

2844

2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sens. STEWART-COUSINS, BRESLIN, DILAN, DUANE, HUNTLEY, KRUEGER, OPPENHEIMER, PARKER, PERKINS, 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

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

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1 TO TERMINATE A PREGNANCY: (I) IN THE ABSENCE OF FETAL VIABILITY; AND
2 (II) AT ANY TIME IF SUCH TERMINATION IS NECESSARY TO PROTECT THE PREG-
3 NANT FEMALE'S LIFE OR HEALTH.

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

7 1. IN THE ABSENCE OF FETAL VIABILITY; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

53 1. [When an abortion is to be performed after the twelfth week of
54 pregnancy it shall be performed only in a hospital and only on an in-pa-
55 tient basis.] When an abortion is to be performed after [the twentieth
56 week of pregnancy,] FETAL VIABILITY, AS THAT TERM IS DEFINED BY SUBDIVI-

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

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

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

17 HOMICIDE[, ABORTION] AND RELATED OFFENSES

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

19 S 125.00 Homicide defined.

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

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

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

30 [The following definitions are applicable to this article:

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

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

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

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

53 S 125.15 Manslaughter in the second degree.

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

55 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.