

SENATE NO. 254

AN ACT RELATIVE TO BIOMEDICAL RESEARCH

*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, as appearing in the 2004 Official Edition, is hereby
2 amended by striking out subsection (a) I and inserting in place thereof the following section:-

3 (a) I. No person shall use any live human fetus whether before or after expulsion from its mother's
4 womb, for scientific, laboratory, research or other kind of experimentation. This section shall not
5 prohibit procedures incident to the study of a human fetus while it is in its mother's womb or a
6 neonate, provided that in the best medical judgment of the physician, made at the time of the study,
7 said procedures do not substantially jeopardize the life or health of the fetus or neonate, and provided
8 that in the case of a fetus said fetus is not the subject of a planned abortion. In any criminal proceeding
9 a fetus shall be conclusively presumed not to be the subject of a planned abortion if the mother signed
10 a written statement at the time of the study, that she was not planning an abortion.

11 This section shall not prohibit or regulate diagnostic or remedial procedures the purpose of
12 which is to determine the life or health of the fetus or neonate involved or to preserve the life or health
13 of the fetus or neonate involved or the mother involved, or to improve the chances of a viable birth for

14 fetuses with congenital or other fetal conditions that would otherwise substantially impair or
15 jeopardize their health or viability, or research approved by an Institutional Review Board applying
16 federal regulations for the protection of fetuses and neonates, that are conducted for the purpose of
17 developing, comparing or improving diagnostic or therapeutic fetal or neonatal interventions to
18 improve the viability or quality of life of fetuses, neonates and children.

19 For purposes of this section, "Institutional Review Board" shall mean a board that has a
20 minimum of 5 members who meet regularly to review research applying the standards of 45 CFR Part
21 46 or 21 CFR Parts 50 and 56, as may be amended from time to time.

22 A fetus is a live fetus for purposes of this section when, in the best medical judgment of a
23 physician, it shows evidence of life as determined by the same medical standards as are used in
24 determining evidence of life in a spontaneously aborted fetus at approximately the same stage of
25 gestational development.

26 For the purposes of this section, "fetus" shall include an embryo, but shall exclude a pre-
27 implantation embryo or parthenote as defined in section 2 of chapter 111L and obtained in accordance
28 with said chapter 111L.

29 SECTION 2. Said chapter 112 of the General Laws, as so appearing, is hereby further amended by
30 striking out subsection (a) IV and inserting in place thereof the following section:-

31 (a) IV. No person shall knowingly sell, transfer, distribute or give away any fetus or neonate for a use
32 which is in violation of the provisions of this section. For purposes of this section, the word "fetus"
33 shall also include an embryo, but shall exclude a pre-implantation embryo or parthenote as defined in
34 section 2 of chapter 111L and obtained in accordance with said chapter 111L.

35 SECTION 3. Said Chapter 112 is hereby further amended by inserting after subsection (b) IX the
36 following subsection:-

37 (b) X. Upon receipt of a request from an institution conducting, or preparing to conduct, research
38 pursuant to this chapter, the Attorney General shall provide a written advisory opinion concerning
39 whether such research is regulated, prohibited, permitted by, or exempt from, this chapter. If in the
40 opinion of the Attorney General the research described in said request is exempt from, or permitted by,
41 this chapter the opinion shall constitute an affirmative defense to any criminal prosecution brought
42 pursuant to the provisions of this section. Opinions issued by the Attorney General pursuant to this
43 section shall be maintained in a publicly accessible fashion by the Attorney General and shall be filed
44 with the Commissioner of Public Health.

45 SECTION 4. This act shall take effect upon its passage.