

10163

I N A S S E M B L Y

May 13, 2016

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

AN ACT to amend the penal law and 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. Section 125.00 of the penal law is amended to read as
2 follows:
3 S 125.00 Homicide defined.
4 Homicide means conduct which causes the death of a person or an unborn
5 child with which a female has been pregnant for more than [twenty-four]
6 TWENTY weeks under circumstances constituting murder, manslaughter in
7 the first degree, manslaughter in the second degree, criminally negli-
8 gent homicide, abortion in the first degree or self-abortion in the
9 first degree.
10 S 2. Subdivision 3 of section 125.05 of the penal law, as amended by
11 chapter 127 of the laws of 1970, is amended to read as follows:
12 3. "Justifiable abortifacient act." An abortifacient act is justifiable when
13 committed upon a female with her consent by a duly licensed physician
14 acting (a) under a reasonable belief that such is necessary to preserve
15 her life OR PREVENT THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
16 MAJOR BODILY FUNCTION, or, (b) within [twenty-four] TWENTY weeks from
17 the commencement of her pregnancy. A pregnant female's commission of an
18 abortifacient act upon herself is justifiable when she acts upon the advice
19 of a duly licensed physician (1) that such act is necessary to preserve
20 her life OR PREVENT THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
21 MAJOR BODILY FUNCTION, or, (2) within [twenty-four] TWENTY weeks from
22 the commencement of her pregnancy. The submission by a female to an
23 abortifacient act is justifiable when she believes that it is being commit-
24 ted by a duly licensed physician, acting under a reasonable belief that
25 such act is necessary to preserve her life OR PREVENT THE SUBSTANTIAL

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

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1 AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION, or, within
2 [twenty-four] TWENTY weeks from the commencement of her pregnancy.

3 S 3. Section 125.05 of the penal law is amended by adding a new subdi-
4 vision 4 to read as follows:

5 4. "DISMEMBERMENT ABORTION." THE ACT OF KNOWINGLY AND PURPOSEFULLY
6 CAUSING THE DEATH OF AN UNBORN CHILD BY MEANS OF DISMEMBERING THE UNBORN
7 CHILD AND EXTRACTING THE UNBORN CHILD ONE PIECE AT A TIME FROM THE UTER-
8 US THROUGH THE USE OF CLAMPS, GRASPING FORCEPS, TONGS, SCISSORS OR SIMI-
9 LAR INSTRUMENTS. THE TERM DOES NOT INCLUDE AN ABORTION WHICH IS EXCLU-
10 SIVELY PERFORMED THROUGH SUCTION CURETTAGE.

11 S 4. Subdivision 3 of section 125.20 of the penal law, as amended by
12 chapter 477 of the laws of 1990, is amended to read as follows:

13 3. He commits upon a female pregnant for more than [twenty-four] TWEN-
14 TY weeks an abortional act which causes her death, unless such abortion-
15 al act is justifiable pursuant to subdivision three of section 125.05;
16 or

17 S 5. Section 125.45 of the penal law is amended to read as follows:
18 S 125.45 Abortion in the first degree.

19 A person is guilty of abortion in the first degree when he commits
20 upon a female pregnant for more than [twenty-four] TWENTY weeks an abor-
21 tional act which causes the miscarriage of such female, unless such
22 abortional act is justifiable pursuant to subdivision three of section
23 125.05.

24 Abortion in the first degree is a class D felony.

25 S 6. Section 125.55 of the penal law is amended to read as follows:
26 S 125.55 Self-abortion in the first degree.

27 A female is guilty of self-abortion in the first degree when, being
28 pregnant for more than [twenty-four] TWENTY weeks, she commits or
29 submits to an abortional act upon herself which causes her miscarriage,
30 unless such abortional act is justifiable pursuant to subdivision three
31 of section 125.05.

