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

2612

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. FITZPATRICK, FINCH -- Multi-Sponsored by -- M. of A. CONTE, 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "human cloning prohibition act".

S 2. Legislative findings. The legislature finds that:

At least one company has announced that it has successfully cloned a human being at the early embryonic stage of life, and others have announced that they will attempt to clone a human being using the technique known as somatic cell nuclear transfer. Efforts to create human beings by cloning mark a new and decisive step toward turning human reproduction into a manufacturing process in which human beings are made in laboratories to preordained specifications and, potentially, in multiple copies. Creating cloned live-born human children, so-called "reproductive cloning," begins by creating cloned human beings at the embryonic stage of life, a process which some also propose as a way of creating human embryos for destructive research as sources of stem cells and tissues for possible treatment of other humans, so-called "therapeutic cloning". Many scientists agree that attempts at "reproductive cloning" pose a massive risk of either producing children who are stillborn, unhealthy, or severely disabled, and that attempting "therapeutic cloning" always results in the destruction of human beings at the embryonic stage of life when their stem cells are harvested. Creating new human life solely to be exploited via "reproductive cloning" or destroyed via "therapeutic cloning" in these ways has been condemned on moral grounds 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.

LBD03509-01-1

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

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

(ii) the transfer of embryos to begin a pregnancy is a simple procedure; and

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

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

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

ARTICLE 32-B

HUMAN CLONING PROHIBITION ACT

SECTION 3230. DEFINITIONS.
3231. HUMAN CLONING PROHIBITIONS.
3232. EXCEPTIONS.
3233. PENALTIES FOR VIOLATIONS.
3234. SEVERABILITY.

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

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

2. "SOMATIC CELL" MEANS A CELL HAVING A COMPLETE SET OF CHROMOSOMES OBTAINED FROM A LIVING OR DECEASED HUMAN BODY AT ANY STAGE OF DEVELOPMENT.

3. "OOCYTE" MEANS THE HUMAN FEMALE EGG.

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

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

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

1. PERFORM OR ATTEMPT TO PERFORM HUMAN CLONING;

2. PARTICIPATE IN AN ATTEMPT TO PERFORM HUMAN CLONING;

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

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

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

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

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

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

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

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

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

(A) FOR DENYING AN APPLICATION FOR,

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

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

S 3234. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

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