

5033

2011-2012 Regular Sessions

I N   S E N A T E

May 2, 2011

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Introduced by Sen. BALL -- 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 establishing a cause of action for damages against a person who attempts or performs a sex selective abortion

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

1     Section 1. The public health law is amended by adding a new section  
2     230-e to read as follows:  
3     S 230-E. PROHIBITION OF SEX SELECTIVE ABORTION.     1. THE FOLLOWING  
4     WORDS OR PHRASES, AS USED IN THIS SECTION SHALL HAVE THE FOLLOWING MEAN-  
5     INGS:  
6     (A) "ABORTION" MEANS THE INTENTIONAL USE OR PRESCRIPTION OF ANY  
7     INSTRUMENT, MEDICINE, DRUG OR ANY OTHER SUBSTANCE OR DEVICE OR METHOD TO  
8     TERMINATE THE LIFE OF AN UNBORN CHILD, OR TO TERMINATE THE PREGNANCY OF  
9     A WOMAN KNOWN TO BE PREGNANT WITH AN INTENTION OTHER THAN TO PRODUCE A  
10    LIVE BIRTH AND PRESERVE THE LIFE AND HEALTH OF THE CHILD AFTER LIVE  
11    BIRTH, OR TO REMOVE AN ECTOPIC PREGNANCY, OR TO REMOVE A DEAD UNBORN  
12    CHILD WHO DIED AS THE RESULT OF NATURAL CAUSES, ACCIDENTAL TRAUMA, OR A  
13    CRIMINAL ASSAULT ON THE PREGNANT WOMAN.  
14    (B) "ATTEMPT TO PERFORM AN ABORTION" MEANS TO DO OR OMIT TO DO  
15    ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE ACTOR BELIEVES THEM TO BE,  
16    IS AN ACT OR OMISSION CONSTITUTING A SUBSTANTIAL STEP IN A COURSE OF  
17    CONDUCT PLANNED TO CULMINATE IN AN ABORTION. SUCH SUBSTANTIAL STEPS  
18    INCLUDE, BUT ARE NOT LIMITED TO: (I) AGREEING WITH AN INDIVIDUAL TO  
19    PERFORM AN ABORTION ON THAT INDIVIDUAL OR ON SOME OTHER PERSON, WHETHER  
20    OR NOT THE TERM "ABORTION" IS USED IN THE AGREEMENT, AND WHETHER OR NOT  
21    THE AGREEMENT IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT  
22    OR A DETERMINATION OF PREGNANCY; AND (II) SCHEDULING OR PLANNING A TIME  
23    TO PERFORM AN ABORTION ON AN INDIVIDUAL, WHETHER OR NOT THE TERM  
24    "ABORTION" IS USED, AND WHETHER OR NOT THE PERFORMANCE IS CONTINGENT ON

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

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1 ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNAN-  
2 CY. THIS DEFINITION SHALL NOT BE CONSTRUED TO REQUIRE THAT AN ABORTION  
3 PROCEDURE ACTUALLY BE INITIATED FOR AN ATTEMPT TO OCCUR.

4 (C) "PHYSICIAN" MEANS A DOCTOR OF MEDICINE OR OSTEOPATHY LEGALLY  
5 AUTHORIZED TO PRACTICE MEDICINE IN THE STATE.

6 2. NO PERSON SHALL KNOWINGLY OR RECKLESSLY PERFORM OR ATTEMPT TO  
7 PERFORM AN ABORTION WITH KNOWLEDGE THAT THE PREGNANT FEMALE IS SEEKING  
8 THE ABORTION SOLELY ON ACCOUNT OF THE SEX OF THE UNBORN CHILD. NOTHING  
9 IN THIS SECTION SHALL BE CONSTRUED TO PROSCRIBE THE PERFORMANCE OF AN  
10 ABORTION BECAUSE THE UNBORN CHILD HAS A GENETIC DISORDER THAT IS  
11 SEX-LINKED.

12 3. ANY PERSON UPON WHOM AN ABORTION WAS PERFORMED OR ATTEMPTED TO BE  
13 PERFORMED IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THE FATHER OF  
14 THE UNBORN CHILD, OR THE GRANDPARENT OF THE UNBORN CHILD MAY MAINTAIN AN  
15 ACTION AGAINST THE PERSON WHO PERFORMED OR ATTEMPTED TO PERFORM THE  
16 ABORTION. THE PERSON WHO PERFORMED OR ATTEMPTED TO PERFORM THE ABORTION  
17 MAY BE LIABLE IN SUCH AN ACTION FOR PUNITIVE DAMAGES NOT TO EXCEED TEN  
18 THOUSAND DOLLARS AND FOR DAMAGES THE PLAINTIFF ACTUALLY SUSTAINED. NO  
19 PLAINTIFF SHALL BE ESTOPPED FROM RECOVERY IN SUCH AN ACTION ON THE  
20 GROUND THAT EITHER THE PLAINTIFF OR THE PERSON UPON WHOM THE ABORTION  
21 WAS PERFORMED GAVE CONSENT TO THE ABORTION.

22 4. AN ABORTION PROVIDER WHO KNOWINGLY OR RECKLESSLY PERFORMED OR  
23 ATTEMPTED TO PERFORM AN ABORTION IN VIOLATION OF THIS SECTION SHALL BE  
24 CONSIDERED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT FOR WHICH THE  
25 CERTIFICATE OR LICENSE OF THE PROVIDER TO PROVIDE HEALTH CARE SERVICES  
26 IN THIS STATE SHALL BE SUSPENDED OR REVOKED BY THE STATE BOARD FOR  
27 PROFESSIONAL MEDICAL CONDUCT PURSUANT TO SECTION TWO HUNDRED THIRTY-A OF  
28 THIS TITLE.

29 5. IN EVERY PROCEEDING OR ACTION INSTITUTED UNDER THIS SECTION, THE  
30 ANONYMITY OF ANY FEMALE UPON WHOM AN ABORTION IS PERFORMED OR ATTEMPTED  
31 SHALL BE PRESERVED UNLESS SHE GIVES HER CONSENT TO SUCH DISCLOSURE. THE  
32 COURT, UPON MOTION OR SUA SPONTE, SHALL ISSUE ORDERS TO THE PARTIES,  
33 WITNESSES AND COUNSEL, AND SHALL DIRECT THE SEALING OF THE RECORD AND  
34 EXCLUSION OF INDIVIDUALS FROM COURTROOMS OR HEARING ROOMS TO THE EXTENT  
35 NECESSARY TO SAFEGUARD THE FEMALE'S IDENTITY FROM PUBLIC DISCLOSURE. IN  
36 THE ABSENCE OF WRITTEN CONSENT OF THE FEMALE UPON WHOM AN ABORTION HAS  
37 BEEN PERFORMED OR ATTEMPTED, ANY PLAINTIFF WHO INSTITUTES AN ACTION  
38 UNDER SUBDIVISION THREE OF THIS SECTION SHALL DO SO UNDER A PSEUDONYM.

39 S 2. If any provision, word, phrase or clause of this act or the  
40 application thereof to any person or circumstance is held invalid, such  
41 invalidity shall not affect the provisions, words, phrases, clause or  
42 applications of this act which can be given effect without the invalid  
43 provision, word, phrase, clause or application, and to this end, the  
44 provisions, words, phrases, and clauses of this act are declared to be  
45 severable. If the application of this act to the period of pregnancy  
46 prior to viability is held invalid, then such invalidity shall not  
47 affect its application to the period of pregnancy subsequent to viabil-  
48 ity.

49 S 3. This act shall take effect immediately.