32 Self-abortion in the first degree is a class A misdemeanor.

33 S 7. Title 5-A of article 41 of the public health law is REPEALED and
34 a new title 5-A is added to read as follows:

35 TITLE V-A

36 REGULATION OF ABORTIONS

37 SECTION 4164. REGULATION OF ABORTIONS.

38 4164-A. MEDICAL CONSULTATION AND JUDGMENT.

39 4164-B. DISMEMBERMENT ABORTION BAN.

40 S 4164. REGULATION OF ABORTIONS. EXCEPT IN THE CASE OF A MEDICAL EMER-
41 GENCY WHICH, IN THE REASONABLE MEDICAL JUDGMENT OF THE PHYSICIAN
42 PERFORMING THE ABORTION, PREVENTS COMPLIANCE WITH A PARTICULAR REQUIRE-
43 MENT OF THIS SECTION, NO ABORTION SHALL BE PERFORMED UPON A WOMAN WHEN
44 THE GESTATIONAL AGE OF THE UNBORN CHILD IS TWENTY OR MORE WEEKS UNLESS
45 EACH OF THE FOLLOWING CONDITIONS IS MET:

46 (A) THE PHYSICIAN PERFORMING THE ABORTION CERTIFIES IN WRITING THAT,
47 BASED UPON HIS MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND HIS MEDICAL
48 JUDGMENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE DEATH OF THE
49 PREGNANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR
50 BODILY FUNCTION OF THE WOMAN.

51 (B) SUCH PHYSICIAN'S JUDGMENT WITH RESPECT TO THE NECESSITY FOR THE
52 ABORTION HAS BEEN CONCURRED IN BY ONE OTHER LICENSED PHYSICIAN WHO
53 CERTIFIES IN WRITING THAT, BASED UPON HIS OR HER SEPARATE PERSONAL
54 MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND HIS OR HER MEDICAL JUDG-
55 MENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE DEATH OF THE PREG-

1 NANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR
2 BODILY FUNCTION OF THE WOMAN.

3 (C) THE ABORTION IS PERFORMED IN A HOSPITAL.

4 (D) THE PHYSICIAN TERMINATES THE PREGNANCY IN A MANNER WHICH PROVIDES
5 THE BEST OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE, UNLESS THE PHYSI-
6 CIAN DETERMINES, IN HIS OR HER GOOD FAITH MEDICAL JUDGMENT, THAT TERMI-
7 NATION OF THE PREGNANCY IN THAT MANNER POSES A SIGNIFICANTLY GREATER
8 RISK EITHER OF THE DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND
9 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE WOMAN THAN
10 WOULD OTHER AVAILABLE METHODS.

11 (E) THE PHYSICIAN PERFORMING THE ABORTION ARRANGES FOR THE ATTENDANCE,
12 IN THE SAME ROOM IN WHICH THE ABORTION IS TO BE COMPLETED, OF A SECOND
13 PHYSICIAN WHO SHALL TAKE CONTROL OF THE CHILD IMMEDIATELY AFTER COMPLETE
14 EXTRACTION FROM THE MOTHER AND SHALL PROVIDE IMMEDIATE MEDICAL CARE FOR
15 THE CHILD, TAKING ALL REASONABLE STEPS NECESSARY TO PRESERVE THE CHILD'S
16 LIFE AND HEALTH.

17 2. IT SHALL NOT BE A VIOLATION OF THIS SECTION IF THE ABORTION IS
18 PERFORMED BY A PHYSICIAN AND THAT PHYSICIAN REASONABLY BELIEVES, AFTER
19 MAKING A DETERMINATION OF THE GESTATIONAL AGE OF THE UNBORN CHILD THAT
20 THE UNBORN CHILD IS LESS THAN TWENTY WEEKS GESTATIONAL AGE.

