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

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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ABINANTI, PAULIN, MAYER, GALEF, PRETLOW -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the civil rights law, in relation to enacting the reproductive health care facilities access act

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

Section 1. This act shall be known and may be cited as the "reproductive health care facilities access act".

S 2. Legislative intent. The legislature finds that the right to obtain reproductive health services is an essential personal right protected by state and federal law. Equally, the right to peaceably protest and express one's views is protected by state and federal law. Such actions include, but are not limited to, the right to speak, march, demonstrate, or engage in other activity protected by the First Amendment.

The legislature finds that current law does not adequately protect reproductive health care facilities and those who work in or seek services from such facilities. Therefore, the legislature has determined that it is appropriate for the protection of the public health, safety and welfare, to enact legislation to prohibit interference with access to reproductive health care services, so that persons harmed by such conduct can seek redress in the courts and the state can obtain injunctive relief and damages. Furthermore, the legislature has determined that it is appropriate to enact this legislation to: ensure public safety and order; protect freedom to receive reproductive health services; advance medical privacy and the well-being of patients seeking reproductive health care services at facilities; and safeguard private property.

S 3. Section 240.70 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

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

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S 240.70 Criminal interference with health care services or religious worship in the second degree.

1. A person is guilty of criminal interference with health services or religious worship in the second degree when:

(a) by force or threat of force or by physical obstruction, he or she [intentionally] KNOWINGLY injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person because such other person was or is obtaining or providing, OR ASSISTING IN OBTAINING OR PROVIDING, reproductive health services; or

(b) by force or threat of force or by physical obstruction, he or she [intentionally] KNOWINGLY injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person in order to discourage such other person or any other person or persons from obtaining or providing, OR ASSISTING IN OBTAINING OR PROVIDING, reproductive health services; or

(c) by force or threat of force or by physical obstruction, he or she intentionally injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person because such person was or is seeking to exercise the right of religious freedom at a place of religious worship; or

(d) he or she intentionally damages the property of a health care facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages the property of a place of religious worship[.]; OR

(E) HE OR SHE ENGAGES IN A COURSE OF CONDUCT OR REPEATEDLY COMMITS ACTS, OR ATTEMPTS TO ENGAGE IN A COURSE OF CONDUCT OR REPEATEDLY COMMIT ACTS, WITHIN TWENTY-FIVE FEET OF THE PREMISES OF A REPRODUCTIVE HEALTH CARE FACILITY IN ORDER TO DISCOURAGE ANOTHER PERSON FROM OBTAINING OR PROVIDING, OR ASSISTING IN OBTAINING OR PROVIDING, REPRODUCTIVE HEALTH SERVICES WHEN SUCH BEHAVIOR PLACES SUCH OTHER PERSON IN REASONABLE FEAR OF HARM.

2. A parent or legal guardian of a minor shall not be subject to prosecution for conduct otherwise prohibited by [paragraph (a) or (b) of] subdivision one of this section which is directed exclusively at such minor.

3. For purposes of this section:

(a) the term "health care facility" means a hospital, clinic, physician's office or other facility that provides reproductive health services, and includes the building or structure in which the facility is located;

(b) the term "interferes with" means to restrict a person's freedom of movement AND SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, ACTIVITIES THAT RESTRICT OR ATTEMPT TO RESTRICT ACCESS TO OR FROM A HEALTH CARE FACILITY, THE PERFORMANCE OF MEDICAL PROCEDURES AT A HEALTH CARE FACILITY OR THE DELIVERY OF GOODS TO SUCH A FACILITY;

(c) the term "intimidates" means to place a person in reasonable apprehension of physical injury to himself or herself or to another person;

(d) the term "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous; [and]

(e) the term "reproductive health services" means health care services provided in a hospital, clinic, physician's office or other facility and includes medical, surgical, counseling or referral services relating to

the human reproductive system, including services relating to pregnancy or the termination of a pregnancy[.]; AND

(F) THE TERM "PREMISES OF A REPRODUCTIVE HEALTH CARE FACILITY" MEANS A HEALTH CARE FACILITY AND INCLUDES THE DRIVEWAY, ENTRANCE, ENTRYWAY OR EXIT OF SUCH FACILITY, ANY PARKING LOT IN WHICH THE FACILITY HAS AN OWNERSHIP OR LEASEHOLD INTEREST AND ANY PUBLIC PARKING LOTS WITHIN TWO HUNDRED FEET OF THE FACILITY WHICH SERVE THE FACILITY.

