

STATE OF NEW YORK

8077

2019-2020 Regular Sessions

IN ASSEMBLY

May 31, 2019

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Health

AN ACT to amend the state finance law, in relation to enacting the "life appropriation act"; to amend the public health law, in relation to the regulation of abortions and prohibiting dismemberment abortions; and to repeal certain provisions of the public health law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "life
2 appropriation act".

3 § 2. The Legislature finds that:

4 1. The state of New York facilitates the disbursement of both state
5 and federal funds to qualifying entities for purposes of conducting
6 certain activities.

7 2. Public dollars awarded to qualifying entities may facilitate or
8 subsidize directly or indirectly expenses or activities not directly
9 related to those for which the funds were intended, including without
10 limitation shared administrative costs, overhead, employee salaries,
11 rent, utilities and various other expenses.

12 3. It is possible that public dollars made available by or through the
13 state of New York may be awarded to an entity that performs convenience
14 abortions or subsidizes or otherwise facilitates the entity's ability to
15 perform convenience abortions although the funds were not disbursed
16 specifically for the purpose of performing convenience abortions.

17 4. As elected representatives of the people of New York, the members
18 of the legislature are entrusted with ensuring that all activities
19 conducted with the aid of public funds are in accordance with the wishes
20 of the people of New York and the intent of the laws of this state.

21 5. It is within the purview of the legislature to establish criteria
22 as the basis on which public funds are disbursed unless prohibited by
23 the United States Constitution.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 6. The United States is a constitutional republic that the state of
2 New York is part of.

3 7. The United States Constitution preempts state action, when they
4 conflict under the doctrine of preemption.

5 8. The Establishment Clause of the First Amendment of the United
6 States Constitution states, "Congress shall make no law respecting an
7 establishment of religion".

8 9. The Establishment Clause of the First Amendment of the United
9 States Constitution applies to the state of New York through the Four-
10 teenth Amendment of the United States Constitution.

11 10. As elected representatives, the members of the legislature have a
12 duty under Article IV of the United States Constitution to not appropri-
13 ate funds in a manner that violates the Establishment Clause of the
14 United States Constitution.

15 11. The United States Supreme Court has recognized that Secular Human-
16 ism is a religion for purposes of the Establishment Clause in *Torcaso v.*
17 *Watkins*, 367 U.S. 488 (1961), *Edwards v. Aguillard*, 482 U.S. 578
18 (1987), and elsewhere.

19 12. The naked assertions that "abortion is not murder," "that abortion
20 is not immoral" and that "life does not begin at conception" are unprov-
21 en faith-based assumptions that are implicitly religious and are unprov-
22 en truth claims that are inseparably linked to the religion of Secular
23 Humanism.

24 13. Whereas, many taxpayers, who are non-observers to the religion of
25 Secular Humanism, object to their tax dollars being spent to enable
26 convenience abortions because such appropriations coercively cause them
27 to violate their conscience by forcing them to indirectly endorse non-
28 secular acts that they consider to be immoral and offensive.

29 14. Whereas, some taxpayers in New York consider convenience abortions
30 to be modern day child sacrifice conducted on the altar of convenience,
31 which is a practice that is non-secular and controversial.

32 15. Whereas, the Establishment Clause prohibits the state of New York
33 from enforcing, respecting, recognizing, favoring or endorsing policies
34 that fund abortion facilities with tax dollars because the practices are
35 non-secular and such appropriations have the effect of excessively
36 entangling the government with the religion of Secular Humanism, putting
37 religion over non-religion.

38 16. The direct or indirect subsidization or facilitation of abortion
39 with funds distributed by the state of New York constitutes paying for
40 an abortion and, therefore, conflicts with the First Amendment Estab-
41 lishment Clause of the United States Constitution.

42 17. The state of New York may not favor or endorse one religion over
43 another, nor may the state of New York favor or endorse the religion of
44 Secular Humanism generally over non-religion.

