

A new law passed by the New York State legislature last Tuesday would keep abortion legal up to the point of birth should the U.S. Supreme Court overturn its *Roe v. Wade* decision. Euphemistically titled the Reproductive Health Act (RHA), the [bill](#) codifies *Roe v. Wade* in state law, keeping abortion legal at any point after 24 weeks into the pregnancy up until birth in cases of “health.”

The RHA also goes far beyond *Roe*, however, repealing legal protections for children born alive following a botched abortion and removing criminal penalties for violent crimes that cause harm to a woman’s unborn child. The new law further enshrines abortion as a “fundamental right” in state law and may legalize abortion up to birth in cases where the unborn child suffers from a life-threatening illness where “there is an absence of fetal viability.”

The RHA passed both chambers of the New York State legislature on January 22, with the lower house [voting](#) overwhelming in favor of the bill (95–49) while the state Senate [approved](#) the bill 38–24.

New York Gov. Andrew Cuomo signed the bill the same day, on the 46th anniversary of the U.S. Supreme Court’s *Roe v. Wade* decision, the case which legalized abortion in all 50 states. Sarah Weddington, the attorney who successfully argued *Roe* before the Supreme Court, sat next to the Governor as the bill was signed into law.

Gov. Cuomo [called](#) the passage of the RHA a “historic victory.” In celebration, he directed major state landmarks including the World Trade Center and the Kosciuszko Bridge to be lit pink to commemorate the passage of the abortion bill.

“In the face of a federal government intent on rolling back *Roe v. Wade* and women’s reproductive rights, I promised that we would enact this critical legislation within the first 30 days of the new session – and we got it done,” Gov. Cuomo said in a released [statement](#).

“With pro-life Brett Kavanaugh joining the U.S. Supreme Court, and with Justice Ruth Bader Ginsburg in frail health, the abortion movement is pressuring state legislators to pass ‘abortion on demand’ laws,” says Population Research Institute President Steven Mosher, “They are in full panic mode over Trump’s appointment of two pro-life justices to the Court, and the prospect of a third in the not-so-distant future.”

Gov. Cuomo had long championed the RHA, identifying the bill as a primary legislative objective of his administration. Unable to pass the RHA as a standalone bill, Gov. Cuomo in 2013 [sought to incorporate](#) the legalization of abortion up to birth in cases of health in his proposed 10-point Women’s Equality Act (WEA) bill. For several years, the State Assembly refused to separate the abortion proposal from the bill and held up the passage of the WEA’s

9 other propositions until 2015. Cuomo had [said](#) that he saw his 10-point WEA bill, including abortion up to the point of birth, “almost as a bill of rights.”

First introduced in the state legislature back in 2006, the RHA met opposition from both moderate Democrat lawmakers and Senate Republicans who had held a majority in the state Senate since 2010. But after Democrats took control of the Senate in the 2018 elections, Gov. Cuomo vowed that the RHA would be signed into law within the first 30 days of the 2019 legislative term.

Pro-abortion state lawmakers advocating for the RHA attempted to sell the bill as merely codifying *Roe v. Wade*. They argued that the bill was necessary to keep abortion legal in New York if the Supreme Court overturned *Roe*.

However, in actual fact, the RHA goes far beyond *Roe*. For one, the Reproductive Health Act repeals a state law which had guaranteed the right to immediate medical care and legal protection for any child born alive following a botched abortion after 20 weeks gestation. Prior to the RHA, it was mandatory for all abortions after 20 weeks to have a second doctor attending the procedure who would be able to provide immediate resuscitation in the event that the child was born alive. The RHA, however, repealed this statute as well as a requirement that doctors maintain medical records of any and all life-sustaining efforts they carry out when attending to abortion survivors. The repealed statute had also required the humane disposal of the infant’s body if resuscitation efforts were unsuccessful. Under the RHA, infants born alive following a botched abortion will now instead be simply left to die and discarded as medical waste.

The Act also repeals criminal penalties for violent crimes that cause the death of a woman’s unborn child. Previously, any person who was not a licensed physician who intentionally caused a woman to miscarry her child was liable to a felony.

Last year, according to police, Livia Abreu of the Bronx, NY was [stabbed repeatedly](#) in the abdomen by her fiancé following a dispute. This caused Abreu to miscarry at 26 weeks and resulted in the death of her child. Prior to the passage of the RHA, Abreu’s alleged attacker could have been charged with criminal abortion. Under the RHA, however, those who commit similar acts of violence against the unborn can only be charged with assaulting the mother, not the child. “I cannot imagine living in a world where harming or killing an unborn child is not a crime,” Abreu [told](#) CBS New York.

Pro-life state lawmakers have blasted the bill’s repeal of criminal penalties on such violent acts as profoundly anti-woman. “Being assaulted and losing your baby is not a woman’s choice,” New York State Assembly Rep. Nicole Malliotakis argued before the lower house

when the RHA bill was being debated, according to [WQAD News 8](#).

The RHA will also allow midwives and nurse practitioners to perform some abortions, according to [CBS New York](#).

The RHA also declares that abortion is a “fundamental right,” language that could keep abortion legal on demand in New York even if the U.S. Supreme Court decides to overturn *Roe v. Wade*.

