

6112

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I N A S S E M B L Y

March 7, 2011

Introduced by M. of A. GLICK, GOTTFRIED, ROSENTHAL, PEOPLES-STOKES,
N. RIVERA, PRETLOW, HOOPER, SILVER, HEASTIE, LIFTON, WRIGHT, CAHILL --
Multi-Sponsored by -- M. of A. BARRON, BING, BOYLAND, BRENNAN,
CYMBROWITZ, DINOWITZ, ENGLEBRIGHT, FARRELL, GALEF, HOYT, JACOBS,
JAFFEE, KELLNER, LAVINE, MILLMAN, O'DONNELL, PAULIN, RUSSELL, SAYWARD,
SCARBOROUGH, SCHIMEL, THIELE, WEINSTEIN, WEISENBERG, WEPRIN -- read
once and referred 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 ASSEM-
BLY, 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:

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

LBD07323-02-1

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

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

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

11 1. IN THE ABSENCE OF FETAL VIABILITY; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 HOMICIDE[, ABORTION] AND RELATED OFFENSES

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

23 S 125.00 Homicide defined.

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

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

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

34 [The following definitions are applicable to this article:

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

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

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

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

1 S 125.15 Manslaughter in the second degree.

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

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

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

7 3.] He OR SHE intentionally causes or aids another person to commit
8 suicide.

9 Manslaughter in the second degree is a class C felony.

10 S 9. Section 125.20 of the penal law, subdivision 3 as amended and
11 subdivision 4 as added by chapter 477 of the laws of 1990, is amended to
12 read as follows:

13 S 125.20 Manslaughter in the first degree.

14 A person is guilty of manslaughter in the first degree when:

15 1. With intent to cause serious physical injury to another person, he
16 OR SHE causes the death of such person or of a third person; or

17 2. With intent to cause the death of another person, he OR SHE causes
18 the death of such person or of a third person under circumstances which
19 do not constitute murder because he acts under the influence of extreme
20 emotional disturbance, as defined in paragraph (a) of subdivision one of
21 section 125.25. The fact that homicide was committed under the influence
22 of extreme emotional disturbance constitutes a mitigating circumstance
23 reducing murder to manslaughter in the first degree and need not be
24 proved in any prosecution initiated under this subdivision; or

25 3. [He commits upon a female pregnant for more than twenty-four weeks
26 an abortifacient act which causes her death, unless such abortifacient act is
27 justifiable pursuant to subdivision three of section 125.05; or

28 4.] Being eighteen years old or more and with intent to cause physical
29 injury to [a] ANOTHER person less than eleven years old, [the defendant]
30 HE OR SHE recklessly engages in conduct which creates a grave risk of
31 serious physical injury to such person and thereby causes the death of
32 such person.

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

34 S 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
35 procedure law, as amended by chapter 405 of the laws of 2010, is amended
36 to read as follows:

37 (b) Any of the following felonies: assault in the second degree as
38 defined in section 120.05 of the penal law, assault in the first degree
39 as defined in section 120.10 of the penal law, reckless endangerment in
40 the first degree as defined in section 120.25 of the penal law, promot-
41 ing a suicide attempt as defined in section 120.30 of the penal law,
42 strangulation in the second degree as defined in section 121.12 of the
43 penal law, strangulation in the first degree as defined in section
44 121.13 of the penal law, criminally negligent homicide as defined in
45 section 125.10 of the penal law, manslaughter in the second degree as
46 defined in section 125.15 of the penal law, manslaughter in the first
47 degree as defined in section 125.20 of the penal law, murder in the
48 second degree as defined in section 125.25 of the penal law, murder in
49 the first degree as defined in section 125.27 of the penal law,
50 [abortion in the second degree as defined in section 125.40 of the penal
51 law, abortion in the first degree as defined in section 125.45 of the
52 penal law,] rape in the third degree as defined in section 130.25 of the
53 penal law, rape in the second degree as defined in section 130.30 of the
54 penal law, rape in the first degree as defined in section 130.35 of the
55 penal law, criminal sexual act in the third degree as defined in section
56 130.40 of the penal law, criminal sexual act in the second degree as

