

ASSEMBLY, No. 1703

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

"Pain-Capable Fetus Protection Act"; bans abortion 20 weeks or more after fertilization.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

WITHDRAWN



1 AN ACT concerning abortions, supplementing Title 2C of the New
2 Jersey Statutes, and designated as the "Pain-Capable Fetus
3 Protection Act."
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 "Abortion" means the use or prescription of any instrument,
10 medicine, drug, or any other substance or device to intentionally kill
11 the fetus of a woman known to be pregnant, or to intentionally
12 terminate the pregnancy of a woman known to be pregnant, with an
13 intention other than: after viability, to produce a live birth and
14 preserve the life and health of the child born alive; or to remove a
15 deceased fetus.

16 "Attempt an abortion" means conduct taken by a person that the
17 person believes will constitute a substantial step in a course of
18 conduct planned to culminate in performing an abortion.

19 "Fertilization" means the fusion of human spermatozoon with a
20 human ovum.

21 "Perform" means to take an action that includes inducing an
22 abortion through a medical or chemical intervention, including
23 writing a prescription for a drug or device intended to result in an
24 abortion.

25 "Physician" means a person who is licensed to practice medicine
26 and surgery pursuant to chapter 9 of Title 45 of the Revised
27 Statutes.

28 "Post-fertilization age" means the age of a fetus as calculated
29 from the fusion of a human spermatozoon with a human ovum.

30 "Probable post-fertilization age of the fetus" means the time
31 period that will, with reasonable medical judgment and reasonable
32 probability, be the post-fertilization age of the fetus at the time the
33 abortion is planned to be performed or induced.

34 "Reasonable medical judgment" means a professional judgment
35 made by a reasonably prudent physician in the practice of medicine,
36 and made with knowledge about the case and the treatment
37 possibilities with respect to the medical conditions involved.

38 "Woman" means a female person who has or has not reached the
39 age of majority.
40

41 2. a. (1) Notwithstanding the provisions of any other law to the
42 contrary, it shall be unlawful for a person to perform an abortion or
43 attempt to do so, unless the person is a physician, performing or
44 attempting to perform the abortion pursuant to this act, who has first
45 made a determination of the probable post-fertilization age of the
46 fetus or has reasonably relied upon this determination made by
47 another physician. In making a determination pursuant to this
48 section, the physician shall make inquiries of the pregnant woman

1 and shall perform or cause to be performed any medical
2 examinations or tests that a reasonably prudent physician,
3 knowledgeable about the case and the medical conditions involved,
4 would consider necessary to make an accurate determination of
5 post-fertilization age.

6 (2) Except as provided in subsection b. of this section, an
7 abortion shall not be performed or attempted if the probable post-
8 fertilization age of the fetus, as determined pursuant to this
9 subsection, is 20 weeks or greater.

10 b. The provisions of subsection a. of this section shall not
11 apply if:

12 (1) in reasonable medical judgment, the abortion is necessary to
13 save the life of a pregnant women whose life is endangered by a
14 physical disorder, physical illness, or physical injury, including a
15 life-endangering physical condition caused by, or arising from, the
16 pregnancy itself, but not including a psychological or emotional
17 condition;

18 (2) the pregnancy is the result of rape, if the rape has been
19 reported at any time prior to the abortion to a law enforcement
20 agency; or

21 (3) the pregnancy is the result of incest against a minor, if the
22 incest has been reported at any time prior to the abortion to a law
23 enforcement agency or to the Division of Child Protection and
24 Permanency in the Department of Children and Families.

25 c. Notwithstanding the requirements for performing or
26 attempting to perform an abortion pursuant to this act, a physician
27 terminating or attempting to terminate a pregnancy pursuant to
28 subsection b. of this section may do so only in a manner which, in
29 reasonable medical judgment, provides the best opportunity for the
30 fetus to survive, unless in reasonable medical judgment termination
31 of the pregnancy in that manner would pose a greater risk than
32 would other available methods of terminating the pregnancy,
33 resulting in:

34 (1) the death of the pregnant woman; or

35 (2) the substantial and irreversible physical impairment of a
36 major bodily function, not including a psychological or emotional
37 condition of the pregnant woman.

38 d. A person who performs or attempts to perform an abortion in
39 violation of subsection a. of this section shall be guilty of a crime of
40 the third degree.

41 e. A woman upon whom an abortion is performed shall be
42 immune from civil or criminal liability for a violation of, or a
43 conspiracy to violate, subsection a. of this section.

44

45 3. This act shall take effect immediately on the first day of the
46 third month next following the date of enactment.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

This bill, designated as the "Pain-Capable Fetus Protection Act," provides that an abortion is not to be performed or attempted if the probable post-fertilization age of the fetus is 20 weeks or greater, with certain exceptions noted below. It is to be unlawful for a person to perform an abortion or attempt to do so, unless the person is a physician who has first made a determination of the probable post-fertilization age of the fetus or has reasonably relied upon this determination made by another physician. In making the determination, a physician is to make inquiries of the pregnant woman and perform any medical examinations or tests necessary to accurately determine post-fertilization age.

The bill provides an exception to the above provisions if: (1) the abortion is necessary to save the life of a pregnant women whose life is endangered by a physical disorder, illness, or injury, including a life-endangering physical condition caused by, or arising from, the pregnancy itself; (2) the pregnancy is the result of rape, if reported to a law enforcement agency prior to the abortion; or (3) the pregnancy is the result of incest against a minor, if reported to a law enforcement agency or to the Division of Child Protection and Permanency in the Department of Children and Families prior to the abortion. In terminating or attempting to terminate a pregnancy under these circumstances, the physician may do so only in a manner which, in reasonable medical judgment, provides the best opportunity for the fetus to survive, unless the termination of the pregnancy in that manner would pose a greater risk of death of the pregnant woman or substantial and irreversible physical impairment of a major bodily function.

A person who performs or attempts to perform an abortion in violation of the bill's requirements is to be guilty of a crime of the third degree (punishable by three to five years imprisonment or fined up to \$15,000, or both); however, a woman upon whom an abortion is to be performed is to be immune from civil or criminal liability.

The bill, which is modeled on H.R. 36 of the 114th Congress, is intended to address the concern that a fetus is capable of experiencing pain by 20 weeks after fertilization, if not earlier. Fetal surgeons have found it necessary to sedate a fetus to prevent the fetus from engaging in vigorous movement in reaction to invasive surgery.