STATE OF NEW YORK

2876

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. BARNWELL -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the penal law, in relation to enacting the reproductive health act and revising existing provisions of law regarding abortion; and to repeal certain provisions of the education law relating to the sale of contraceptives

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new article 25-A to read as follows:

ARTICLE 25-A

REPRODUCTIVE HEALTH ACT

Section 2599-aa. Abortion.

§ 2599-aa. Abortion. 1. A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case: there is an absence of fetal viability or the abortion is necessary to protect the patient's life or health.

2. No regulation, rule, provision, or law, shall be made or implemented that places an undue burden in the path of a woman seeking an abortion of a nonviable fetus. An "undue burden" shall have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.

§ 2. Subdivision 8 of section 6811 of the education law is REPEALED.

§ 3. Section 125.00 of the penal law is amended to read as follows:

§ 125.00 Homicide defined.

Homicide means conduct which causes the death of a person or [~~an unborn child with which a female has been pregnant for more than twenty-four weeks~~] **a viable fetus** under circumstances constituting murder,

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

LBD02214-01-9

manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.

§ 4. Subdivision 3 of section 125.05 of the penal law, as amended by chapter 127 of the laws of 1970, is amended to read as follows:

3. "Justifiable abortional act." **(a)** An abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting [~~(a) under a reasonable belief that~~] **under a reasonable and good faith professional judgment based on the facts of the patient's case (i) that** such **act** is necessary to preserve her life **or health**, or[~~, (b) within twenty-four weeks from the commencement of her pregnancy~~] **(ii) there is an absence of fetal viability**.

(b) A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the [~~advice~~] **good faith professional judgment** of a duly licensed physician [~~(1)~~] **(i)** that such act is necessary to preserve her life **or health**, or[~~, (2) within twenty-four weeks from the commencement of her pregnancy~~] **(ii) there is an absence of fetal viability**.

The submission by a female to an abortional act is justifiable when she believes that it is being committed by a duly licensed physician[~~,~~] acting under [~~a reasonable belief~~] **the physician's good faith professional judgment (i)** that such act is necessary to preserve her life **or health**, or[~~, within twenty-four weeks from the commencement of her pregnancy~~] **(ii) there is an absence of fetal viability**.

§ 5. Section 125.15 of the penal law is amended to read as follows:

§ 125.15 Manslaughter in the second degree.

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

1. He **or she** recklessly causes the death of another person; or

2. He **or she** commits upon a female an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 **of this article**; or

3. He **or she** intentionally causes or aids another person to commit suicide.

Manslaughter in the second degree is a class C felony.

§ 6. Section 125.20 of the penal law, subdivision 3 as amended and subdivision 4 as added by chapter 477 of the laws of 1990, is amended to read as follows:

§ 125.20 Manslaughter in the first degree.

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

1. With intent to cause serious physical injury to another person, he **or she** causes the death of such person or of a third person; or

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

3. He **or she** commits upon a female pregnant [~~for more than twenty-four weeks~~] **with a viable fetus** an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 **of this article**; or

4. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly

engages in conduct which creates a grave risk of serious physical injury to such person and thereby causes the death of such person.

Manslaughter in the first degree is a class B felony.

§ 7. Section 125.40 of the penal law is amended to read as follows:

§ 125.40 Abortion in the second degree.

A person is guilty of abortion in the second degree when he **or she** commits an abortional act upon a female, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 **of this article**.

Abortion in the second degree is a class E felony.

§ 8. Section 125.45 of the penal law is amended to read as follows:

§ 125.45 Abortion in the first degree.

A person is guilty of abortion in the first degree when he **or she** commits upon a female pregnant [~~**for more than twenty-four weeks**~~] **with a viable fetus** an abortional act which causes the miscarriage of such female, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 **of this article**.

Abortion in the first degree is a class D felony.

§ 9. Section 125.55 of the penal law is amended to read as follows:

§ 125.55 Self-abortion in the first degree.

A female is guilty of self-abortion in the first degree when, being pregnant [~~**for more than twenty-four weeks**~~] **with a viable fetus**, she commits or submits to an abortional act upon herself which causes her miscarriage, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 **of this article**.

Self-abortion in the first degree is a class A misdemeanor.

§ 10. This act shall take effect immediately.