S T A T E O F N E W Y O R K

2286

2013-2014 Regular Sessions

I N S E N A T E

January 15, 2013

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing a cause of action for damages against a person who attempts or performs a sex selective abortion

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 230-e to read as follows:

S 230-E. PROHIBITION OF SEX SELECTIVE ABORTION. 1. THE FOLLOWING WORDS OR PHRASES, AS USED IN THIS SECTION SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ABORTION" MEANS THE INTENTIONAL USE OR PRESCRIPTION OF ANY INSTRUMENT, MEDICINE, DRUG OR ANY OTHER SUBSTANCE OR DEVICE OR METHOD TO TERMINATE THE LIFE OF AN UNBORN CHILD, OR TO TERMINATE THE PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT WITH AN INTENTION OTHER THAN TO PRODUCE A LIVE BIRTH AND PRESERVE THE LIFE AND HEALTH OF THE CHILD AFTER LIVE BIRTH, OR TO REMOVE AN ECTOPIC PREGNANCY, OR TO REMOVE A DEAD UNBORN CHILD WHO DIED AS THE RESULT OF NATURAL CAUSES, ACCIDENTAL TRAUMA, OR A CRIMINAL ASSAULT ON THE PREGNANT WOMAN.

(B) "ATTEMPT TO PERFORM AN ABORTION" MEANS TO DO OR OMIT TO DO ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE ACTOR BELIEVES THEM TO BE, IS AN ACT OR OMISSION CONSTITUTING A SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN AN ABORTION. SUCH SUBSTANTIAL STEPS INCLUDE, BUT ARE NOT LIMITED TO: (I) AGREEING WITH AN INDIVIDUAL TO PERFORM AN ABORTION ON THAT INDIVIDUAL OR ON SOME OTHER PERSON, WHETHER OR NOT THE TERM "ABORTION" IS USED IN THE AGREEMENT, AND WHETHER OR NOT THE AGREEMENT IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNANCY; AND (II) SCHEDULING OR PLANNING A TIME TO PERFORM AN ABORTION ON AN INDIVIDUAL, WHETHER OR NOT THE TERM "ABORTION" IS USED, AND WHETHER OR NOT THE PERFORMANCE IS CONTINGENT ON

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD00903-01-3

ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNANCY. THIS DEFINITION SHALL NOT BE CONSTRUED TO REQUIRE THAT AN ABORTION PROCEDURE ACTUALLY BE INITIATED FOR AN ATTEMPT TO OCCUR.

(C) "PHYSICIAN" MEANS A DOCTOR OF MEDICINE OR OSTEOPATHY LEGALLY AUTHORIZED TO PRACTICE MEDICINE IN THE STATE.

2. NO PERSON SHALL KNOWINGLY OR RECKLESSLY PERFORM OR ATTEMPT TO PERFORM AN ABORTION WITH KNOWLEDGE THAT THE PREGNANT FEMALE IS SEEKING THE ABORTION SOLELY ON ACCOUNT OF THE SEX OF THE UNBORN CHILD. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROSCRIBE THE PERFORMANCE OF AN ABORTION BECAUSE THE UNBORN CHILD HAS A GENETIC DISORDER THAT IS SEX-LINKED.

3. ANY PERSON UPON WHOM AN ABORTION WAS PERFORMED OR ATTEMPTED TO BE PERFORMED IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THE FATHER OF THE UNBORN CHILD, OR THE GRANDPARENT OF THE UNBORN CHILD MAY MAINTAIN AN ACTION AGAINST THE PERSON WHO PERFORMED OR ATTEMPTED TO PERFORM THE ABORTION. THE PERSON WHO PERFORMED OR ATTEMPTED TO PERFORM THE ABORTION MAY BE LIABLE IN SUCH AN ACTION FOR PUNITIVE DAMAGES NOT TO EXCEED TEN THOUSAND DOLLARS AND FOR DAMAGES THE PLAINTIFF ACTUALLY SUSTAINED. NO PLAINTIFF SHALL BE ESTOPPED FROM RECOVERY IN SUCH AN ACTION ON THE GROUND THAT EITHER THE PLAINTIFF OR THE PERSON UPON WHOM THE ABORTION WAS PERFORMED GAVE CONSENT TO THE ABORTION.

4. AN ABORTION PROVIDER WHO KNOWINGLY OR RECKLESSLY PERFORMED OR ATTEMPTED TO PERFORM AN ABORTION IN VIOLATION OF THIS SECTION SHALL BE CONSIDERED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT FOR WHICH THE CERTIFICATE OR LICENSE OF THE PROVIDER TO PROVIDE HEALTH CARE SERVICES IN THIS STATE SHALL BE SUSPENDED OR REVOKED BY THE STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT PURSUANT TO SECTION TWO HUNDRED THIRTY-A OF THIS TITLE.

5. IN EVERY PROCEEDING OR ACTION INSTITUTED UNDER THIS SECTION, THE ANONYMITY OF ANY FEMALE UPON WHOM AN ABORTION IS PERFORMED OR ATTEMPTED SHALL BE PRESERVED UNLESS SHE GIVES HER CONSENT TO SUCH DISCLOSURE. THE COURT, UPON MOTION OR SUA SPONTE, SHALL ISSUE ORDERS TO THE PARTIES, WITNESSES AND COUNSEL, AND SHALL DIRECT THE SEALING OF THE RECORD AND EXCLUSION OF INDIVIDUALS FROM COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD THE FEMALE'S IDENTITY FROM PUBLIC DISCLOSURE. IN THE ABSENCE OF WRITTEN CONSENT OF THE FEMALE UPON WHOM AN ABORTION HAS BEEN PERFORMED OR ATTEMPTED, ANY PLAINTIFF WHO INSTITUTES AN ACTION UNDER SUBDIVISION THREE OF THIS SECTION SHALL DO SO UNDER A PSEUDONYM.

S 2. If any provision, word, phrase or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clause or applications of this act which can be given effect without the invalid provision, word, phrase, clause or application, and to this end, the provisions, words, phrases, and clauses of this act are declared to be severable. If the application of this act to the period of pregnancy prior to viability is held invalid, then such invalidity shall not affect its application to the period of pregnancy subsequent to viability.

S 3. This act shall take effect immediately.