

The Reproductive Health Act:

FACT
VS
FICTION

The Reproductive Health Act (RHA) (Bill S.240 – Krueger, Stewart-Cousins/A.1748 – Glick, Heastie) was signed into law by Gov. Andrew Cuomo on January 22, 2019.

Unfortunately, many misconceptions exist regarding the RHA. This flyer is designed to dispel those misconceptions so that readers may gain an accurate understanding of the law's provisions.

RHA FICTION

The RHA simply codified the 1973 U.S. Supreme Court decision in *Roe v. Wade*.

RHA FACT

The RHA goes far, far beyond what *Roe v. Wade* requires. The *Roe* decision and later Supreme Court decisions on abortion hold that states may not place undue burdens upon access to pre-viability abortions, but may regulate post-viability abortions so long as abortion remains available to protect a woman's life or health. The RHA, on the other hand, allows certain non-physicians to perform abortions;² repealed two laws that punished persons who harm pregnant women in an attempt to cause miscarriages;³ and repealed a law that guaranteed access to medical care for viable babies born alive as a result of late-term abortion procedures.⁴ Nothing in *Roe* or in subsequent Supreme Court cases required any of this. The claim that the RHA codified *Roe* distorts and minimizes the true scope and impact of the law.

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RHA FICTION

The RHA prevented abortion from being banned by the Supreme Court.

RHA FACT

If *Roe v. Wade* had been overturned by the Supreme Court prior to the passage of the RHA, abortion would not have been banned in the State of New York. Rather, the question of the legality of abortion would have been left to New York (and other states) to decide. Here in New York, a 1970 state law legalized abortion before *Roe* was ever decided.

RHA FICTION

The RHA does not open the door to elective abortions in the third trimester.

RHA FACT

Before the RHA was passed, New York banned third-trimester abortions except when a woman's life was endangered by the continuation of her pregnancy.⁵ (While federal courts might have allowed greater access to third-trimester abortion in New York if a lawsuit had been filed, the question was never decided.) The RHA made such abortions legal in two situations: (a) when "there is an absence of fetal viability;" or (b) when an abortion is "necessary to protect the patient's life or **health**" (emphasis added).⁶ Existing court decisions make it clear that broad health exceptions like the one contained in the RHA effectively legalize abortion for any reason whatsoever.⁷ In practical terms, the RHA clearly and unequivocally opens the door to elective abortion at any stage of pregnancy—including the third trimester.

As stated above, the RHA also repealed existing protections for viable babies born alive as a result of late-term abortion procedures.

¹ See <https://www.nysenate.gov/legislation/bills/2019/s240>.

² Section Seven of the RHA repealed Penal Law § 125.05(3), which provided that abortions shall be performed by licensed physicians. Section Two of the RHA added a new § 2599-BB(1) to the Public Health Law; that section provides, in pertinent part, as follows: "A health care practitioner licensed, certified, or authorized under Title Eight of the Education Law, acting within his or her lawful scope of practice, may perform an abortion..." Examples of health care professionals licensed, certified, or authorized under Title Eight of the Education Law include physician assistants, nurses, nurse practitioners, and midwives.

³ Section Five of the RHA repealed Penal Law §§ 125.05(2), 125.40, and 125.45. These statutes banned forced abortions and assaults upon women with the intent of causing miscarriages. While other existing laws may be used to prosecute these types of offenses against women, no other laws can be used to prosecute them as crimes against fetuses.

⁴ Section Three of the RHA repealed Public Health Law § 4164. Public Health Law § 4164 provided, in pertinent part, as follows: "When an abortion is to be performed after the twentieth week of

pregnancy, a physician other than the physician performing the abortion shall be in attendance to take control of and to provide immediate medical care for any live birth that is the result of the abortion... Such child shall be accorded **immediate legal protection** under the laws of the state of New York..." (emphasis added).

⁵ See N.Y. Penal Law § 125.05(3). Then-New York Attorney General Eric Schneiderman issued a 2016 opinion in which he asserted that the U.S. Constitution requires the State of New York to allow third-trimester abortions under a broad health exception. (See https://ag.ny.gov/sites/default/files/abortion_opinion_2016-f1.pdf). The RHA expanded upon the Schneiderman opinion by placing this broad exception within New York's statutes.

⁶ See Section Two of the RHA, which added a new § 2599-BB(1) to the N.Y. Public Health Law.

⁷ See *Doe vs. Bolton*, 410 U.S. 179, 192 (1973) ("medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient. All these factors may relate to health").