1 defined in section 130.45 of the penal law, criminal sexual act in the
2 first degree as defined in section 130.50 of the penal law, sexual abuse
3 in the first degree as defined in section 130.65 of the penal law,
4 unlawful imprisonment in the first degree as defined in section 135.10
5 of the penal law, kidnapping in the second degree as defined in section
6 135.20 of the penal law, kidnapping in the first degree as defined in
7 section 135.25 of the penal law, labor trafficking as defined in section
8 135.35 of the penal law, custodial interference in the first degree as
9 defined in section 135.50 of the penal law, coercion in the first degree
10 as defined in section 135.65 of the penal law, criminal trespass in the
11 first degree as defined in section 140.17 of the penal law, burglary in
12 the third degree as defined in section 140.20 of the penal law, burglary
13 in the second degree as defined in section 140.25 of the penal law,
14 burglary in the first degree as defined in section 140.30 of the penal
15 law, criminal mischief in the third degree as defined in section 145.05
16 of the penal law, criminal mischief in the second degree as defined in
17 section 145.10 of the penal law, criminal mischief in the first degree
18 as defined in section 145.12 of the penal law, criminal tampering in the
19 first degree as defined in section 145.20 of the penal law, arson in the
20 fourth degree as defined in section 150.05 of the penal law, arson in
21 the third degree as defined in section 150.10 of the penal law, arson in
22 the second degree as defined in section 150.15 of the penal law, arson
23 in the first degree as defined in section 150.20 of the penal law, grand
24 larceny in the fourth degree as defined in section 155.30 of the penal
25 law, grand larceny in the third degree as defined in section 155.35 of
26 the penal law, grand larceny in the second degree as defined in section
27 155.40 of the penal law, grand larceny in the first degree as defined in
28 section 155.42 of the penal law, health care fraud in the fourth degree
29 as defined in section 177.10 of the penal law, health care fraud in the
30 third degree as defined in section 177.15 of the penal law, health care
31 fraud in the second degree as defined in section 177.20 of the penal
32 law, health care fraud in the first degree as defined in section 177.25
33 of the penal law, robbery in the third degree as defined in section
34 160.05 of the penal law, robbery in the second degree as defined in
35 section 160.10 of the penal law, robbery in the first degree as defined
36 in section 160.15 of the penal law, unlawful use of secret scientific
37 material as defined in section 165.07 of the penal law, criminal
38 possession of stolen property in the fourth degree as defined in section
39 165.45 of the penal law, criminal possession of stolen property in the
40 third degree as defined in section 165.50 of the penal law, criminal
41 possession of stolen property in the second degree as defined by section
42 165.52 of the penal law, criminal possession of stolen property in the
43 first degree as defined by section 165.54 of the penal law, trademark
44 counterfeiting in the second degree as defined in section 165.72 of the
45 penal law, trademark counterfeiting in the first degree as defined in
46 section 165.73 of the penal law, forgery in the second degree as defined
47 in section 170.10 of the penal law, forgery in the first degree as
48 defined in section 170.15 of the penal law, criminal possession of a
49 forged instrument in the second degree as defined in section 170.25 of
50 the penal law, criminal possession of a forged instrument in the first
51 degree as defined in section 170.30 of the penal law, criminal
52 possession of forgery devices as defined in section 170.40 of the penal
53 law, falsifying business records in the first degree as defined in
54 section 175.10 of the penal law, tampering with public records in the
55 first degree as defined in section 175.25 of the penal law, offering a
56 false instrument for filing in the first degree as defined in section

1 175.35 of the penal law, issuing a false certificate as defined in
2 section 175.40 of the penal law, criminal diversion of prescription
3 medications and prescriptions in the second degree as defined in section
4 178.20 of the penal law, criminal diversion of prescription medications
5 and prescriptions in the first degree as defined in section 178.25 of
6 the penal law, residential mortgage fraud in the fourth degree as
7 defined in section 187.10 of the penal law, residential mortgage fraud
8 in the third degree as defined in section 187.15 of the penal law, resi-
9 dential mortgage fraud in the second degree as defined in section 187.20
10 of the penal law, residential mortgage fraud in the first degree as
11 defined in section 187.25 of the penal law, escape in the second degree
12 as defined in section 205.10 of the penal law, escape in the first
13 degree as defined in section 205.15 of the penal law, absconding from
14 temporary release in the first degree as defined in section 205.17 of
15 the penal law, promoting prison contraband in the first degree as
16 defined in section 205.25 of the penal law, hindering prosecution in the
17 second degree as defined in section 205.60 of the penal law, hindering
18 prosecution in the first degree as defined in section 205.65 of the
19 penal law, sex trafficking as defined in section 230.34 of the penal
20 law, criminal possession of a weapon in the third degree as defined in
21 subdivisions two, three and five of section 265.02 of the penal law,
22 criminal possession of a weapon in the second degree as defined in
23 section 265.03 of the penal law, criminal possession of a weapon in the
24 first degree as defined in section 265.04 of the penal law, manufacture,
25 transport, disposition and defacement of weapons and dangerous instru-
26 ments and appliances defined as felonies in subdivisions one, two, and
27 three of section 265.10 of the penal law, sections 265.11, 265.12 and
28 265.13 of the penal law, or prohibited use of weapons as defined in
29 subdivision two of section 265.35 of the penal law, relating to firearms
30 and other dangerous weapons, or failure to disclose the origin of a
31 recording in the first degree as defined in section 275.40 of the penal
32 law;

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

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

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

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

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

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

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

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

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

51 S 4. Sittings of courts to be public. The sittings of every court
52 within this state shall be public, and every citizen may freely attend
53 the same, except that in all proceedings and trials in cases for
54 divorce, seduction, [abortion,] rape, assault with intent to commit
55 rape, criminal sexual act, bastardy or filiation, the court may, in its

1 discretion, exclude therefrom all persons who are not directly inter-
2 ested therein, excepting jurors, witnesses, and officers of the court.
3 S 13. This act shall take effect on the thirtieth day after it shall
4 have become a law.