SENATE, No. 1618

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 16, 2012

Sponsored by:
Senator ANTHONY R. BUCCO
District 25 (Morris and Somerset)
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District 24 (Morris, Sussex and Warren)

SYNOPSIS
"Post-Viability Protection Act."

CURRENT VERSION OF TEXT
As introduced.
AN ACT protecting unborn children from post-viability abortions and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "Post-Viability Protection Act."

2. The Legislature finds and declares that:
   a. It is the strong public policy of this State to prefer, encourage, and support childbirth over abortion;
   b. Maternal health factors which lead to the termination of late-term pregnancy can be accommodated without sacrificing the life of the unborn child, and the viability of the unborn child strongly favors appropriate delivery rather than abortion;
   c. The risk of maternal death from abortion increases with the length of pregnancy;
   d. Maternal death from abortion at 21 weeks and greater is twice as great for abortions as for childbirth; and
   e. The compilation of relevant data concerning the termination of late-term pregnancies will add to the sum of medical and public health knowledge and, thus, will promote the public's interest in protecting maternal health and life and the lives of viable unborn children.

3. As used in this act:
   "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with the knowledge or intent that the termination of the pregnancy will result in the death of the unborn child, including, but not limited to, dilation and evacuation, hysterotomy, hysterectomy, induction, and dilation and extraction, also known as partial-birth abortion.
   "Delivered alive" means the complete delivery, expulsion, or extraction of a human being from a pregnant woman, irrespective of the duration of the pregnancy and whether or not the placenta has been separated or the umbilical cord cut, after which delivery, expulsion or extraction the human being breathes or shows evidence of any of the following: beating of the heart, pulsation of the umbilical cord, definite movement of voluntary muscles, or any brain-wave activity.
   "Department" means the Department of Health and Senior Services.
   "Gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.
   "Hospital" means a hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and shall not include an ambulatory care facility
of any type, including, but not limited to, an abortion facility.

"Medical emergency" means a condition which so complicates
the medical condition of the pregnant woman as to necessitate the
immediate termination of the pregnancy to avert her death or for
which a delay will create serious risk of substantial and irreversible
impairment of a major bodily function; and shall not include any
claim or diagnosis that the failure to perform an abortion may result
in conduct by the pregnant woman which would result in her death
or in substantial and irreversible impairment of a major bodily
function.

"Terminate," "terminated," "terminates," or "termination," when
used in reference to a pregnancy, means the use of any means to
terminate the pregnancy of a female prior to the spontaneous onset
of labor at full term, and shall not include the use of any means to
cause the unborn child to be delivered alive at full term.

"Unborn child" means the living offspring of human beings from
the moment of conception through pregnancy and until the child is
completely delivered, expelled, or extracted from the woman,
irrespective of the duration of the pregnancy and whether or not the
placenta has been separated or the umbilical cord cut.

"Viable" or "viability" means that state of development when the
life of the unborn child may be continued indefinitely outside the
womb by natural or artificial life supportive systems.

4. a. No physician shall perform an abortion or termination of
pregnancy unless the physician or the referring physician first shall
have made and recorded the following determination:
   (1) a determination of the gestational age of the unborn child at
   the time of the abortion or termination of pregnancy; and
   (2) whenever the gestational age of the unborn child is
determined to be 20 weeks or greater, the physician shall also
determine whether or not the unborn child is viable.

b. In making any such determination, the physician shall make
inquiries of the pregnant woman and shall perform a medical
examination using the equipment and tests a prudent physician
would consider necessary to determine the gestational age and
viability of an unborn child, such as ultrasound.

c. The requirements of this section shall not apply in the case
of a medical emergency which is so severe and immediate that it
would prevent a prudent physician from complying with these
requirements before performing an abortion or terminating a
pregnancy, provided that the physician makes and records the
required determination immediately after the abortion or
termination of pregnancy.

5. a. No physician shall intentionally, knowingly, or recklessly
perform an abortion or terminate a pregnancy when:
   (1) the unborn child is viable; or
(2) the unborn child has reached a gestational age of 24 weeks or greater.

b. The prohibition of subsection a. of this section shall not apply to a termination of pregnancy in the case of a medical emergency, provided that each of the following conditions is met:

(1) The physician who terminates the pregnancy certifies in writing that, based upon a medical examination of the pregnant woman and the medical judgment of the physician, a medical emergency exists;

(2) Such physician’s judgment with respect to the necessity of the termination of pregnancy has been concurred in by one other physician, who certifies in writing that, based upon a separate medical examination of the pregnant woman and the medical judgment of the concurring physician, a medical emergency exists;

(3) The pregnancy is terminated in a hospital;

(4) The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive; and

(5) The physician who terminates the pregnancy arranges for the attendance, in the same room in which the termination of pregnancy is to be completed, of a second physician who shall take control immediately of any child delivered alive and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child’s life and health as specified in section 7 of this act.

c. The requirements of subsection b. of this section shall not apply in the case of a medical emergency which is so severe and immediate as to prevent a prudent physician from complying with one or more of the specified conditions, provided that all other conditions are met.

