STATE OF NEW YORK

3601

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. MANKTELOW, DeSTEFANO, MORINELLO, BLANKENBUSH, FITZPATRICK, MILLER, BRABENEC, DiPIETRO, REILLY, BYRNES, McDONOUGH, SMITH, MIKULIN, HAWLEY, SMULLEN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the born alive abortion survivors' protection act

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 section 2599-bb-1 to read as follows:

§ 2599-bb-1. The born alive abortion survivors' protection act. 1. Any health care practitioner present at the time the child is born alive during an abortion or attempted abortion procedure shall:

(a) exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age; and

(b) following the exercise of skill, care, and diligence required under paragraph (a) of this subdivision, ensure that the child born alive is immediately transported and admitted to a hospital.

2. A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, who has knowledge of a failure to comply with the requirements of subdivision one of this section shall immediately report the failure to an appropriate state or federal law enforcement agency, or to both.

A violation of this subdivision is a class A misdemeanor.

3. An individual that intentionally performs or attempts to perform an overt act that kills a child born alive described under paragraph (a) of subdivision one of this section, shall be guilty under section 125.25 or

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

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110.05 of the penal law for intentionally killing or attempting to kill a human being.

4. The mother of a child born alive described under subdivision one of this section may not be prosecuted for a violation of this section, an attempt to violate this section, a conspiracy to violate this section, or an offense under subdivision two or three of this section based on such a violation.

5. If a child is born alive and there is a violation of subdivision one of this section, the mother of the child born alive upon whom the abortion was performed or attempted may, in a civil action against any person who committed the violation, obtain appropriate relief, which shall include:

(a) actual money damage for all injuries, psychological and physical, caused by the violation of subdivision one of this section:

(b) statutory damages equal to three times the cost of the abortion or attempted abortion; and

(c) punitive damages.

6. If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also award, as part of the costs, reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall award, as part of the costs, reasonable attorneys' fees in favor of the defendant against the plaintiff.

7. As used in this section:

(a) "attempt" means with respect to an abortion, conduct that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in performing an abortion.

(b) "born alive" has the same meaning as defined in section eight of title one of the United States Code.

§ 2. This act shall take effect immediately.