

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. STEWART-COUSINS, ADAMS, AVELLA, BRESLIN, DILAN, GIANARIS, HASSELL-THOMPSON, KRUEGER, LATIMER, MONTGOMERY, PARKER, PERALTA, PERKINS, RIVERA, SAMPSON, SERRANO, SQUADRON, STAVISKY -- 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 enacting the "reproductive health act" and revising existing provisions regarding abortions; to amend the penal law, the criminal procedure law, the county law and the judiciary law, in relation to abortion; to repeal certain provisions of the education law relating to the sale of contraceptives; and to repeal certain provisions of the penal law relating to abortion

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "reproductive health act".

3 S 2. The public health law is amended by adding a new article 17 to  
4 read as follows:

5 ARTICLE 17

6 REPRODUCTIVE HEALTH ACT

7 SECTION 1700. STATEMENT OF POLICY.

8 1701. AUTHORIZED PERFORMANCE OF ABORTIONS.

9 1702. STATE REGULATION.

10 1703. DEFINITIONS.

11 S 1700. STATEMENT OF POLICY. THE LEGISLATURE DECLARES THAT EVERY INDI-  
12 VIDUAL HAS A FUNDAMENTAL RIGHT OF PRIVACY WITH RESPECT TO CERTAIN  
13 PERSONAL REPRODUCTIVE DECISIONS. ACCORDINGLY, IT IS THE PUBLIC POLICY  
14 OF THE STATE OF NEW YORK THAT:

15 1. EVERY INDIVIDUAL HAS THE FUNDAMENTAL RIGHT TO CHOOSE OR REFUSE  
16 CONTRACEPTION; AND

17 2. EVERY FEMALE HAS THE FUNDAMENTAL RIGHT TO DETERMINE THE COURSE OF  
18 HER PREGNANCY, WHICH INCLUDES THE RIGHT TO CARRY A PREGNANCY TO TERM OR  
19 TO TERMINATE A PREGNANCY: (I) IN THE ABSENCE OF FETAL VIABILITY; AND

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

1 (II) AT ANY TIME IF SUCH TERMINATION IS NECESSARY TO PROTECT THE PREG-  
2 NANT FEMALE'S LIFE OR HEALTH.

3 S 1701. AUTHORIZED PERFORMANCE OF ABORTIONS. THE PERFORMANCE OF AN  
4 ABORTION BY A QUALIFIED, LICENSED HEALTH CARE PRACTITIONER, ACTING WITH-  
5 IN THE SCOPE OF HIS OR HER PRACTICE, IS AUTHORIZED:

6 1. IN THE ABSENCE OF FETAL VIABILITY; AND

7 2. AT ANY TIME, IF IN THE GOOD FAITH MEDICAL JUDGMENT OF A PHYSICIAN,  
8 SUCH TERMINATION IS NECESSARY TO PROTECT THE FEMALE'S LIFE OR HEALTH.

9 S 1702. STATE REGULATION. 1. THE STATE SHALL NOT DENY, REGULATE OR  
10 RESTRICT THE RIGHTS SET FORTH IN SECTION SEVENTEEN HUNDRED OF THIS ARTI-  
11 CLE BY ANY LAW, ORDINANCE, REGULATION OR POLICY EXCEPT BY LAW, REGU-  
12 LATION OR POLICY THAT IS NARROWLY TAILORED TO SERVE A COMPELLING STATE  
13 INTEREST AND EXCEPT AS SET FORTH IN SUBDIVISION THREE OF THIS SECTION.

14 2. THE STATE SHALL NOT DISCRIMINATE AGAINST THE EXERCISE OF THE RIGHTS  
15 SET FORTH IN SECTION SEVENTEEN HUNDRED OF THIS ARTICLE IN THE REGULATION  
16 OR PROVISION OF BENEFITS, FACILITIES, SERVICES OR INFORMATION.

17 3. NOTHING IN THIS ARTICLE SHALL PROHIBIT THE ENFORCEMENT OF GENERALLY  
18 APPLICABLE STATUTES, RULES OF LAW AND REGULATIONS GOVERNING MATTERS SUCH  
19 AS PRACTITIONER LICENSING, PHARMACEUTICALS AND MEDICAL DEVICES, AND  
20 MEDICAL PROCEDURES.