6. In addition to all other reports, certificates, and records required by law, any physician who performs an abortion or terminates a pregnancy when the gestational age of the unborn child is 20 weeks or greater shall, within 30 days after the abortion or termination of pregnancy, file with the department a report on forms prescribed by the department, including the following information:

a. The name, address, and signature of the physician who performed the abortion or terminated the pregnancy;

b. The name, address, and signature of the concurring physician if required by paragraph (2) of subsection b. of section 5 of this act;

c. The name, address and signature of the second physician if required by paragraph (5) of subsection b. of section 5 of this act;

d. The name and address of the hospital or other facility where the abortion was performed or the pregnancy was terminated;

e. The means or method used to perform the abortion or terminate the pregnancy;

f. The county and State in which the pregnant woman resided.
at the time of the abortion or termination of pregnancy;
g. The age of the pregnant woman at the time of the abortion or
termination of pregnancy;
h. The number of prior pregnancies, abortions, and
terminations of pregnancy of the pregnant woman, if any;
i. The gestational age of the unborn child at the time of the
abortion or termination of pregnancy;
j. The inquiries, examinations, and tests utilized to determine
the gestational age and viability of the unborn child; and
k. The originals or certified copies of the certificates if required
by paragraphs (1) or (2) of subsection b. of section 5 of this act.

7. In the event that an unborn child is delivered alive during the
course of any abortion, termination of pregnancy, premature
delivery or delivery at full term, all physicians and licensed health
care professionals attending the pregnant woman shall provide or
arrange for the provision of that type and degree of care and
treatment for the child which is commonly and customarily
provided to any other child of the same gestational age who is
delivered alive.

8. a. Any physician who violates any of the reporting
requirements of this act shall be subject to a penalty of $1,000 for
each abortion or termination of pregnancy that is not reported, in
addition to forfeiture of all fees relating to each such abortion or
termination of pregnancy.
b. Any physician or licensed health care professional who
intentionally, knowingly, or recklessly violates any of the other
provisions of this act shall be subject to immediate revocation of his
license by the appropriate licensing board, a penalty of $25,000 for
each incident, and forfeiture of all fees relating to each incident.

9. A pregnant woman upon whom an abortion is performed or
whose pregnancy is terminated in violation of this act shall be
immune from civil or criminal liability for a violation of the
provisions of this act.

10. This act shall take effect immediately.

STATEMENT

This bill establishes the "Post-Viability Protection Act." Under
the provisions of the bill, a physician shall not perform an abortion
or termination of pregnancy unless the physician or the referring
physician first shall have made and recorded a determination of the
gestational age of the unborn child at the time of the abortion or
termination of pregnancy; and if the gestational age of the unborn
child is determined to be 20 weeks or greater, the physician shall also determine whether or not the unborn child is viable. In making the determination, the physician shall make inquiries of the pregnant woman and shall perform a medical examination using the equipment and tests a prudent physician would consider necessary to determine the gestational age and viability of an unborn child, such as ultrasound. However, these requirements shall not apply in the case of a medical emergency which is so severe and immediate that it would prevent a prudent physician from complying with the requirements before performing an abortion or terminating a pregnancy, provided that, the physician makes and records the required determination immediately after the abortion or termination of pregnancy.

In addition, the bill provides that a physician shall not intentionally, knowingly, or recklessly perform an abortion or terminate a pregnancy if the unborn child is viable or the unborn child has reached a gestational age of 24 weeks or greater. However, this prohibition shall not apply to a termination of pregnancy in the case of a medical emergency, provided that the following conditions are met:

-- The physician who terminates the pregnancy certifies in writing that, based upon medical examination of the pregnant woman and the medical judgment of the physician, a medical emergency exists;
-- Such physician's judgment with respect to the necessity of the termination of pregnancy has been concurred in by one other physician, who certifies in writing that, based upon a separate medical examination of the pregnant woman and the medical judgment of the concurring physician, a medical emergency exists;
-- The pregnancy is terminated in a hospital;
-- The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive; and
-- The physician who terminates the pregnancy arranges for the attendance, in the same room in which the termination of pregnancy is to be completed, of a second physician who shall take control immediately of any child delivered alive and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

The bill exempts a physician from these requirements, however, in the case of a medical emergency which is so severe and immediate as to prevent a prudent physician from complying with one or more of the specified conditions, provided that all other conditions are met.

In addition, the bill requires any physician who performs an abortion or terminates a pregnancy when the gestational age of the unborn child is 20 weeks or greater, within 30 days after the abortion or termination of pregnancy, to file with the Department of
The bill also provides that in the event that an unborn child is delivered alive during the course of any abortion, termination of pregnancy, premature delivery or delivery at full term, all physicians and licensed health care professionals attending the pregnant woman shall provide or arrange for the provision of that type and degree of care and treatment for the child which is commonly and customarily provided to any other child of the same gestational age who is delivered alive.

In addition, the bill provides immunity from civil or criminal liability to a pregnant woman upon whom an abortion is performed in violation of the bill and includes a penalty provision for physicians who violate the bill's reporting requirements. Lastly, the bill provides for revocation of a professional license and forfeiture of fees for violations of the bill, which are in addition to a penalty of $25,000 for each incident that violates the provisions of the bill.