, is hereby amended by adding the following reference to Section 12L½:

36

37 Section 12O. If an abortion is performed pursuant to section twelve L½ or twelve M, no
38 abortion procedure which is designed to destroy the life of the unborn child or injure the unborn
39 child in its mother's womb may be used unless, in the physician's best medical judgment, all
40 other available procedures would create a greater risk of death or serious bodily harm to the
41 mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than
42 the one being used.

43

44 SECTION 4. Section 12P of Chapter 112 of the General Laws, as appearing in the 2016
45 Official Edition, is hereby amended by adding the following reference to Section 12L½:

46

47 Section 12P. If an abortion is performed pursuant to section twelve L½ or twelve M, the
48 physician performing the abortion shall take all reasonable steps, both during and subsequent to
49 the abortion, in keeping with good medical practice, consistent with the procedure being used, to
50 preserve the life and health of the aborted child. Such steps shall include the presence of life-

51 supporting equipment, as defined by the department of public health, in the room where the
52 abortion is to be performed.

53

54 SECTION 5. Section 12Q of Chapter 112 of the General Laws, as appearing in the 2016
55 Official Edition, is hereby amended by adding the following reference to Section 12L½:

56

57 Section12Q. Except in an emergency requiring immediate action, no abortion may be
58 performed under sections twelve L, twelve L½, or twelve M unless the written informed consent
59 of the proper person or persons has been delivered to the physician performing the abortion as set
60 forth in sections twelve S; and if the abortion is during or after the thirteenth week of pregnancy,
61 it is performed in a hospital duly authorized to provide facilities for general surgery.

62

63 Except in an emergency requiring immediate action, no abortion may be performed under
64 section twelve L½ or twelve M unless performed in a hospital duly authorized to provide
65 facilities for obstetrical services.

66

67 SECTION 6. Section 12R of Chapter 112 of the General Laws, as appearing in the 2016
68 Official Edition, is hereby amended by adding the following reference to Section 12L½:

69

70 Section12R. If the physician performing the abortion is not the physician who made the
71 medical judgment required by section twelve L½ or twelve M, before performing the abortion he
72 shall obtain from the physician making such judgment a written statement setting forth the
73 exception contained in section twelve L½ or twelve M that in his best medical judgment permits
74 the abortion and the specified reasons why the abortion qualifies under that exception. Prior to
75 the performance of an abortion the physician shall make a positive determination of pregnancy,
76 test for blood type and Rh type, test for Rho(D) sensitization on each patient found to be Rho(D)
77 negative by use of an antiglobulin (Coombs) test performed by a blood bank operated by a
78 licensed hospital, or by a laboratory, and offer Rho(D) immune globulin (Human) to each
79 Rho(D) negative patient with a negative sensitization test at the time of any abortion. The
80 physician performing the abortion shall retain this written statement as an attachment to the file
81 copy of his report required by this section. Within thirty days after the performance of an
82 abortion, the physician performing such abortion shall file with the commissioner of public
83 health on a form prescribed by him the following information to the best of his knowledge: the
84 date and place of the abortion; if he was the physician making the medical judgment required by
85 section twelve L½ or twelve M, the exception contained in said section that in his best medical
86 judgment permitted the abortion and the specific reasons why the abortion qualified under that
87 exception; if he is not the physician who made such medical judgment, the name and address of
88 the physician from whom he received the written statement required by this section and the
89 exception contained in said sections twelve L½ or twelve M that permitted the abortion and a
90 verbatim recitation of the specific reasons why the abortion qualified under either exception as
91 set forth in the written statement he received from such physician; the age of the mother; the
92 method used to perform the abortion; whether the mother survived the abortion; the details of

93 any morbidity observed in the mother; the gestational age of the child; the weight and crown-
94 rump length of the child if determinable; whether the unborn child was alive when removed or
95 expelled from the mother and if so, the steps taken to preserve its life; and the length of time the
96 child lived after removal or expulsion from the mother. The physician performing the abortion
97 shall retain in his files for seven years after the abortion a copy of the report to which he should
98 attach or otherwise add the name of the mother. The original of the report filed with the
99 commissioner shall not contain the name of the mother and shall be maintained by the
100 commissioner as a public record. The commissioner shall prepare from these reports such
101 statistical tables with respect to maternal health, abortion procedures, the unborn child and
102 viability as he deems useful and shall make an annual report thereof to the general court. Nothing
103 in this section shall be construed to limit the authority of the department of public health to
104 require reports pursuant to sections twenty-four A and twenty-five A of chapter one hundred and
105 eleven.