21 4. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO CONFLICT WITH ANY  
22 APPLICABLE STATE OR FEDERAL LAW OR REGULATION PERMITTING A HEALTH CARE  
23 PROVIDER TO REFRAIN FROM PROVIDING ABORTIONS DUE TO THE PROVIDER'S RELI-  
24 GIOUS OR MORAL BELIEFS.

25 S 1703. DEFINITIONS. THE FOLLOWING DEFINITIONS SHALL APPLY FOR  
26 PURPOSES OF THIS ARTICLE:

27 1. "ABORTION" MEANS THE TERMINATION OF A PREGNANCY FOR PURPOSES OTHER  
28 THAN PRODUCING A LIVE BIRTH, WHICH INCLUDES BUT IS NOT LIMITED TO A  
29 TERMINATION USING PHARMACOLOGICAL AGENTS. ABORTION DOES NOT INCLUDE THE  
30 TERMINATION OF AN ECTOPIC PREGNANCY.

31 2. "CONTRACEPTION" MEANS ANY DRUG OR DEVICE APPROVED BY THE UNITED  
32 STATES FOOD AND DRUG ADMINISTRATION FOR THE PURPOSE OF PREVENTING PREG-  
33 NANCY.

34 3. "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED SINCE THE FIRST  
35 DAY OF THE PREGNANT FEMALE'S LAST MENSTRUAL PERIOD.

36 4. "PREGNANCY" MEANS THE HUMAN REPRODUCTIVE PROCESS, BEGINNING WITH  
37 THE IMPLANTATION OF A FERTILIZED EGG.

38 5. "STATE" MEANS THE STATE OF NEW YORK AND EVERY COUNTY, CITY, TOWN,  
39 MUNICIPAL CORPORATION OR QUASI-MUNICIPAL CORPORATION OF THE STATE,  
40 INCLUDING GOVERNMENTAL AND POLITICAL SUBDIVISIONS, AGENCIES AND INSTRU-  
41 MENTALITIES.

42 6. "FETAL VIABILITY" MEANS THE POINT IN PREGNANCY WHEN, AS DETERMINED  
43 BY A PHYSICIAN OR OTHER QUALIFIED PRACTITIONER ACTING IN GOOD FAITH  
44 WITHIN THE SCOPE OF HIS OR HER PRACTICE IN ACCORDANCE WITH GENERALLY  
45 ACCEPTED MEDICAL STANDARDS APPLIED TO THE PARTICULAR FACTS OF THE CASE  
46 BEFORE THAT PRACTITIONER: (A) THE GESTATIONAL AGE OF THE FETUS IS TWEN-  
47 TY-FOUR WEEKS OR MORE, AND (B) THERE IS A REASONABLE LIKELIHOOD OF THE  
48 FETUS'S SUSTAINED SURVIVAL OUTSIDE THE UTERUS WITHOUT THE APPLICATION OF  
49 EXTRAORDINARY MEDICAL MEASURES.

50 S 3. Subdivision 1 of section 4164 of the public health law, as added  
51 by chapter 991 of the laws of 1974, is amended to read as follows:

52 1. [When an abortion is to be performed after the twelfth week of  
53 pregnancy it shall be performed only in a hospital and only on an in-pa-  
54 tient basis.] When an abortion is to be performed after [the twentieth  
55 week of pregnancy,] FETAL VIABILITY, AS THAT TERM IS DEFINED BY SUBDIVI-  
56 SION SIX OF SECTION SEVENTEEN HUNDRED THREE OF THIS CHAPTER, IT SHALL BE

1 PERFORMED BY A PHYSICIAN IN A FACILITY WHICH IS LICENSED BY THE DEPART-  
2 MENT PURSUANT TO ARTICLE TWENTY-EIGHT OF THIS CHAPTER AND a physician  
3 other than the physician performing the abortion shall be in attendance  
4 to take control of and to provide immediate medical care for any live  
5 birth that is the result of the abortion, PROVIDED, HOWEVER, THAT AN  
6 ABORTION SHALL NOT BE DELAYED FOR THE PURPOSE OF SECURING SUCH SECOND  
7 PHYSICIAN'S ATTENDANCE IF, IN THE JUDGMENT OF THE PHYSICIAN PERFORMING  
8 THE ABORTION, SUCH DELAY WOULD POSE A RISK TO THE FEMALE'S LIFE OR  
9 HEALTH. The commissioner [of health] is authorized to promulgate rules  
10 and regulations to insure the health and safety of the mother and the  
11 [viable child] LIVE BIRTH, in such instances.