45 18. It is the policy of the state of New York to:

46 a. favor childbirth and family planning services that do not include
47 convenience abortions or the promotion of convenience abortions within
48 the continuum of care or services; and

49 b. avoid the direct or indirect use of state funds to promote or
50 support convenience abortions.

51 19. The state of New York has a compelling interest to uphold communi-
52 ty standards of decency.

53 20. Abortion facilities that provide convenience abortions tend to
54 erode community standards of decency.

55 § 3. The state finance law is amended by adding a new article 17 to
56 read as follows:

ARTICLE 17
LIFE APPROPRIATION ACT

Section 250. Definitions.

251. Prohibition on appropriations for the direct or indirect costs of abortion.

252. Hospital and Medicaid funding.

253. Effect of article.

§ 250. Definitions. As used in this article the following terms shall have the following meanings:

1. "Convenience abortion" is an elective abortion that means the act of using or prescribing an instrument, medicine, drug, device or another substance or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. An act is not a convenience abortion if the act is performed with the intent to:

- a. save the life of the mother,
- b. save the life or preserve the health of the unborn child,
- c. remove a dead unborn child caused by spontaneous abortion,
- d. remove an ectopic pregnancy, or
- e. abort and remove an unborn child that is the result of rape or incest.

2. "Abortion referral" means the act of recommending a pregnant woman to a doctor, clinic or other person or entity for the purpose of obtaining or learning about obtaining a convenience abortion.

3. "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is controlled by or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent or sibling entity.

4. "Pregnancy" means the female reproductive condition of having an unborn child in the woman's uterus.

5. "Unborn child" means the offspring of human beings from fertilization until birth.

§ 251. Prohibition on appropriations for the direct or indirect costs of abortion. 1. In view of the First Amendment Establishment Clause of the United States Constitution, an agency or instrumentality of the state shall not award a grant to pay the direct or indirect costs of performing, inducing, referring or counseling in favor of abortions, including without limitation:

- a. administrative costs and expenses;
- b. overhead costs;
- c. employee salaries;
- d. rent and mortgage payments; and
- e. telephone and other utility payments.

2. In view of the First Amendment Establishment Clause of the United States Constitution, an agency or instrumentality of the state shall not grant, appropriate or distribute a grant to an individual or entity that:

- a. performs convenience abortions, induces convenience abortions, provides convenience abortion referrals or counsels in favor of convenience abortions; or
- b. is an affiliate of a person or entity that performs abortions, induces abortions, provides abortion referrals or counsels in favor of convenience abortions.

§ 252. Hospital and Medicaid funding. 1. This article does not affect the funding of a hospital, medical school or university.

2. The restrictions under this article do not apply to funding available through the state's plan for medical assistance as required by title XIX of the federal Social Security Act.

§ 253. Effect of article. 1. This article does not create or recognize:

a. a right to an abortion; or

b. a right to public funds, a contract or a grant.

2. This article recognizes:

a. The members of the legislature have a duty to comply with the Establishment Clause of the First Amendment of the United States Constitution pursuant to Article VI;

b. That convenience abortions are, by their nature, non-secular practices that are implicitly religious and inseparably linked to the religion of Secular Humanism;

c. That the state of New York is prohibited under the First Amendment Establishment Clause from funding or promoting convenience abortions directly or indirectly because such appropriations constitute an endorsement of the religion of Secular Humanism and have the effect of excessively entangling the government with the religion of Secular Humanism;

d. That the United States Supreme Court and this legislature have recognized that Secular Humanism is a religion for the purposes of the Establishment Clause and convenience abortions are non-secular practices that are inseparably linked to the religion of Secular Humanism;

e. That it is the policy of the state of New York to favor childbirth and family planning services that do not include convenience abortions or the promotion of convenience abortions within the continuum of care or services and to avoid the direct or indirect use of state funds to promote or support convenience abortions;

f. That the state of New York has a compelling interest to uphold community standards of decency; and

g. That facilities that provide convenience abortions tend to erode community standards of decency by encouraging promiscuity and normalizing false permission-giving beliefs about sex.

