

4311

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. FITZPATRICK, BARRA, BENJAMIN, FINCH -- Multi-
Sponsored by -- M. of A. CONTE, ERRIGO, OAKS, RABBITT, SAYWARD,
SCHROEDER, WEISENBERG -- read once and referred to the Committee on
Health

AN ACT to amend the public health law, in relation to creating the human
cloning prohibition act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "human cloning prohibition act".
3 S 2. Legislative findings. The legislature finds that:
4 At least one company has announced that it has successfully cloned a
5 human being at the early embryonic stage of life, and others have
6 announced that they will attempt to clone a human being using the tech-
7 nique known as somatic cell nuclear transfer. Efforts to create human
8 beings by cloning mark a new and decisive step toward turning human
9 reproduction into a manufacturing process in which human beings are made
10 in laboratories to preordained specifications and, potentially, in
11 multiple copies. Creating cloned live-born human children, so-called
12 "reproductive cloning," begins by creating cloned human beings at the
13 embryonic stage of life, a process which some also propose as a way of
14 creating human embryos for destructive research as sources of stem cells
15 and tissues for possible treatment of other humans, so-called "therapeu-
16 tic cloning". Many scientists agree that attempts at "reproductive clon-
17 ing" pose a massive risk of either producing children who are stillborn,
18 unhealthy, or severely disabled, and that attempting "therapeutic clon-
19 ing" always results in the destruction of human beings at the embryonic
20 stage of life when their stem cells are harvested. Creating new human
21 life solely to be exploited via "reproductive cloning" or destroyed via
22 "therapeutic cloning" in these ways has been condemned on moral grounds
23 by many as displaying a profound disrespect for life.

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

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1 The distinction between "therapeutic" and "reproductive" cloning is a
 2 false distinction scientifically because both begin with the creation of
 3 a human being at the embryonic stage of life, one destined for implanta-
 4 tion in a womb, one destined for destructive farming of its stem cells;
 5 regardless of its ultimate destiny, all human embryos are simultaneously
 6 human beings. It will be nearly impossible to ban only attempts at
 7 "reproductive cloning" if "therapeutic cloning" is allowed because:

8 (i) cloning would take place within the privacy of a doctor-patient
 9 relationship;

10 (ii) the transfer of embryos to begin a pregnancy is a simple proce-
 11 dure; and

12 (iii) any government effort to prevent the transfer of an existing
 13 cloned embryo, or to prevent birth once transfer has occurred, would
 14 raise substantial moral, legal, and practical issues.

15 Based on the above findings, it is the purpose of this act to prohibit
 16 the use of cloning technology to initiate the development of new human
 17 beings at the embryonic stage of life for any purpose, therapeutic or
 18 reproductive.

19 S 3. The public health law is amended by adding a new article 32-B to
 20 read as follows:

21 ARTICLE 32-B

22 HUMAN CLONING PROHIBITION ACT

23 SECTION 3230. DEFINITIONS.

24 3231. HUMAN CLONING PROHIBITIONS.

25 3232. EXCEPTIONS.

26 3233. PENALTIES FOR VIOLATIONS.

27 3234. SEVERABILITY.

28 S 3230. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
 29 SHALL HAVE THE FOLLOWING MEANINGS:

30 1. "HUMAN CLONING" MEANS HUMAN ASEXUAL REPRODUCTION, ACCOMPLISHED BY
 31 INTRODUCING THE GENETIC MATERIAL OF A HUMAN SOMATIC CELL INTO AN OOCYTE
 32 WHOSE NUCLEUS HAS BEEN REMOVED OR INACTIVATED, TO PRODUCE A LIVING
 33 ORGANISM WITH A HUMAN OR PREDOMINANTLY HUMAN GENETIC CONSTITUTION.

34 2. "SOMATIC CELL" MEANS A CELL HAVING A COMPLETE SET OF CHROMOSOMES
 35 OBTAINED FROM A LIVING OR DECEASED HUMAN BODY AT ANY STAGE OF DEVELOP-
 36 MENT.

37 3. "OOCYTE" MEANS THE HUMAN FEMALE EGG.

38 4. "EMBRYO" MEANS AN ORGANISM OF THE SPECIES HOMO SAPIENS FROM THE
 39 SINGLE CELL STAGE TO EIGHT WEEKS DEVELOPMENT.