12 S 4. Subdivision 8 of section 6811 of the education law is REPEALED.

13 S 5. Sections 125.40, 125.45, 125.50, 125.55 and 125.60 of the penal  
14 law are REPEALED, and the article heading of article 125 of the penal  
15 law is amended to read as follows:

16 HOMICIDE[, ABORTION] AND RELATED OFFENSES

17 S 6. Section 125.00 of the penal law is amended to read as follows:

18 S 125.00 Homicide defined.

19 Homicide means conduct which causes the death of a person [or an  
20 unborn child with which a female has been pregnant for more than twen-  
21 ty-four weeks] under circumstances constituting murder, manslaughter in  
22 the first degree, manslaughter in the second degree, OR criminally  
23 negligent homicide[, abortion in the first degree or self-abortion in  
24 the first degree].

25 S 7. Section 125.05 of the penal law, subdivision 3 as amended by  
26 chapter 127 of the laws of 1970, is amended to read as follows:

27 S 125.05 Homicide[, abortion] and related offenses; [definitions of  
28 terms] PERSON DEFINED.

29 [The following definitions are applicable to this article:

30 1. "Person,"] FOR THE PURPOSES OF THIS ARTICLE, THE TERM "PERSON,"  
31 when referring to the victim of a homicide, means a human being who has  
32 been born and is alive.

33 [2. "Abortional act" means an act committed upon or with respect to a  
34 female, whether by another person or by the female herself, whether she  
35 is pregnant or not, whether directly upon her body or by the administer-  
36 ing, taking or prescription of drugs or in any other manner, with intent  
37 to cause a miscarriage of such female.

38 3. "Justifiable abortional act." An abortional act is justifiable when  
39 committed upon a female with her consent by a duly licensed physician  
40 acting (a) under a reasonable belief that such is necessary to preserve  
41 her life, or, (b) within twenty-four weeks from the commencement of her  
42 pregnancy. A pregnant female's commission of an abortional act upon  
43 herself is justifiable when she acts upon the advice of a duly licensed  
44 physician (1) that such act is necessary to preserve her life, or, (2)  
45 within twenty-four weeks from the commencement of her pregnancy. The  
46 submission by a female to an abortional act is justifiable when she  
47 believes that it is being committed by a duly licensed physician, acting  
48 under a reasonable belief that such act is necessary to preserve her  
49 life, or, within twenty-four weeks from the commencement of her pregnan-  
50 cy.]

51 S 8. Section 125.15 of the penal law is amended to read as follows:

52 S 125.15 Manslaughter in the second degree.

53 A person is guilty of manslaughter in the second degree when:

54 1. He OR SHE recklessly causes the death of another person; or

1 2. [He commits upon a female an abortifacient act which causes her death,  
2 unless such abortifacient act is justifiable pursuant to subdivision three  
3 of section 125.05; or

4 3.] He OR SHE intentionally causes or aids another person to commit  
5 suicide.

6 Manslaughter in the second degree is a class C felony.

7 S 9. Section 125.20 of the penal law, subdivision 3 as amended and  
8 subdivision 4 as added by chapter 477 of the laws of 1990, is amended to  
9 read as follows:

10 S 125.20 Manslaughter in the first degree.

11 A person is guilty of manslaughter in the first degree when:

12 1. With intent to cause serious physical injury to another person, he  
13 OR SHE causes the death of such person or of a third person; or

14 2. With intent to cause the death of another person, he OR SHE causes  
15 the death of such person or of a third person under circumstances which  
16 do not constitute murder because he acts under the influence of extreme  
17 emotional disturbance, as defined in paragraph (a) of subdivision one of  
18 section 125.25. The fact that homicide was committed under the influence  
19 of extreme emotional disturbance constitutes a mitigating circumstance  
20 reducing murder to manslaughter in the first degree and need not be  
21 proved in any prosecution initiated under this subdivision; or

22 3. [He commits upon a female pregnant for more than twenty-four weeks  
23 an abortifacient act which causes her death, unless such abortifacient act is  
24 justifiable pursuant to subdivision three of section 125.05; or

25 4.] Being eighteen years old or more and with intent to cause physical  
26 injury to [a] ANOTHER person less than eleven years old, [the defendant]  
27 HE OR SHE recklessly engages in conduct which creates a grave risk of  
28 serious physical injury to such person and thereby causes the death of  
29 such person.