§ 4. Title 5-A of article 41 of the public health law is REPEALED and a new title 5-A is added to read as follows:

TITLE V-A

REGULATION OF ABORTIONS

Section 4164. Regulation of abortions.

4164-a. Medical consultation and judgment.

4164-b. Dismemberment abortion ban.

§ 4164. Regulation of abortions. 1. Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this section, no abortion shall be performed upon a woman when the gestational age of the unborn child is twenty or more weeks unless each of the following conditions is met:

(a) The physician performing the abortion certifies in writing that, based upon his medical examination of the pregnant woman and his medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(b) Such physician's judgment with respect to the necessity for the abortion has been concurred in by one other licensed physician who certifies in writing that, based upon his or her separate personal medical examination of the pregnant woman and his or her medical judgment,

1 ment, the abortion is necessary to prevent either the death of the preg-
2 nant woman or the substantial and irreversible impairment of a major
3 bodily function of the woman.

4 (c) The abortion is performed in a hospital.

5 (d) The physician terminates the pregnancy in a manner which provides
6 the best opportunity for the unborn child to survive, unless the physi-
7 cian determines, in his or her good faith medical judgment, that termi-
8 nation of the pregnancy in that manner poses a significantly greater
9 risk either of the death of the pregnant woman or the substantial and
10 irreversible impairment of a major bodily function of the woman than
11 would other available methods.

12 (e) The physician performing the abortion arranges for the attendance,
13 in the same room in which the abortion is to be completed, of a second
14 physician who shall take control of the child immediately after complete
15 extraction from the mother and shall provide immediate medical care for
16 the child, taking all reasonable steps necessary to preserve the child's
17 life and health.

18 2. It shall not be a violation of this section if the abortion is
19 performed by a physician and that physician reasonably believes, after
20 making a determination of the gestational age of the unborn child that
21 the unborn child is less than twenty weeks gestational age.

22 § 4164-a. Medical consultation and judgment. Except in a medical emer-
23 gency where there is insufficient time before the abortion is performed,
24 the woman upon whom the abortion is to be performed shall have a
25 private, in-person medical consultation either with the physician who is
26 to perform the abortion or with the referring physician. The consulta-
27 tion will be in a place, at a time and of a duration reasonably suffi-
28 cient to enable the physician to determine whether, based on his or her
29 best clinical judgment, the abortion is necessary.

30 § 4164-b. Dismemberment abortion ban. 1. An individual may not
31 perform or attempt to perform a dismemberment abortion upon another
32 individual when the gestational age of the unborn child is twenty or
33 more weeks unless all of the following apply:

34 (a) The individual performing or attempting to perform the dismember-
35 ment abortion is a physician and certifies in writing that, based upon
36 the physician's medical examination of the pregnant woman and the physi-
37 cian's medical judgment, the abortion is necessary to prevent either the
38 death of the pregnant woman or the substantial and irreversible impair-
39 ment of a major bodily function of the woman.

40 (b) Such physician's judgment with respect to the necessity for the
41 abortion has been concurred in by one other licensed physician who
42 certifies in writing that, based upon his or her separate personal
43 medical examination of the pregnant woman and his or her medical judg-
44 ment, the abortion is necessary to prevent either the death of the preg-
45 nant woman or the substantial and irreversible impairment of a major
46 bodily function of the woman.

47 (c) The abortion is performed in a hospital.

48 (d) The physician terminates the pregnancy in a manner which provides
49 the best opportunity for the unborn child to survive, unless the physi-
50 cian determines, in his or her good faith medical judgment, that termi-
51 nation of the pregnancy in that manner poses a significantly greater
52 risk either of the death of the pregnant woman or the substantial and
53 irreversible impairment of a major bodily function of the woman than
54 would other available methods.

