STATE OF NEW YORK

7437

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

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

AN ACT to amend the public health law, in relation to enacting the "preservation of new life act" and revising existing provisions of law regarding abortion; to amend the education law, the penal law, the criminal procedure law, the county law and the judiciary law, in relation to abortion; and to repeal article 25-A of the public health law relating to abortion

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 cited as the "preservation of new life act".

§ 2. Article 25-A of the public health law is REPEALED.

§ 3. The public health law is amended by adding a new section 4164 to read as follows:

§ 4164. Induce viable births. 1. When an abortion is to be performed after the twelfth week of pregnancy it shall be performed only in a hospital and only on an in-patient basis. When an abortion is to be performed after the twentieth week of pregnancy, a physician other than the physician performing the abortion shall be in attendance to take control of and to provide immediate medical care for any live birth that is the result of the abortion. The commissioner of health is authorized to promulgate rules and regulations to insure the health and safety of the mother and the viable child, in such instances.

2. Such child shall be accorded immediate legal protection under the laws of the state of New York, including but not limited to applicable provisions of the social services law, article five of the civil rights law and the penal law.

3. The medical records of all life-sustaining efforts put forth for such a live aborted birth, their failure or success, shall be kept by attending physician. All other vital statistics requirements in the

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

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public health law shall be complied with in regard to such aborted child.

4. In the event of the subsequent death of the aborted child, the disposal of the dead body shall be in accordance with the requirements of this chapter.

§ 4. Section 6811 of the education law is amended by adding a new subdivision 8 to read as follows:

8. Any person to sell or distribute any instrument or article, or any recipe, drug or medicine for the prevention of conception to a minor under the age of sixteen years; the sale or distribution of such to a person other than a minor under the age of sixteen years is authorized only by a licensed pharmacist but the advertisement or display of said articles, within or without the premises of such pharmacy is hereby prohibited;

§ 5. Section 125.05 of the penal law, the section heading, opening paragraph and closing paragraph as amended by chapter 1 of the laws of 2019, is amended to read as follows:

§ 125.05 Homicide, abortion and related offenses; [~~definition~~] definitions of terms.

The following [~~definition is~~] definitions are applicable to this article:

1. "Person," when referring to the victim of a homicide, means a human being who has been born and is alive.

2. "Abortional act" means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescribing of drugs or in any other manner, with intent to cause a miscarriage of such female.

3. "Justifiable abortional act." 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 such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy. A pregnant female`s commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician (1) that such act is necessary to preserve her life, or, (2) within twenty-four weeks from the commencement of her pregnancy. 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 that such act is necessary to preserve her life, or, within twenty-four weeks from the commencement of her pregnancy.

§ 6. The penal law is amended by adding five new sections 125.40, 125.45, 125.50, 125.55 and 125.60 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 upon a female pregnant for more than twenty-four weeks 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 second degree is a class E felony.

§ 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 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.

§ 125.50 Self-abortion in the second degree.

A female is guilty of self-abortion in the second degree when, being pregnant, she commits or submits to an abortional act upon herself, unless such abortional act is justifiable pursuant to subdivision three of section 125.05 of this article.

Self-abortion in the second degree is a class B misdemeanor.

§ 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, 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.

§ 125.60 Issuing abortional articles.

A person is guilty of issuing abortional articles when he or she manufactures, sells or delivers any instrument, article, medicine, drug or substance with intent that the same be used in unlawfully procuring the miscarriage of a female.

Issuing abortional articles is a class B misdemeanor.

§ 7. Section 125.00 of the penal law, as amended by chapter 1 of the laws of 2019, 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** under circumstances constituting murder, manslaughter in the first degree, manslaughter in the second degree, [~~or~~] criminally negligent homicide**, abortion in the first degree or self-abortion in the first degree**.

§ 8. Section 125.15 of the penal law is amended by adding a new subdivision 2 to read as follows:

2. He 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

§ 9. Section 125.20 of the penal law is amended by adding a new subdivision 3 to read as follows:

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

§ 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 134 of the laws of 2019, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law, strangulation in the first degree as defined in section 121.13 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, **abortion in the second degree as defined in section 125.40 of the penal law,**

abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, aggravated labor trafficking as defined in section 135.37 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in

section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, sex trafficking of a child as defined in section 230.34-a of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, criminal manufacture, sale or transport of an undetectable firearm, rifle or shotgun as defined in section 265.50 of the penal law, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

§ 11. Subdivision 1 of section 673 of the county law, as amended by chapter 1 of the laws of 2019, is amended to read as follows:

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

(a) A violent death, whether by criminal violence, suicide or casualty;

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

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

(d) **A death caused by suspected criminal abortion;**

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

[~~(e)~~] **(f)** A death of a person confined in a public institution other than a hospital, infirmary or nursing home.

§ 12. Section 4 of the judiciary law, as amended by chapter 1 of the laws of 2019, is amended to read as follows:

§ 4. Sittings of courts to be public. The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, seduction, **abortion,** rape, assault with intent to commit rape, criminal sexual act, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.

§ 13. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 14. This act shall take effect immediately.