40 5. "FETUS" MEANS AN ORGANISM OF THE SPECIES HOMO SAPIENS FROM EIGHT
 41 WEEKS DEVELOPMENT UNTIL COMPLETE EXPULSION OR EXTRACTION FROM A WOMAN'S
 42 BODY, OR REMOVAL FROM AN ARTIFICIAL WOMB OR OTHER SIMILAR ENVIRONMENT
 43 DESIGNED TO NURTURE THE DEVELOPMENT OF SUCH ORGANISM.

44 S 3231. HUMAN CLONING PROHIBITIONS. IT SHALL BE UNLAWFUL FOR ANY
 45 PERSON OR ENTITY, PUBLIC OR PRIVATE, TO INTENTIONALLY OR KNOWINGLY:

46 1. PERFORM OR ATTEMPT TO PERFORM HUMAN CLONING;

47 2. PARTICIPATE IN AN ATTEMPT TO PERFORM HUMAN CLONING;

48 3. TRANSFER OR RECEIVE THE PRODUCT OF HUMAN CLONING FOR ANY PURPOSE;
 49 OR

50 4. TRANSFER OR RECEIVE, IN WHOLE OR IN PART, ANY OOCYTE, EMBRYO,
 51 FETUS, OR HUMAN SOMATIC CELL, FOR THE PURPOSE OF HUMAN CLONING.

52 S 3232. EXCEPTIONS. NOTHING IN THIS ARTICLE SHALL RESTRICT AREAS OF
 53 SCIENTIFIC RESEARCH NOT SPECIFICALLY PROHIBITED BY THIS ARTICLE, INCLUD-
 54 ING IN VITRO FERTILIZATION, THE ADMINISTRATION OF FERTILITY-ENHANCING
 55 DRUGS, RESEARCH IN THE USE OF NUCLEAR TRANSFER OR OTHER CLONING TECH-

1 NIQUES TO PRODUCE MOLECULES, DNA, TISSUES, ORGANS, PLANTS, OR ANIMALS
2 OTHER THAN HUMANS, OR CELLS OTHER THAN HUMAN EMBRYOS.

3 S 3233. PENALTIES FOR VIOLATIONS. 1. (A) ANY PERSON OR ENTITY THAT
4 VIOLATES SUBDIVISIONS ONE AND TWO OF SECTION THIRTY-TWO HUNDRED THIRTY-
5 ONE OF THIS ARTICLE SHALL BE GUILTY OF A CLASS D FELONY.

6 (B) ANY PERSON OR ENTITY THAT VIOLATES SUBDIVISIONS THREE AND FOUR OF
7 SECTION THIRTY-TWO HUNDRED THIRTY-ONE OF THIS ARTICLE SHALL BE GUILTY OF
8 A CLASS A MISDEMEANOR.

9 2. ANY PERSON OR ENTITY THAT VIOLATES ANY PROVISION OF THIS ARTICLE
10 AND DERIVES A PECUNIARY GAIN FROM SUCH VIOLATION SHALL BE FINED UP TO
11 ONE MILLION DOLLARS PURSUANT TO THE PREVAILING FEDERAL PENALTY GUIDE-
12 LINES OR TWICE THE AMOUNT OF GROSS GAIN, OR ANY AMOUNT INTERMEDIATE
13 BETWEEN THE FOREGOING, AT THE DISCRETION OF THE COURT.

14 3. ANY VIOLATION OF THIS ARTICLE SHALL CONSTITUTE UNPROFESSIONAL
15 CONDUCT AND SHALL RESULT IN PERMANENT REVOCATION OF THE VIOLATOR'S
16 LICENSE TO PRACTICE MEDICINE.

17 4. ANY VIOLATION OF THIS ARTICLE SHALL BE THE BASIS:

18 (A) FOR DENYING AN APPLICATION FOR,

19 (B) FOR DENYING AN APPLICATION FOR THE RENEWAL OF, OR

20 (C) FOR REVOKING ANY LICENSE, PERMIT, CERTIFICATE, OR ANY OTHER FORM
21 OF PERMISSION REQUIRED TO PRACTICE OR ENGAGE IN A TRADE, OCCUPATION OR
22 PROFESSION.

23 S 3234. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
24 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
25 DICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL
26 REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAIN-
27 DER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE,
28 SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED
29 IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

30 S 4. This act shall take effect on the sixtieth day after it shall
31 have become a law.