SENATE, No. 2026

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED APRIL 18, 2016

Sponsored by:
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District 24 (Morris, Sussex and Warren)
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SYNOPSIS
"Pain-Capable Unborn Child Protection Act"; bans abortion 20 weeks or more after fertilization.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 12/5/2017)
AN ACT concerning abortions, supplementing Title 2C of the New Jersey Statutes, and designated as the "Pain-Capable Unborn Child Protection Act."

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

1. As used in this act:
   "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to intentionally kill the unborn child of a woman known to be pregnant or to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than: after viability, to produce a live birth and preserve the life and health of the child born alive; or to remove a dead unborn child.
   "Attempt an abortion" means conduct taken by a person that the person believes will constitute a substantial step in a course of conduct planned to culminate in performing an abortion.
   "Counseling" means counseling provided by a counselor licensed by the State, or a victim’s rights advocate provided by a law enforcement agency.
   "Facility" means any medical or counseling group, center, or clinic and includes the entire legal entity, including any entity that controls, is controlled by, or is under common control with such facility.
   "Fertilization" means the fusion of human spermatozoon with a human ovum.
   "Medical treatment" means treatment provided at a hospital licensed by the State or operated under authority of a federal agency, at a medical clinic licensed by the State or operated under authority of a federal agency, or from a personal physician licensed by the State.
   "Minor" means an individual who has not attained the age of 18 years.
   "Perform an abortion" means to take an action that includes inducing an abortion through a medical or chemical intervention, including writing a prescription for a drug or device intended to result in an abortion.
   "Physician" means a person who is licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes.
   "Post-fertilization age" means the age of unborn child as calculated from the fusion of a human spermatozoon with a human ovum.
   "Probable post-fertilization age of the unborn child" means the time period that will, with reasonable medical judgment and reasonable probability, be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced.
"Reasonable medical judgment" means a professional judgment made by a reasonably prudent physician in the practice of medicine, and made with knowledge about the case and the treatment possibilities with respect to the medical conditions involved.

"Unborn child" means an individual organism of species Homo sapiens, beginning at fertilization, until the point of being born alive.

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

2. a. (1) Notwithstanding the provisions of any other law to the contrary, it shall be unlawful for a person to perform an abortion or attempt to do so, unless the person is a physician, performing or attempting to perform the abortion pursuant to this act, who has first made a determination of the probable post-fertilization age of the unborn child or has reasonably relied upon this determination made by another physician. In making a determination pursuant to this section, the physician shall make inquiries of the pregnant woman and shall perform or cause to be performed any medical examinations or tests that a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to make an accurate determination of post-fertilization age.

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

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

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

(2) the pregnancy is the result of rape, if the rape has been reported at any time prior to the abortion to a law enforcement agency or to Department of Defense victim assistance personnel, and at least 48 hours prior to the abortion, the patient has obtained counseling for the rape, provided that the counseling may not be provided by a facility that performs abortions unless that facility is a hospital; or the patient has obtained medical treatment for the rape or an injury related to the rape. The physician who performs or attempts to perform an abortion under an exception provided by this paragraph shall comply with such applicable State laws that are in effect regarding reporting requirements in cases of rape; or

(3) the pregnancy is the result of rape or incest against a minor, if the rape or incest has been reported at any time prior to the
abortion to a law enforcement agency or to the Division of Child
Protection and Permanency in the Department of Children and
Families. The physician who performs or attempts to perform an
abortion under an exception provided by this paragraph shall
comply with such applicable State laws that are in effect regarding
reporting requirements in cases of rape or incest.

c. Notwithstanding the requirements for performing or
attempting to perform an abortion pursuant to this act, a physician
terminating or attempting to terminate a pregnancy pursuant to
subsection b. of this section may do so only in a manner which, in
reasonable medical judgment, provides the best opportunity for the
unborn child to survive, unless in reasonable medical judgment
termination of the pregnancy in that manner would pose a greater
risk of:

   (1) the death of the pregnant woman; or

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

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

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

f. If, in reasonable medical judgment, the pain-capable unborn
child has the potential to survive outside the womb, the physician
who performs or attempts an abortion under an exception provided
by subsection b. of this section shall ensure a second physician
trained in neonatal resuscitation is present and prepared to provide
care to the child consistent with the requirements of subsection g. of
this section.

g. When a physician performs or attempts an abortion in
accordance with this section, and the child is born alive, as defined
in the federal “Born-Alive Infants Protection Act of 2002” (Pub. L.
107–207, 1 U.S.C. s.8), the following shall apply:

   (1) Any health care practitioner present at the time shall
humanely 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 a
child born alive at the same gestational age in the course of a
natural birth.

   (2) Following the care required to be rendered under paragraph
(1) of this subsection, the child born alive shall be immediately
transported and admitted to a hospital.

   (3) A health care practitioner or any employee of a hospital,
physician’s office, or abortion clinic who has knowledge of a
failure to comply with the requirements of this paragraph shall
immediately report the failure to an appropriate State or federal law
enforcement agency or both.

h. A physician who performs or attempts to perform an
abortion under an exception provided by paragraph (2) of
subsection b. of this section shall, prior to the abortion, place in the
patient medical file, documentation from a hospital licensed by the
State or operated under authority of a federal agency, a medical
clinic licensed by the State or operated under authority of a federal
agency, a personal physician licensed by the State, a counselor
licensed by the State, or a victim’s rights advocate provided by a
law enforcement agency, which documentation shall show that the
adult woman seeking the abortion obtained medical treatment or
counseling for the rape or an injury related to the rape.