30 Manslaughter in the first degree is a class B felony.

31 S 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal  
32 procedure law, as amended by chapter 405 of the laws of 2010, is amended  
33 to read as follows:

34 (b) Any of the following felonies: assault in the second degree as  
35 defined in section 120.05 of the penal law, assault in the first degree  
36 as defined in section 120.10 of the penal law, reckless endangerment in  
37 the first degree as defined in section 120.25 of the penal law, promot-  
38 ing a suicide attempt as defined in section 120.30 of the penal law,  
39 strangulation in the second degree as defined in section 121.12 of the  
40 penal law, strangulation in the first degree as defined in section  
41 121.13 of the penal law, criminally negligent homicide as defined in  
42 section 125.10 of the penal law, manslaughter in the second degree as  
43 defined in section 125.15 of the penal law, manslaughter in the first  
44 degree as defined in section 125.20 of the penal law, murder in the  
45 second degree as defined in section 125.25 of the penal law, murder in  
46 the first degree as defined in section 125.27 of the penal law,  
47 [abortion in the second degree as defined in section 125.40 of the penal  
48 law, abortion in the first degree as defined in section 125.45 of the  
49 penal law,] rape in the third degree as defined in section 130.25 of the  
50 penal law, rape in the second degree as defined in section 130.30 of the  
51 penal law, rape in the first degree as defined in section 130.35 of the  
52 penal law, criminal sexual act in the third degree as defined in section  
53 130.40 of the penal law, criminal sexual act in the second degree as  
54 defined in section 130.45 of the penal law, criminal sexual act in the  
55 first degree as defined in section 130.50 of the penal law, sexual abuse  
56 in the first degree as defined in section 130.65 of the penal law,

1 unlawful imprisonment in the first degree as defined in section 135.10  
2 of the penal law, kidnapping in the second degree as defined in section  
3 135.20 of the penal law, kidnapping in the first degree as defined in  
4 section 135.25 of the penal law, labor trafficking as defined in section  
5 135.35 of the penal law, custodial interference in the first degree as  
6 defined in section 135.50 of the penal law, coercion in the first degree  
7 as defined in section 135.65 of the penal law, criminal trespass in the  
8 first degree as defined in section 140.17 of the penal law, burglary in  
9 the third degree as defined in section 140.20 of the penal law, burglary  
10 in the second degree as defined in section 140.25 of the penal law,  
11 burglary in the first degree as defined in section 140.30 of the penal  
12 law, criminal mischief in the third degree as defined in section 145.05  
13 of the penal law, criminal mischief in the second degree as defined in  
14 section 145.10 of the penal law, criminal mischief in the first degree  
15 as defined in section 145.12 of the penal law, criminal tampering in the  
16 first degree as defined in section 145.20 of the penal law, arson in the  
17 fourth degree as defined in section 150.05 of the penal law, arson in  
18 the third degree as defined in section 150.10 of the penal law, arson in  
19 the second degree as defined in section 150.15 of the penal law, arson  
20 in the first degree as defined in section 150.20 of the penal law, grand  
21 larceny in the fourth degree as defined in section 155.30 of the penal  
22 law, grand larceny in the third degree as defined in section 155.35 of  
23 the penal law, grand larceny in the second degree as defined in section  
24 155.40 of the penal law, grand larceny in the first degree as defined in  
25 section 155.42 of the penal law, health care fraud in the fourth degree  
26 as defined in section 177.10 of the penal law, health care fraud in the  
27 third degree as defined in section 177.15 of the penal law, health care  
28 fraud in the second degree as defined in section 177.20 of the penal  
29 law, health care fraud in the first degree as defined in section 177.25  
30 of the penal law, robbery in the third degree as defined in section  
31 160.05 of the penal law, robbery in the second degree as defined in  
32 section 160.10 of the penal law, robbery in the first degree as defined  
33 in section 160.15 of the penal law, unlawful use of secret scientific  
34 material as defined in section 165.07 of the penal law, criminal  
35 possession of stolen property in the fourth degree as defined in section  
36 165.45 of the penal law, criminal possession of stolen property in the  
37 third degree as defined in section 165.50 of the penal law, criminal  
38 possession of stolen property in the second degree as defined by section  
39 165.52 of the penal law, criminal possession of stolen property in the  
40 first degree as defined by section 165.54 of the penal law, trademark  
41 counterfeiting in the second degree as defined in section 165.72 of the  
42 penal law, trademark counterfeiting in the first degree as defined in  
43 section 165.73 of the penal law, forgery in the second degree as defined  
44 in section 170.10 of the penal law, forgery in the first degree as  
45 defined in section 170.15 of the penal law, criminal possession of a  
46 forged instrument in the second degree as defined in section 170.25 of  
47 the penal law, criminal possession of a forged instrument in the first  
48 degree as defined in section 170.30 of the penal law, criminal  
49 possession of forgery devices as defined in section 170.40 of the penal  
50 law, falsifying business records in the first degree as defined in  
51 section 175.10 of the penal law, tampering with public records in the  
52 first degree as defined in section 175.25 of the penal law, offering a  
53 false instrument for filing in the first degree as defined in section  
54 175.35 of the penal law, issuing a false certificate as defined in  
55 section 175.40 of the penal law, criminal diversion of prescription  
56 medications and prescriptions in the second degree as defined in section

