

# *Where is that in the new abortion law?*

We have been challenged to substantiate our arguments about the Reproductive Health Act. Here is an explanation of how the bill (now the law) does precisely what we have accused it of doing.

**The language of the bill is in *italics*, followed by the legal analysis.**

*§ 2599-aa. Policy and purpose. The legislature finds that comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore, it is the policy of the state that:*

*1. Every individual has the fundamental right to choose or refuse contraception or sterilization.*

*2. Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article.*

→ The term "fundamental right" is extremely significant. A "fundamental right" cannot be regulated except for compelling state interests and in the narrowest way possible. Virtually no regulations of abortion survive this "strict scrutiny" standard.

*3. The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information.*

→ This language poses a threat to religious freedom and conscience rights. The state can deny licenses to individuals and institutions that do not provide or cooperate with abortion.

*§ 2599-bb. Abortion. 1. A health care practitioner licensed, certified, or authorized under title eight of the education law,*

→ To understand the significance of this provision, it is necessary to understand that the Education Department oversees all the licensed professions like doctors, physician assistants, nurses, and others. This provision authorizes the Education Department to permit non-doctors to do abortions and to set the limits on what they can do. It's entirely in their discretion to allow non-doctors to do surgical abortions like early suction aspiration abortions.

*acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case:*

→ This means that the application of this law is entirely in the discretion of the abortionist. Since there are no penalties for violating the law, this standard is meaningless.

*the patient is within twenty-four weeks from the commencement of pregnancy, or*

→ This means abortion on demand for any reason at all for the first 24 weeks of pregnancy, including times when the infant has a heartbeat (about 8 weeks), and can feel pain (about 20 weeks).

*there is an absence of fetal viability, or*

→ This term is undefined in the law, meaning that it is up to the abortionist to determine the application of the law, with no third party having to concur. The abortionist can therefore decide that an infant isn't "viable", for example, because he/she has a developmental problem that would require medical treatment for her to survive – in other words, virtually any kind of disability.

*the abortion is necessary to protect the patient's life or health.*

- This is the heart of the matter. This term has been defined by the Supreme Court as meaning "all factors -- physical, emotional, psychological, familial, and the woman's age -- relevant to the well-being of the patient" (*Doe v. Bolton*, the companion case to *Roe v. Wade*). In effect, it means any reason whatsoever, if the woman and the abortionist consider it relevant to her emotional or psychological or family health.

*§ 3. Section 4164 of the public health law is REPEALED.*

- This provision repeals the law that gave full civil rights protection to a child born accidentally in a post-20 week abortion, required that such abortions be done in a hospital, and that a second doctor be available to provide care to the infant. By repealing it, the bill guarantees that the infant will be allowed to die untreated. After all, the infant isn't the doctor's patient – that's the mother. And the doctor has no obligation to provide treatment that he/she considers futile.

*§ 5. Sections 125.40, 125.45, 125.50, 125.55 and 125.60 of the penal law are REPEALED*

- This provision repeals all the criminal statutes that would penalize illegal abortions. It thus would prevent a serious criminal prosecution for a direct attack on the unborn child, an abortion by an unlicensed person (the "back-alley" practitioner), and a coerced abortion.

## **BE INFORMED...**

Many of the advocates for this law continue to spread falsehoods and deny what it really does. The fact is that there is absolutely nothing that would prohibit any of these following things:

- Abortion up until the moment of birth for any reason – because of the broad definition of "health" that could include virtually anything the mother and the abortionist want it to mean.
- Non-doctors doing surgical abortions – because it repeals the physician-only provision of the old law and leaves it entirely up to the Education Department to decide who can do abortions.
- Pharmaceutical abortions prescribed over the internet – again, because the scope of practice of the abortionist is entirely in the discretion of the Education Department.
- New York becoming an abortion destination – because we will be one of the few states in the nation that permits late-term abortions for any reason without any regulation.
- Aborting an infant with a disability who would need medical care to survive out of the womb – because of the vagueness of the term "viability" and the broadness of the term "health".
- Not treating an infant born alive accidentally – because it repealed the law that granted legal protection to such children.
- Prosecutions of non-licensed persons performing abortions – because prosecuting the offense of practicing medicine without a license is up to the discretion of the Education Department and the Attorney General, and it's very unlikely they are going to do much about this.
- An attack on an unborn child that does no harm to the mother but causes a miscarriage – because the unborn child is not a "person" under our law, the only possible crimes to prosecute might be misdemeanor assaults on the mother, a woefully inadequate remedy for such a heinous offense.