Criminal interference with health care services or religious worship in the second degree is a class A misdemeanor.

S 3. Section 79-m of the civil rights law, as amended by chapter 566 of the laws of 2008, is amended to read as follows:

S 79-m. Criminal interference with health care services, religious worship, funeral, burial or memorial service; injunction; CIVIL ACTION. 1. Whenever the attorney general or district attorney of the county where the affected health care facility, place of religious worship, or site of a funeral, burial or memorial service is located has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of section 240.21, 240.70 [or], 240.71, 240.72 OR 240.73 of the penal law, the attorney general or district attorney may bring an action in the name of the people of the state of New York to permanently enjoin such violation. In such action preliminary and temporary relief may be granted under article sixty-three of the civil practice law and rules.

2. A CIVIL CLAIM OR CAUSE OF ACTION TO RECOVER FROM A DEFENDANT AS HEREINAFTER DEFINED, FOR PHYSICAL, PSYCHOLOGICAL OR OTHER INJURY OR CONDITION SUFFERED BY A PERSON, INCLUDING ANY PERSON WHOSE ABILITY TO ACCESS THE PREMISES OF A HEALTH CARE FACILITY HAS BEEN INTERFERED WITH OR ANY OWNER OR OPERATOR OF SUCH A FACILITY OR OWNER OF A BUILDING IN WHICH SUCH FACILITY IS LOCATED OR ANY EMPLOYEE OR VOLUNTEER WORKING FOR SUCH A FACILITY, AS A RESULT OF ACTS BY SUCH DEFENDANT OF CRIMINAL INTERFERENCE WITH HEALTH CARE SERVICES OR RELIGIOUS WORSHIP IN THE SECOND DEGREE AS DEFINED IN SECTION 240.70 OF THE PENAL LAW, CRIMINAL INTERFERENCE WITH HEALTH CARE SERVICES OR RELIGIOUS WORSHIP IN THE FIRST DEGREE AS DEFINED IN SECTION 240.71 OF THE PENAL LAW, AGGRAVATED INTERFERENCE WITH HEALTH CARE SERVICES IN THE SECOND DEGREE AS DEFINED IN SECTION 240.72 OF THE PENAL LAW, OR AGGRAVATED INTERFERENCE WITH HEALTH CARE SERVICES IN THE FIRST DEGREE AS DEFINED IN SECTION 240.73 OF THE PENAL LAW MAY BE BROUGHT WITHIN FIVE YEARS. AS USED IN THIS SUBDIVISION, THE TERM "DEFENDANT" SHALL MEAN ONLY A PERSON WHO COMMITS THE ACTS DESCRIBED IN THIS SUBDIVISION OR WHO, IN A CRIMINAL PROCEEDING, COULD BE CHARGED WITH CRIMINAL LIABILITY FOR THE COMMISSION OF SUCH ACTS PURSUANT TO SECTION 20.00 OF THE PENAL LAW AND SHALL NOT APPLY TO ANY RELATED CIVIL CLAIM OR CAUSE OF ACTION ARISING FROM SUCH ACTS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A CRIMINAL CHARGE BE BROUGHT OR A CRIMINAL CONVICTION BE OBTAINED AS A CONDITION OF BRINGING A CIVIL CAUSE OF ACTION OR RECEIVING A CIVIL JUDGMENT PURSUANT TO THIS SUBDIVISION OR BE CONSTRUED TO REQUIRE THAT ANY OF THE RULES GOVERNING A CRIMINAL PROCEEDING BE APPLICABLE TO ANY SUCH CIVIL ACTION. A PLAINTIFF IN A CIVIL CAUSE OR ACTION BROUGHT PURSUANT TO THIS SUBDIVISION MAY SEEK ANY RELIEF AVAILABLE CONSISTENT WITH THE CIVIL PRACTICE LAW AND RULES, INCLUDING INJUNCTIVE RELIEF.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act 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, para-

graph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.