1 178.20 of the penal law, criminal diversion of prescription medications  
2 and prescriptions in the first degree as defined in section 178.25 of  
3 the penal law, residential mortgage fraud in the fourth degree as  
4 defined in section 187.10 of the penal law, residential mortgage fraud  
5 in the third degree as defined in section 187.15 of the penal law, resi-  
6 dential mortgage fraud in the second degree as defined in section 187.20  
7 of the penal law, residential mortgage fraud in the first degree as  
8 defined in section 187.25 of the penal law, escape in the second degree  
9 as defined in section 205.10 of the penal law, escape in the first  
10 degree as defined in section 205.15 of the penal law, absconding from  
11 temporary release in the first degree as defined in section 205.17 of  
12 the penal law, promoting prison contraband in the first degree as  
13 defined in section 205.25 of the penal law, hindering prosecution in the  
14 second degree as defined in section 205.60 of the penal law, hindering  
15 prosecution in the first degree as defined in section 205.65 of the  
16 penal law, sex trafficking as defined in section 230.34 of the penal  
17 law, criminal possession of a weapon in the third degree as defined in  
18 subdivisions two, three and five of section 265.02 of the penal law,  
19 criminal possession of a weapon in the second degree as defined in  
20 section 265.03 of the penal law, criminal possession of a weapon in the  
21 first degree as defined in section 265.04 of the penal law, manufacture,  
22 transport, disposition and defacement of weapons and dangerous instru-  
23 ments and appliances defined as felonies in subdivisions one, two, and  
24 three of section 265.10 of the penal law, sections 265.11, 265.12 and  
25 265.13 of the penal law, or prohibited use of weapons as defined in  
26 subdivision two of section 265.35 of the penal law, relating to firearms  
27 and other dangerous weapons, or failure to disclose the origin of a  
28 recording in the first degree as defined in section 275.40 of the penal  
29 law;

30 S 11. Subdivision 1 of section 673 of the county law, as added by  
31 chapter 545 of the laws of 1965, is amended to read as follows:

32 1. A coroner or medical examiner has jurisdiction and authority to  
33 investigate the death of every person dying within his county, or whose  
34 body is found within the county, which is or appears to be:

35 (a) A violent death, whether by criminal violence, suicide or casual-  
36 ty;

37 (b) A death caused by unlawful act or criminal neglect;

38 (c) A death occurring in a suspicious, unusual or unexplained manner;

39 (d) [A death caused by suspected criminal abortion;

40 (e)] A death while unattended by a physician, so far as can be discov-  
41 ered, or where no physician able to certify the cause of death as  
42 provided in the public health law and in form as prescribed by the  
43 commissioner of health can be found;

44 [(f)] (E) A death of a person confined in a public institution other  
45 than a hospital, infirmary or nursing home.

46 S 12. Section 4 of the judiciary law, as amended by chapter 264 of the  
47 laws of 2003, is amended to read as follows:

48 S 4. Sittings of courts to be public. The sittings of every court  
49 within this state shall be public, and every citizen may freely attend  
50 the same, except that in all proceedings and trials in cases for  
51 divorce, seduction, [abortion,] rape, assault with intent to commit  
52 rape, criminal sexual act, bastardy or filiation, the court may, in its  
53 discretion, exclude therefrom all persons who are not directly inter-  
54 ested therein, excepting jurors, witnesses, and officers of the court.

55 S 13. This act shall take effect on the thirtieth day after it shall  
56 have become a law.