

ASSEMBLY, No. 3232

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

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

As introduced.

WITHDRAWN



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.

40

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.

14
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.

22
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.

49 (2) If judgment is rendered in favor of the defendant in an action
50 brought under this section or section 3 of this act, and the court

1 finds that the plaintiff's action was frivolous and brought in bad
2 faith, the court shall award reasonable attorney fees to the defendant
3 in addition to any other relief that is awarded.

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

8
9 5. a. Upon a first conviction of a violation of section 2 of this
10 act, a person shall be guilty of a disorderly persons offense.

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

14
15 6. In every civil, criminal, or administrative proceeding or
16 action arising out of a violation of section 2 of this act, the court
17 shall rule whether the anonymity of any woman upon whom an
18 unlawful abortion has been performed or attempted to be performed
19 shall be preserved from public disclosure if she does not give her
20 consent to the disclosure. The court, upon motion or sua sponte,
21 shall make a ruling and, upon determining that the woman's
22 anonymity should be preserved, shall issue orders to the parties,
23 witnesses, and counsel and shall direct the sealing of the record and
24 exclusion of individuals from courtrooms or hearing rooms to the
25 extent necessary to safeguard her identity from public disclosure.
26 Each order shall be accompanied by specific written findings
27 explaining why the anonymity of the woman should be preserved
28 from public disclosure, why the order is essential to that end, how
29 the order is narrowly tailored to serve that interest, and why no
30 reasonable less restrictive alternative exists. In the absence of
31 written consent of the woman upon whom an unlawful abortion has
32 been performed or attempted to be performed, anyone other than a
33 public official who brings an action arising out of a violation of
34 section 2 of this act shall do so under a pseudonym. This section
35 shall not be construed to conceal the identity of the plaintiff or of
36 witnesses from the defendant or from attorneys for the defendant.

37
38 7. Nothing in this act shall be construed as creating or
39 recognizing a right to abortion, nor a right to a particular method of
40 abortion.

41
42 8. This act shall take effect immediately.

43 44 45 STATEMENT

46
47 This bill, which is designated the "Protection of Fetuses from
48 Dismemberment Abortion Act," prohibits the performance or the
49 attempt to perform a dismemberment abortion, except as described
50 below.

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

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

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

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

38 The Attorney General or a county prosecutor may bring a cause
39 of action for injunctive relief. For a cause of action for civil
40 damages, the bill lists the persons who may bring the action. The
41 damages to be awarded are to include: economic damages for
42 injuries, psychological and physical, occasioned by the
43 dismemberment abortion; statutory damages equal to three times the
44 cost of the dismemberment abortion; injunctive relief; and payment
45 of attorneys' fees.

46 Lastly, the bill provides that in every civil, criminal, or
47 administrative proceeding or action arising out of a violation of the
48 bill, the court is to rule whether the anonymity of any woman upon
49 whom an unlawful abortion has been performed or attempted to be
50 performed is to be preserved from public disclosure if she does not

1 give her consent to the disclosure. The court is to make a ruling
2 and, upon determining that the woman's anonymity should be
3 preserved, would issue orders to the parties, witnesses, and counsel
4 and direct the sealing of the record and exclusion of individuals
5 from courtrooms or hearing rooms to the extent necessary to
6 safeguard her identity from public disclosure.

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

WITHDRAWN