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

5808

2009-2010 Regular Sessions

I N S E N A T E

June 5, 2009

Introduced by Sens. STEWART-COUSINS, ADAMS, BRESLIN, DILAN, DUANE, ESPADA, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KLEIN, KRUEGER, KRUGER, MONSERRATE, MONTGOMERY, OPPENHEIMER, PARKER, PERKINS, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SQUADRON, STAVISKY, THOMPSON -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

Section 1. This act shall be known and may be cited as the "Reproductive Health Act".

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

ARTICLE 17

REPRODUCTIVE HEALTH ACT

SECTION 1700. STATEMENT OF POLICY.
1701. AUTHORIZED PERFORMANCE OF ABORTIONS.
1702. STATE REGULATION.
1703. DEFINITIONS.

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

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

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

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2. EVERY FEMALE HAS THE FUNDAMENTAL RIGHT TO DETERMINE THE COURSE OF HER PREGNANCY, WHICH INCLUDES THE RIGHT TO CARRY A PREGNANCY TO TERM OR TO TERMINATE A PREGNANCY: (I) IN THE ABSENCE OF FETAL VIABILITY; AND (II) AT ANY TIME IF SUCH TERMINATION IS NECESSARY TO PROTECT THE PREGNANT FEMALE'S LIFE OR HEALTH.

S 1701. AUTHORIZED PERFORMANCE OF ABORTIONS. THE PERFORMANCE OF AN ABORTION BY A QUALIFIED, LICENSED HEALTH CARE PRACTITIONER, ACTING WITHIN THE SCOPE OF HIS OR HER PRACTICE, IS AUTHORIZED:

1. IN THE ABSENCE OF FETAL VIABILITY; AND

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

S 1702. STATE REGULATION. 1. THE STATE SHALL NOT DENY, REGULATE OR RESTRICT THE RIGHTS SET FORTH IN SECTION SEVENTEEN HUNDRED OF THIS ARTICLE BY ANY LAW, ORDINANCE, REGULATION OR POLICY EXCEPT BY LAW, REGULATION OR POLICY THAT IS NARROWLY TAILORED TO SERVE A COMPELLING STATE INTEREST AND EXCEPT AS SET FORTH IN SUBDIVISION THREE OF THIS SECTION.

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

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

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

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

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

2. "CONTRACEPTION" MEANS ANY DRUG OR DEVICE APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOR THE PURPOSE OF PREVENTING PREGNANCY.

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

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

5. "STATE" MEANS THE STATE OF NEW YORK AND EVERY COUNTY, CITY, TOWN, MUNICIPAL CORPORATION, OR QUASI-MUNICIPAL CORPORATION OF THE STATE, INCLUDING GOVERNMENTAL AND POLITICAL SUBDIVISIONS, AGENCIES AND INSTRUMENTALITIES.

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

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

1. [When an abortion is to be performed after the twelfth week of pregnancy it shall be performed only in a hospital and only on an in-pa-

tient basis.] When an abortion is to be performed after [the twentieth week of pregnancy,] FETAL VIABILITY, AS THAT TERM IS DEFINED BY SUBDIVISION SIX OF SECTION SEVENTEEN HUNDRED THREE OF THIS CHAPTER, IT SHALL BE PERFORMED BY A PHYSICIAN IN A FACILITY WHICH IS LICENSED BY THE DEPARTMENT PURSUANT TO ARTICLE TWENTY-EIGHT OF THIS CHAPTER AND a physician other than the physician performing the abortion shall be in attendance to take control of and to provide immediate medical care for any live birth that is the result of the abortion, PROVIDED, HOWEVER, THAT AN ABORTION SHALL NOT BE DELAYED FOR THE PURPOSE OF SECURING SUCH SECOND PHYSICIAN'S ATTENDANCE IF, IN THE JUDGMENT OF THE PHYSICIAN PERFORMING THE ABORTION, SUCH DELAY WOULD POSE A RISK TO THE FEMALE'S LIFE OR HEALTH. The commissioner of health is authorized to promulgate rules and regulations to insure the health and safety of the mother and the [viable child] LIVE BIRTH, in such instances.

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

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

HOMICIDE[, ABORTION] AND RELATED OFFENSES

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

S 125.00 Homicide defined.

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

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

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

[The following definitions are applicable to this article:

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

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

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

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

S 125.15 Manslaughter in the second degree.

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

1. He recklessly causes the death of another person; or
2. [He commits upon a female an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05; or
3.] He intentionally causes or aids another person to commit suicide.
Manslaughter in the second degree is a class C felony.
S 9. Section 125.20 of the penal law, subdivision 3 as amended and subdivision 4 as added by chapter 477 of the laws of 1990, is amended to read as follows:
S 125.20 Manslaughter in the first degree.
A person is guilty of manslaughter in the first degree when:
1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or
2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph (a) of subdivision one of section 125.25. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or
3. [He commits upon a female pregnant for more than twenty-four weeks an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05; or
4.] Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly engages in conduct which creates a grave risk of serious physical injury to such person and thereby causes the death of such person.
Manslaughter in the first degree is a class B felony.
S 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:
(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, [abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law,] rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor

trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the

penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

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

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

(a) A violent death, whether by criminal violence, suicide or casualty;

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

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

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

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

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

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

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

S 13. This act shall take effect immediately.