55 (e) The physician performing the abortion arranges for the attendance,
56 in the same room in which the abortion is to be completed, of a second

1 physician who shall take control of the child immediately after complete
2 extraction from the mother and shall provide immediate medical care for
3 the child, taking all reasonable steps necessary to preserve the child's
4 life and health.

5 2. Prohibition before twenty weeks of gestational age. An individual
6 may not perform or attempt to perform a dismemberment abortion upon
7 another individual when the gestational age of the unborn child is less
8 than twenty weeks unless both of the following apply:

9 (a) The individual performing or attempting to perform the dismember-
10 ment abortion is a physician and certifies in writing that, based upon
11 the physician's medical examination of the pregnant woman and the physi-
12 cian's medical judgment, the abortion is necessary to prevent either the
13 death of the pregnant woman or the substantial and irreversible impair-
14 ment of a major bodily function of the woman.

15 (b) The physician's judgment with respect to the necessity for the
16 abortion has been concurred in by one other licensed physician who
17 certifies in writing that, based upon his or her separate personal
18 medical examination of the pregnant woman and his or her medical judg-
19 ment, the abortion is necessary to prevent either the death of the preg-
20 nant woman or the substantial and irreversible impairment of a major
21 bodily function of the woman.

22 3. Definition. Dismemberment abortion shall mean the act of knowingly
23 and purposefully causing the death of an unborn child by means of
24 dismembering the unborn child and extracting the unborn child one piece
25 at a time from the uterus through the use of clamps, grasping forceps,
26 tongs, scissors or similar instruments. The term does not include an
27 abortion which is exclusively performed through suction curettage.

28 4. Liability. The following individuals shall not be liable for
29 performing or attempting to perform a dismemberment abortion:

30 (a) The female patient upon whom the dismemberment abortion is
31 performed or attempted to be performed.

32 (b) A nurse, technician, secretary or receptionist who is not a physi-
33 cian but is acting at the direction of a physician.

34 (c) A pharmacist or other individual who fills a prescription or
35 provides instruments or materials used in a dismemberment abortion at
36 the direction of or to a physician.

37 5. Penalty. Any individual who violates this section is guilty of a
38 class D felony.

39 § 5. The public health law is amended by adding a new section 4160-b
40 to read as follows:

41 § 4160-b. Abortion reporting. For the purpose of promotion of maternal
42 health and life by adding to the sum of medical and public health know-
43 ledge through the compilation of relevant data, and to promote the
44 state's interest in protection of the unborn child, a report of each
45 abortion performed shall be made to the department on forms prescribed
46 by it. The report forms shall not identify the individual patient by
47 name and shall include the following information:

48 1. identification of the physician who performed the abortion, the
49 concurring physician, the second physician as required by section
50 forty-one hundred sixty-four of this article and the facility where the
51 abortion was performed and of the referring physician, agency or
52 service, if any;

53 2. the county and state in which the woman resides;

54 3. the woman's age;

55 4. the number of prior pregnancies and prior abortions of the woman;

1 5. the gestational age of the unborn child at the time of the
2 abortion;

3 6. the type of procedure performed or prescribed and the date of the
4 abortion;

5 7. pre-existing medical conditions of the woman which would complicate
6 pregnancy, if any, and, if known, any medical complication which
7 resulted from the abortion itself;

8 8. the basis for the medical judgment of the physician who performed
9 the abortion that the abortion was necessary to prevent either the death
10 of the pregnant woman or the substantial and irreversible impairment of
11 a major bodily function of the woman;

12 9. the weight of the aborted child; and

13 10. the basis for any medical judgment that a medical emergency
14 existed which excused the physician from compliance with any provision
15 of this section.

16 § 6. This act shall take effect on the first of January next succeed-
17 ing the date on which it shall have become a law.