i. A physician who performs or attempts to perform an
abortion under an exception provided by paragraph (3) of
subsection b. of this section shall, prior to the abortion, place in the
patient medical file documentation from the Division of Child
Protection and Permanency in the Department of Children and
Families showing that the rape or incest was reported prior to the
abortion; or, as an alternative, documentation from a law
enforcement agency showing that the rape or incest was reported
prior to the abortion.

j. The physician who intends to perform or attempt to perform
an abortion under the provisions of subsection b. of this section
shall not perform any part of the abortion procedure without first
obtaining a signed informed consent authorization form in
accordance with this subsection. The informed consent
authorization form shall be signed in person by the woman seeking
the abortion, as well as by the physician who is performing or
attempting to perform the abortion, and a witness. The physician
performing or attempting to perform an abortion shall retain the
signed informed consent form in the patient’s medical file, and shall
maintain the form in compliance with all State and federal laws,
including the federal "Health Insurance Portability and
regulations. The informed consent authorization form shall be
presented in person by the physician and shall consist of:

(1) a statement by the physician indicating the probable post-
fertilization age of the pain-capable unborn child;
(2) a statement that State law allows abortion after 20 weeks
fetal age only if the mother’s life is endangered by a physical
disorder, physical illness, or physical injury, when the pregnancy
was the result of rape, or an act of incest against a minor;
(3) a statement that the abortion shall be performed by the
method most likely to allow the child to be born alive, unless this
would cause significant risk to the mother;
(4) a statement that in any case in which an abortion procedure
results in a child born alive, State law requires that child to be given
every form of medical assistance that is provided to children
spontaneously born prematurely, including transportation and
admittance to a hospital;
(5) a statement that these requirements are binding upon the
physician and all other medical personnel who are subject to
criminal and civil penalties and that a woman on whom an abortion
has been performed may take civil action if these requirements are
not followed; and
(6) affirmation that each signer has filled out the informed
consent form to the best of the signer’s knowledge and understands
the information contained in the form.

k. A woman upon whom an abortion has been performed or
attempted in violation of any provision of this section may, in a
civil action against any person who committed the violation, obtain
appropriate relief, under the following conditions:
(1) A parent of a minor upon whom an abortion has been
performed or attempted under an exception provided for in
paragraphs (2) or (3) of subsection b. of this section, and that was
performed in violation of any provision of this section may, in a
civil action against any person who committed the violation obtain
appropriate relief, unless the pregnancy resulted from the plaintiff’s
criminal conduct.
(2) Appropriate relief in a civil action under this subsection
includes objectively verifiable money damages for all injuries,
psychological and physical, occasioned by the violation; statutory
damages equal to three times the cost of the abortion; and punitive
damages.
(3) The court shall award a reasonable attorney’s fee as part of
the costs to a prevailing plaintiff in a civil action under this
subsection.
(4) If a defendant in a civil action under this subsection prevails
and the court finds that the plaintiff’s suit was frivolous, the court
shall award a reasonable attorney’s fee in favor of the defendant
against the plaintiff.
(5) Except as provided under paragraph (4) of this subsection, in
a civil action under this subsection, no damages, attorney’s fee or
other monetary relief shall be assessed against the woman upon
whom the abortion was performed or attempted.

l. Any physician who performs or attempts an abortion
pursuant to subsection b. of this section shall annually submit a
summary of all such abortions to the National Center for Health
Statistics no later than 60 days after the end of the calendar year in
which the abortion was performed or attempted, under the following
conditions:
(1) The summary shall include the number of abortions
performed or attempted on an unborn child who had a post-
fertilization age of 20 weeks or more and specify the following for
each abortion:
(a) the probable post-fertilization age of the unborn child;
(b) the method used to carry out the abortion;
(c) the location where the abortion was conducted;
(d) the exception under subsection b. of this section pursuant to
which the abortion was conducted; and
(e) any incident of live birth resulting from the abortion.

(2) A summary required under this subsection shall not contain
any information identifying the woman whose pregnancy was
terminated and shall be submitted consistent with the federal
"Health Insurance Portability and Accountability Act of 1996,"
Pub.L.104-191, and related regulations.

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

STATEMENT

This bill, designated as the "Pain-Capable Unborn Child
Protection Act," provides that an abortion is not to be performed or
attempted if the probable post-fertilization age of the unborn child
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 unborn child 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 rape or incest against a minor, if
reported to a law enforcement agency or to the Division of Child
Protection and Permanency (DCPP) 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 unborn child 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.

The bill also: outlines the procedures that a physician who
performs or attempts an abortion must follow, consistent with the
federal “Born Alive Infant Protection Act”, if an exception provided in the bill exists and the pain-capable unborn child survives the abortion or attempted abortion; outlines the documentation from a law enforcement agency, Department of Defense victim assistance personnel, or DCCP, that a physician is required to file proving a pregnant woman or minor seeking an abortion has been raped or is a victim of incest; requires the woman seeking the abortion, the physician performing or attempting to perform the abortion, and a witness to sign an informed consent authorization form; and requires any physician who performs or attempts an abortion pursuant to the bill to annually submit a summary of all such abortions to the National Center for Health Statistics as provided by the conditions outlined in the bill.

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 a fine of 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.

A woman or the parent of a minor upon whom an abortion is performed in violation of the provisions of the bill may, in a civil action against any person who committed the violation, obtain appropriate relief the conditions delineated in the bill.

The bill, which is modeled on H.R.36 of the 114th Congress, is intended to address the concern that an unborn child is capable of experiencing pain by 20 weeks after fertilization, if not earlier. Surgeons in the field of maternal and fetal medicine have found it necessary to sedate an unborn child to prevent the unborn child from engaging in vigorous movement in reaction to invasive surgery.

It is the purpose of this Legislature to assert a compelling governmental interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates they are capable of feeling pain.