

ASSEMBLY, No. 1700

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Designated as "Protection of Fetuses from Dismemberment Abortion Act"; prohibits dismemberment abortions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning abortions, supplementing Title 2C of the New
2 Jersey Statutes, and designated as the "Protection of Fetuses from
3 Dismemberment Abortion Act."
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 "Abortion" means the use or prescription of any instrument,
10 medicine, drug, or any other substance or device to terminate the
11 pregnancy of a woman known to be pregnant with an intention other
12 than to increase the probability of a live birth, to preserve the life or
13 health of the child who is born, or to remove a fetus that is deceased
14 as the result of natural causes in utero, accidental trauma, or a
15 criminal assault on the pregnant woman or fetus, and which causes
16 the premature termination of the pregnancy.

17 "Dismemberment abortion" means, with the purpose of causing
18 the death of a fetus, knowingly dismembering a living fetus and
19 extracting the fetus one piece at a time from the uterus through the
20 use of clamps, grasping forceps, tongs, scissors, or similar
21 instruments that, through the convergence of two rigid levers, slice,
22 crush, or grasp a portion of the body of the fetus in order to cut or
23 rip it off.

24 The term excludes an abortion which uses suction to dismember
25 the body of the fetus by sucking fetal parts into a collection
26 container, except that it includes an abortion in which a
27 dismemberment abortion is used to cause the death of a fetus but
28 suction is subsequently used to extract fetal parts after the death of
29 the fetus.

30 "Medical emergency" means a condition that, in reasonable
31 medical judgment, so complicates the medical condition of the
32 pregnant woman as to necessitate the immediate abortion of her
33 pregnancy to avert the death of the woman, or for which a delay
34 necessary to comply with the provisions of this act will create a
35 serious risk of substantial and irreversible physical impairment of a
36 major bodily function. A condition shall not be deemed a medical
37 emergency if based on a claim or diagnosis that the woman will
38 engage in conduct which would result in her death or in substantial
39 and irreversible physical impairment of a major bodily function.
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41 2. a. A person shall not perform, or attempt to perform, a
42 dismemberment abortion on a fetus unless a medical emergency
43 exists, as follows:

44 (1) the dismemberment abortion is necessary to preserve the life
45 of the pregnant woman; or

46 (2) a continuation of the pregnancy will cause a substantial and
47 irreversible physical impairment of a major bodily function of the
48 pregnant woman.

1 A condition under this subsection shall not be deemed to exist if
2 it is based on a claim or diagnosis that the woman will engage in
3 conduct which would result in her death or in substantial and
4 irreversible physical impairment of a major bodily function.

5 b. A woman upon whom an abortion is performed or attempted
6 to be performed shall not be liable for performing or attempting to
7 perform a dismemberment abortion. A nurse, technician, secretary,
8 receptionist, or other employee or agent who is not a physician, but
9 who acts at the direction of a physician, and a pharmacist or other
10 individual who is not a physician but who fills a prescription or
11 provides instruments or materials used in an abortion at the
12 direction of or to a physician shall not be liable for performing or
13 attempting to perform a dismemberment abortion.

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15 3. The Attorney General or a county prosecutor may bring a
16 cause of action for injunctive relief against a person who has
17 performed or attempted to perform a dismemberment abortion in
18 violation of section 2 of this act. Any injunctive relief ordered
19 pursuant to an action filed under this section shall prohibit the
20 defendant from performing or attempting to perform any
21 dismemberment abortions in violation of section 2 of this act.

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23 4. a. A cause of action for civil damages against a person who
24 has performed a dismemberment abortion in violation of section 2
25 of this act may be maintained by the following persons, unless, in a
26 case in which the plaintiff is not the woman upon whom the
27 abortion was performed, the pregnancy resulted from criminal
28 conduct of the plaintiff:

29 (1) a woman upon whom a dismemberment abortion has been
30 performed in violation of section 2 of this act;

31 (2) the man who fathered the fetus, if married to the woman at
32 the time the dismemberment abortion was performed; or

33 (3) the parent or guardian of the woman, if the woman has not
34 attained 18 years of age at the time of the abortion or the woman
35 has died as a result of the abortion.

36 b. Damages awarded in an action under subsection a. of this
37 section shall include:

38 (1) economic damages for injuries, psychological and physical,
39 occasioned by the dismemberment abortion;

40 (2) statutory damages equal to three times the cost of the
41 dismemberment abortion;

42 (3) injunctive relief; and

43 (4) reasonable attorney fees awarded in accordance with
44 subsection c. of this section.

45 c. (1) If judgment is rendered in favor of the plaintiff in an
46 action brought under this section or section 3 of this act, the court
47 shall award reasonable attorney fees to the plaintiff in addition to
48 any other relief that is awarded.

