

**SENATE, No. 1118**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED JANUARY 25, 2018

**Sponsored by:**

**Senator ANTHONY M. BUCCO**  
**District 25 (Morris and Somerset)**  
**Senator ANTHONY R. BUCCO**  
**District 25 (Morris and Somerset)**

**SYNOPSIS**

"Post-Viability Protection Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/25/2019)**

1 AN ACT protecting unborn children from post-viability abortions  
2 and supplementing Title 2A of the New Jersey Statutes.

3

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

6

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

9

10 2. The Legislature finds and declares that:

11 a. It is the strong public policy of this State to prefer,  
12 encourage, and support childbirth over abortion;

13 b. Maternal health factors which lead to the termination of late-  
14 term pregnancy can be accommodated without sacrificing the life of  
15 the unborn child, and the viability of the unborn child strongly  
16 favors appropriate delivery rather than abortion;

17 c. The risk of maternal death from abortion increases with the  
18 length of pregnancy;

19 d. Maternal death from abortion at 21 weeks and greater is  
20 twice as great for abortions as for childbirth; and

21 e. The compilation of relevant data concerning the termination  
22 of late-term pregnancies will add to the sum of medical and public  
23 health knowledge and, thus, will promote the public's interest in  
24 protecting maternal health and life and the lives of viable unborn  
25 children.

26

27 3. As used in this act:

28 "Abortion" means the use of any means to terminate the  
29 pregnancy of a female known to be pregnant with the knowledge or  
30 intent that the termination of the pregnancy will result in the death  
31 of the unborn child, including, but not limited to, dilation and  
32 evacuation, hysterotomy, hysterectomy, induction, and dilation and  
33 extraction, also known as partial-birth abortion.

34 "Delivered alive" means the complete delivery, expulsion, or  
35 extraction of a human being from a pregnant woman, irrespective of  
36 the duration of the pregnancy and whether or not the placenta has  
37 been separated or the umbilical cord cut, after which delivery,  
38 expulsion or extraction the human being breathes or shows evidence  
39 of any of the following: beating of the heart, pulsation of the  
40 umbilical cord, definite movement of voluntary muscles, or any  
41 brain-wave activity.

42 "Department" means the Department of Health.

43 "Gestational age" means the age of the unborn child as calculated  
44 from the first day of the last menstrual period of the pregnant  
45 woman.

46 "Hospital" means a hospital licensed pursuant to P.L.1971,  
47 c.136 (C.26:2H-1 et seq.) and shall not include an ambulatory care  
48 facility of any type, including, but not limited to, an abortion

1 facility.

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

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

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

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

24

25 4. a. No physician shall perform an abortion or termination of  
26 pregnancy unless the physician or the referring physician first shall  
27 have made and recorded the following determination:

28 (1) a determination of the gestational age of the unborn child at  
29 the time of the abortion or termination of pregnancy; and

30 (2) whenever the gestational age of the unborn child is  
31 determined to be 20 weeks or greater, the physician shall also  
32 determine whether or not the unborn child is viable.

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

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

45

46 5. a. No physician shall intentionally, knowingly, or recklessly  
47 perform an abortion or terminate a pregnancy when:

48 (1) the unborn child is viable; or

1 (2) the unborn child has reached a gestational age of 24 weeks  
2 or greater.

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

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

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

15 (3) The pregnancy is terminated in a hospital;

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

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

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

30

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

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

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

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

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

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

48 f. The county and State in which the pregnant woman resided

- 1 at the time of the abortion or termination of pregnancy;
- 2 g. The age of the pregnant woman at the time of the abortion or  
3 termination of pregnancy;
- 4 h. The number of prior pregnancies, abortions, and  
5 terminations of pregnancy of the pregnant woman, if any;
- 6 i. The gestational age of the unborn child at the time of the  
7 abortion or termination of pregnancy;
- 8 j. The inquiries, examinations, and tests utilized to determine  
9 the gestational age and viability of the unborn child; and
- 10 k. The originals or certified copies of the certificates if required  
11 by paragraphs (1) or (2) of subsection b. of section 5 of this act.

12

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

21

22 8. a. Any physician who violates any of the reporting  
23 requirements of this act shall be subject to a penalty of \$1,000 for  
24 each abortion or termination of pregnancy that is not reported, in  
25 addition to forfeiture of all fees relating to each such abortion or  
26 termination of pregnancy.

27 b. Any physician or licensed health care professional who  
28 intentionally, knowingly, or recklessly violates any of the other  
29 provisions of this act shall be subject to immediate revocation of his  
30 license by the appropriate licensing board, a penalty of \$25,000 for  
31 each incident, and forfeiture of all fees relating to each incident.

32

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

37

38 10. This act shall take effect immediately.

39

40

41 STATEMENT

42

43 This bill establishes the "Post-Viability Protection Act." Under  
44 the provisions of the bill, a physician shall not perform an abortion  
45 or termination of pregnancy unless the physician or the referring  
46 physician first shall have made and recorded a determination of the  
47 gestational age of the unborn child at the time of the abortion or  
48 termination of pregnancy; and if the gestational age of the unborn

1 child is determined to be 20 weeks or greater, the physician shall  
2 also determine whether or not the unborn child is viable. In making  
3 the determination, the physician shall make inquiries of the  
4 pregnant woman and shall perform a medical examination using the  
5 equipment and tests a prudent physician would consider necessary  
6 to determine the gestational age and viability of an unborn child,  
7 such as ultrasound. However, these requirements shall not apply in  
8 the case of a medical emergency which is so severe and immediate  
9 that it would prevent a prudent physician from complying with the  
10 requirements before performing an abortion or terminating a  
11 pregnancy, provided that, the physician makes and records the  
12 required determination immediately after the abortion or  
13 termination of pregnancy.

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

21 -- The physician who terminates the pregnancy certifies in  
22 writing that, based upon medical examination of the pregnant  
23 woman and the medical judgment of the physician, a medical  
24 emergency exists;

25 -- Such physician's judgment with respect to the necessity of the  
26 termination of pregnancy has been concurred in by one other  
27 physician, who certifies in writing that, based upon a separate  
28 medical examination of the pregnant woman and the medical  
29 judgment of the concurring physician, a medical emergency  
30 exists;

31 -- The pregnancy is terminated in a hospital;

32 -- The physician terminates the pregnancy in a manner which  
33 provides the best opportunity for the unborn child to survive; and

34 -- The physician who terminates the pregnancy arranges for the  
35 attendance, in the same room in which the termination of  
36 pregnancy is to be completed, of a second physician who shall  
37 take control immediately of any child delivered alive and shall  
38 provide immediate medical care for the child, taking all  
39 reasonable steps necessary to preserve the child's life and health.

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

45 In addition, the bill requires any physician who performs an  
46 abortion or terminates a pregnancy when the gestational age of the  
47 unborn child is 20 weeks or greater, within 30 days after the  
48 abortion or termination of pregnancy, to file with the Department of

1 Health a report on forms prescribed by the department.

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

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