# ASSEMBLY, No. 3725

# STATE OF NEW JERSEY

## 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

**Sponsored by:**
**Assemblyman RONALD S. DANCER**
**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**SYNOPSIS**

"Dismemberment Abortion Ban Act"; prohibits dismemberment abortions.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning abortions, supplementing Title 2C of the New Jersey Statues, and designated as the "Dismemberment Abortion Ban Act."

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

1. As used in this act:

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

"Dismemberment abortion" means, with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting the unborn child 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 unborn child in order to cut or rip it off.

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

"Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman, or for which a delay necessary to comply with the provisions of this act will create a serious risk of substantial and irreversible physical impairment of a major bodily function. A condition shall not be deemed a medical emergency if it is based on a claim or diagnosis 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.

2. a. A person shall not perform, or attempt to perform, a dismemberment abortion on an unborn child unless a medical emergency exists, as follows:

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

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

A condition under this subsection shall not be deemed to exist if it is based on a claim or diagnosis 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.

b. 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. 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 for performing or attempting to perform a dismemberment abortion.

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

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

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

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

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

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

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

(2) punitive damages equal to three times the cost of the dismemberment abortion;

(3) injunctive relief; and

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

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

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

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

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

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

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

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

8. This act shall take effect immediately.

STATEMENT

This bill, which is designated the "Dismemberment Abortion Ban 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 an unborn child, knowingly dismembering an unborn child and extracting the unborn child 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 unborn child in order to cut or rip it off. The definition excludes an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, but includes an abortion in which a dismemberment abortion is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

Upon a first conviction for violating the provisions of the bill, a person would be guilty of a disorderly persons offense, which is punishable by a fine of up to $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, which is punishable by a fine of up to $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. The bill lists the persons who may bring an action for civil damages, including the pregnant women, her husband, if any, and her parents, if she is younger than 18 years of age. The damages that may be awarded include: economic

damages for injuries, psychological and physical, occasioned by the dismemberment abortion; punitive damages equal to three times the cost of the dismemberment abortion; injunctive relief; and payment of attorneys' fees.

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

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