1 (2) If judgment is rendered in favor of the defendant in an action
2 brought under this section or section 3 of this act, and the court
3 finds that the plaintiff's action was frivolous and brought in bad
4 faith, the court shall award reasonable attorney fees to the defendant
5 in addition to any other relief that is awarded.

6 (3) Attorney fees shall not be assessed against the woman upon
7 whom a dismemberment abortion was performed or attempted to be
8 performed, except in accordance with paragraph (2) of this
9 subsection.

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11 5. a. Upon a first conviction of a violation of section 2 of this
12 act, a person shall be guilty of a disorderly persons offense.

13 b. Upon a second or subsequent conviction of a violation of
14 section 2 of this act, a person shall be guilty of a crime of the fourth
15 degree.

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17 6. In every civil, criminal, or administrative proceeding or
18 action arising out of a violation of section 2 of this act, the court
19 shall rule whether the anonymity of any woman upon whom an
20 unlawful abortion has been performed or attempted to be performed
21 shall be preserved from public disclosure if she does not give her
22 consent to the disclosure. The court, upon motion or sua sponte,
23 shall make a ruling and, upon determining that the woman's
24 anonymity should be preserved, shall issue orders to the parties,
25 witnesses, and counsel and shall direct the sealing of the record and
26 exclusion of individuals from courtrooms or hearing rooms to the
27 extent necessary to safeguard her identity from public disclosure.
28 Each order shall be accompanied by specific written findings
29 explaining why the anonymity of the woman should be preserved
30 from public disclosure, why the order is essential to that end, how
31 the order is narrowly tailored to serve that interest, and why no
32 reasonable less restrictive alternative exists. In the absence of
33 written consent of the woman upon whom an unlawful abortion has
34 been performed or attempted to be performed, anyone other than a
35 public official who brings an action arising out of a violation of
36 section 2 of this act shall do so under a pseudonym. This section
37 shall not be construed to conceal the identity of the plaintiff or of
38 witnesses from the defendant or from attorneys for the defendant.

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40 7. Nothing in this act shall be construed as creating or
41 recognizing a right to abortion, nor a right to a particular method of
42 abortion.

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44 8. This act shall take effect immediately.

STATEMENT

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This bill, which is designated the "Protection of Fetuses from Dismemberment Abortion Act," prohibits the performance or the attempt to perform a dismemberment abortion, except as described below.

Under the bill, a person is not to perform, or attempt to perform a dismemberment abortion unless a medical emergency exists, as follows: the dismemberment abortion is necessary to preserve the life of the pregnant woman; or a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman. However, these conditions would be deemed not to exist if they are based on a claim that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

"Dismemberment abortion" is defined as, with the purpose of causing the death of a fetus, knowingly dismembering a fetus and extracting the fetus one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the body of the fetus in order to cut or rip it off. The definition excludes an abortion which uses suction to dismember the body of the fetus by sucking fetal parts into a collection container, but includes an abortion in which a dismemberment abortion is used to cause the death of a fetus but suction is subsequently used to extract fetal parts after the death of the fetus.

Upon a first conviction for violating the provisions of the bill, a person would be guilty of a disorderly persons offense (punishable by a fine not exceeding \$1,000, imprisonment for up to 6 months, or both). For a second or subsequent conviction, the person would be guilty of a crime of the fourth degree (punishable by a fine not exceeding \$10,000, imprisonment for up to 18 months, or both).

The bill provides, however, that a woman upon whom an abortion is performed or attempted to be performed shall not be liable for performing or attempting to perform a dismemberment abortion. Similarly, a nurse, technician, secretary, receptionist, or other employee or agent who is not a physician, but who acts at the direction of a physician, and a pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of, or to a physician, shall not be liable.

The Attorney General or a county prosecutor may bring a cause of action for injunctive relief. For a cause of action for civil damages, the bill lists the persons who may bring the action. The damages to be awarded are to include: economic damages for injuries, psychological and physical, occasioned by the

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1 dismemberment abortion; statutory damages equal to three times the
2 cost of the dismemberment abortion; injunctive relief; and payment
3 of attorneys' fees.

4 Lastly, the bill provides that in every civil, criminal, or
5 administrative proceeding or action arising out of a violation of the
6 bill, the court is to rule whether the anonymity of any woman upon
7 whom an unlawful abortion has been performed or attempted to be
8 performed is to be preserved from public disclosure if she does not
9 give her consent to the disclosure. The court is to make a ruling
10 and, upon determining that the woman's anonymity should be
11 preserved, would issue orders to the parties, witnesses, and counsel
12 and direct the sealing of the record and exclusion of individuals
13 from courtrooms or hearing rooms to the extent necessary to
14 safeguard her identity from public disclosure.

15 This bill is similar in content and intent to Kansas' "Unborn
16 Child Protection from Dismemberment Abortion Act," signed into
17 law by Governor Sam Brownback on April 7, 2015.