

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:

1 Section 1. This act shall be known and may be cited as the "Reproduc-
2 tive 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

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

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

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

9 1. IN THE ABSENCE OF FETAL VIABILITY; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 HOMICIDE[, ABORTION] AND RELATED OFFENSES

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

21 S 125.00 Homicide defined.

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

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

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

32 [The following definitions are applicable to this article:

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

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

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

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

55 S 125.15 Manslaughter in the second degree.

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

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

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

5 3.] He intentionally causes or aids another person to commit 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 causes the death of such person or of a third person; or

14 2. With intent to cause the death of another person, he causes the
15 death of such person or of a third person under circumstances which do
16 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 person less than eleven years old, the defendant recklessly
27 engages in conduct which creates a grave risk of serious physical injury
28 to such person and thereby causes the death of such person.

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

30 S 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
31 procedure law, as amended by chapter 472 of the laws of 2008, is amended
32 to read as follows:

33 (b) Any of the following felonies: assault in the second degree as
34 defined in section 120.05 of the penal law, assault in the first degree
35 as defined in section 120.10 of the penal law, reckless endangerment in
36 the first degree as defined in section 120.25 of the penal law, promot-
37 ing a suicide attempt as defined in section 120.30 of the penal law,
38 criminally negligent homicide as defined in section 125.10 of the penal
39 law, manslaughter in the second degree as defined in section 125.15 of
40 the penal law, manslaughter in the first degree as defined in section
41 125.20 of the penal law, murder in the second degree as defined in
42 section 125.25 of the penal law, murder in the first degree as defined
43 in section 125.27 of the penal law, [abortion in the second degree as
44 defined in section 125.40 of the penal law, abortion in the first degree
45 as defined in section 125.45 of the penal law,] rape in the third degree
46 as defined in section 130.25 of the penal law, rape in the second degree
47 as defined in section 130.30 of the penal law, rape in the first degree
48 as defined in section 130.35 of the penal law, criminal sexual act in
49 the third degree as defined in section 130.40 of the penal law, criminal
50 sexual act in the second degree as defined in section 130.45 of the
51 penal law, criminal sexual act in the first degree as defined in section
52 130.50 of the penal law, sexual abuse in the first degree as defined in
53 section 130.65 of the penal law, unlawful imprisonment in the first
54 degree as defined in section 135.10 of the penal law, kidnapping in the
55 second degree as defined in section 135.20 of the penal law, kidnapping
56 in the first degree as defined in section 135.25 of the penal law, labor

1 trafficking as defined in section 135.35 of the penal law, custodial
2 interference in the first degree as defined in section 135.50 of the
3 penal law, coercion in the first degree as defined in section 135.65 of
4 the penal law, criminal trespass in the first degree as defined in
5 section 140.17 of the penal law, burglary in the third degree as defined
6 in section 140.20 of the penal law, burglary in the second degree as
7 defined in section 140.25 of the penal law, burglary in the first degree
8 as defined in section 140.30 of the penal law, criminal mischief in the
9 third degree as defined in section 145.05 of the penal law, criminal
10 mischief in the second degree as defined in section 145.10 of the penal
11 law, criminal mischief in the first degree as defined in section 145.12
12 of the penal law, criminal tampering in the first degree as defined in
13 section 145.20 of the penal law, arson in the fourth degree as defined
14 in section 150.05 of the penal law, arson in the third degree as defined
15 in section 150.10 of the penal law, arson in the second degree as
16 defined in section 150.15 of the penal law, arson in the first degree as
17 defined in section 150.20 of the penal law, grand larceny in the fourth
18 degree as defined in section 155.30 of the penal law, grand larceny in
19 the third degree as defined in section 155.35 of the penal law, grand
20 larceny in the second degree as defined in section 155.40 of the penal
21 law, grand larceny in the first degree as defined in section 155.42 of
22 the penal law, health care fraud in the fourth degree as defined in
23 section 177.10 of the penal law, health care fraud in the third degree
24 as defined in section 177.15 of the penal law, health care fraud in the
25 second degree as defined in section 177.20 of the penal law, health care
26 fraud in the first degree as defined in section 177.25 of the penal law,
27 robbery in the third degree as defined in section 160.05 of the penal
28 law, robbery in the second degree as defined in section 160.10 of the
29 penal law, robbery in the first degree as defined in section 160.15 of
30 the penal law, unlawful use of secret scientific material as defined in
31 section 165.07 of the penal law, criminal possession of stolen property
32 in the fourth degree as defined in section 165.45 of the penal law,
33 criminal possession of stolen property in the third degree as defined in
34 section 165.50 of the penal law, criminal possession of stolen property
35 in the second degree as defined by section 165.52 of the penal law,
36 criminal possession of stolen property in the first degree as defined by
37 section 165.54 of the penal law, trademark counterfeiting in the second
38 degree as defined in section 165.72 of the penal law, trademark counter-
39 feiting in the first degree as defined in section 165.73 of the penal
40 law, forgery in the second degree as defined in section 170.10 of the
41 penal law, forgery in the first degree as defined in section 170.15 of
42 the penal law, criminal possession of a forged instrument in the second
43 degree as defined in section 170.25 of the penal law, criminal
44 possession of a forged instrument in the first degree as defined in
45 section 170.30 of the penal law, criminal possession of forgery devices
46 as defined in section 170.40 of the penal law, falsifying business
47 records in the first degree as defined in section 175.10 of the penal
48 law, tampering with public records in the first degree as defined in
49 section 175.25 of the penal law, offering a false instrument for filing
50 in the first degree as defined in section 175.35 of the penal law, issu-
51 ing a false certificate as defined in section 175.40 of the penal law,
52 criminal diversion of prescription medications and prescriptions in the
53 second degree as defined in section 178.20 of the penal law, criminal
54 diversion of prescription medications and prescriptions in the first
55 degree as defined in section 178.25 of the penal law, residential mort-
56 gage fraud in the fourth degree as defined in section 187.10 of the

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

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

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

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

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

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

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

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

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

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

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

51 S 13. This act shall take effect immediately.