The RHA bill also codifies *Roe v. Wade* in New York state law, maintaining *Roe*’s exemption that states not ban post-viability abortions in cases of health of the mother. New York’s abortion law actually predates *Roe* by three years. In 1970, New York legalized abortion on demand up to 24 weeks and later in cases to save the life of the mother. The Supreme Court’s *Roe* decision further legalized post-viability abortion in New York in cases of health. The U.S. Supreme Court in *Roe v. Wade* and *Planned Parenthood v. Casey* prohibited states from banning abortion prior to viability,^[1] which is to say, prior to the point at which the unborn child “has the capability of meaningful life outside the mother’s womb.”^[2] After the point of viability, however, states are able to ban abortion completely, “except when it is necessary to preserve the life or health of the mother.”^[3]

The RHA goes further than *Roe* and *Casey*, however, by permitting abortion after viability in cases where the unborn child is presumed to have an “absence” of viability, language that appears to be aimed at permitting abortion after 24 weeks for unborn children suffering from severe, life-threatening illnesses or disabilities such as microcephaly or trisomy 18 (Edwards’ syndrome). Viability under *Roe* and *Casey* has not before been understood to include unborn children living with life-threatening illnesses. This interpretation, if upheld, could represent a significant expansion over *Roe* in New York.

Even before the passage of the RHA bill, the State of New York has allowed providers to perform abortions in cases of “health” and “absence of fetal viability” up to birth since at least 2016. A formal [opinion](#) issued by New York Attorney General Eric Schneiderman in 2016 stated that exemptions allowing third trimester abortions in New York in cases of health and “when the fetus is nonviable” “must be read into the law” in order to be in compliance with the Supreme Court’s *Roe v. Wade* decision.

New York is not the only state where lawmakers are seeking to codify *Roe* into state law and to legalize abortion up to birth. In New Mexico, pro-abortion lawmakers have introduced similar legislation. New Mexico’s HB 51 would repeal the state’s pre-*Roe* abortion law which had banned abortion except in cases of rape, incest, fetal disability, and when the pregnancy is likely to result in “grave impairment” of physical or mental health. Additionally, HB 51

would also repeal a section of New Mexico law that provides religious and moral exemptions for health care workers and hospitals that opt not to participate in performing abortions.

In Rhode Island, pro-abortion lawmakers have [introduced](#) two bills which would prohibit the state from restricting abortion prior to viability and would mandate that the government permit women to have an abortion up to the point of birth in cases of health. One of the two bills, [H 5127](#), would repeal the state's fetal homicide law which, much like the New York RHA, would remove criminal liability for violent acts that harm a woman's unborn child.

H 5127 would additionally repeal the Rhode Island's partial-birth abortion ban, a statute which is no longer in effect due to a ruling from a federal Appeals Court which struck down the law back in 2001. Federal law under the Partial-Birth Abortion Ban Act of 2003 will still ban the practice of partial-birth abortion, however. But according to the ACLU, since Congress passed the Partial-Birth Abortion Ban Act in 2003, [nine states](#) have passed state-level statutes mirroring the federal ban. H 5127, however, would only seek to remove the state's defunct partial-birth abortion ban and will not revise the state law to mirror the federal ban. Perhaps the most extreme late-term abortion bill being considered on the state-level has been introduced in Vermont, where state lawmakers have proposed prohibiting [all government restrictions](#) on abortion. The Vermont Freedom of Choice Act ([H. 57](#)) would explicitly deny unborn children all human rights, stating that a "fetus shall not have independent rights under Vermont law."

The Freedom of Choice Act would also make explicit that abortion in Vermont is legal up to birth for any reason, [stating](#) "every individual who becomes pregnant has the fundamental right to choose to carry a pregnancy to term, give birth to a child, or to have an abortion." Unlike the New York law which restricts abortion up to birth in cases of health of the mother, the Freedom of Choice Act would legalize abortion up to birth on demand. Currently, abortion in Vermont is already *de facto* legal on demand at any point in the pregnancy due to the fact that there [are no restrictions](#) on the performance of late-term abortion in the state; however, H.57 would make explicit the legalization of on-demand abortion up to the point of birth. Pro-abortion lawmakers in Virginia have introduced a bill called the Reproductive Freedom Act which, much like the New York RHA, would [establish](#) a "fundamental right" to abortion in state law. The bill, introduced as [HB 2369](#) in the House of Delegates and as [SB 1637](#) in the Senate, would prohibit the government from regulating benefits, facilities, services, or information in such a way that would interfere with a person's decision to have an abortion. Virginia Gov. Ralph Northam has made the Reproductive Freedom Act a core objective of his term in office, and [asked](#) the Virginia General Assembly to pass the bill during his annual

State of the Commonwealth address earlier this month.

A separate bill introduced in the Virginia House of Delegates called [HB 2491](#) would loosen restrictions on third trimester abortions, in part by repealing a state law requiring two consulting physicians to certify that an abortion in the third trimester is necessary for reasons of health. HB 2491 would also allow [third trimester abortions](#) in cases where the pregnancy is likely to “impair” the mother’s physical or mental health, changing the current law which prohibits abortion unless the pregnancy threatens to “substantially and irretrievably impair” the mother’s health. HB 2491 would also repeal the state’s 24-hour waiting period, would repeal a requirement that abortionists offer women the opportunity to see an ultrasound image of their unborn child, and would nix a law requiring women to be provided with full informed consent prior to having an abortion. Whether the Reproductive Freedom Act and HB 2491 pass the Virginia General Assembly will [likely depend](#) on the outcome of the Virginia state elections later this year.

Last year, Massachusetts also [passed](#) a bill to keep abortion legal in that state should *Roe v. Wade* be overturned.

According to the Guttmacher Institute, nine states in addition to New York have laws in place codifying *Roe* in state law should the U.S. Supreme Court reverse its decision.

^[1] *Roe v. Wade*, 410 U.S. 113, 163 (1973); see also *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833, 879 (1992).

^[2] *Roe v. Wade*, 410 U.S. 113, 163 (1973); see also *Akron v. Akron Ctr. For Reproductive Health*, 462 U.S. 416, 428 (1983).

^[3] *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833, 846, 879 (1992) (at 879 quoting *Roe v. Wade*, 410 U.S. 113, 163-164 (1973)).