21 S 4164-A. MEDICAL CONSULTATION AND JUDGMENT. EXCEPT IN A MEDICAL EMER-
22 GENCY WHERE THERE IS INSUFFICIENT TIME BEFORE THE ABORTION IS PERFORMED,
23 THE WOMAN UPON WHOM THE ABORTION IS TO BE PERFORMED SHALL HAVE A
24 PRIVATE, IN-PERSON MEDICAL CONSULTATION EITHER WITH THE PHYSICIAN WHO IS
25 TO PERFORM THE ABORTION OR WITH THE REFERRING PHYSICIAN. THE CONSULTA-
26 TION WILL BE IN A PLACE, AT A TIME AND OF A DURATION REASONABLY SUFFI-
27 CIENT TO ENABLE THE PHYSICIAN TO DETERMINE WHETHER, BASED ON HIS OR HER
28 BEST CLINICAL JUDGMENT, THE ABORTION IS NECESSARY.

29 S 4164-B. DISMEMBERMENT ABORTION BAN.

30 1. AN INDIVIDUAL MAY NOT PERFORM OR ATTEMPT TO PERFORM A DISMEMBERMENT
31 ABORTION UPON ANOTHER INDIVIDUAL WHEN THE GESTATIONAL AGE OF THE UNBORN
32 CHILD IS TWENTY OR MORE WEEKS UNLESS ALL OF THE FOLLOWING APPLY:

33 (A) THE INDIVIDUAL PERFORMING OR ATTEMPTING TO PERFORM THE DISMEMBER-
34 MENT ABORTION IS A PHYSICIAN AND CERTIFIES IN WRITING THAT, BASED UPON
35 THE PHYSICIAN'S MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND THE PHYSI-
36 CIAN'S MEDICAL JUDGMENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE
37 DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIR-
38 MENT OF A MAJOR BODILY FUNCTION OF THE WOMAN.

39 (B) SUCH PHYSICIAN'S JUDGMENT WITH RESPECT TO THE NECESSITY FOR THE
40 ABORTION HAS BEEN CONCURRED IN BY ONE OTHER LICENSED PHYSICIAN WHO
41 CERTIFIES IN WRITING THAT, BASED UPON HIS OR HER SEPARATE PERSONAL
42 MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND HIS OR HER MEDICAL JUDG-
43 MENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE DEATH OF THE PREG-
44 NANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR
45 BODILY FUNCTION OF THE WOMAN.

46 (C) THE ABORTION IS PERFORMED IN A HOSPITAL.

47 (D) THE PHYSICIAN TERMINATES THE PREGNANCY IN A MANNER WHICH PROVIDES
48 THE BEST OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE, UNLESS THE PHYSI-
49 CIAN DETERMINES, IN HIS OR HER GOOD FAITH MEDICAL JUDGMENT, THAT TERMI-
50 NATION OF THE PREGNANCY IN THAT MANNER POSES A SIGNIFICANTLY GREATER
51 RISK EITHER OF THE DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND
52 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE WOMAN THAN
53 WOULD OTHER AVAILABLE METHODS.

54 (E) THE PHYSICIAN PERFORMING THE ABORTION ARRANGES FOR THE ATTENDANCE,
55 IN THE SAME ROOM IN WHICH THE ABORTION IS TO BE COMPLETED, OF A SECOND
56 PHYSICIAN WHO SHALL TAKE CONTROL OF THE CHILD IMMEDIATELY AFTER COMPLETE

1 EXTRACTION FROM THE MOTHER AND SHALL PROVIDE IMMEDIATE MEDICAL CARE FOR
2 THE CHILD, TAKING ALL REASONABLE STEPS NECESSARY TO PRESERVE THE CHILD'S
3 LIFE AND HEALTH.

4 2. PROHIBITION BEFORE TWENTY WEEKS OF GESTATIONAL AGE. AN INDIVIDUAL
5 MAY NOT PERFORM OR ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION UPON
6 ANOTHER INDIVIDUAL WHEN THE GESTATIONAL AGE OF THE UNBORN CHILD IS LESS
7 THAN TWENTY WEEKS UNLESS BOTH OF THE FOLLOWING APPLY:

8 (A) THE INDIVIDUAL PERFORMING OR ATTEMPTING TO PERFORM THE DISMEMBER-
9 MENT ABORTION IS A PHYSICIAN AND CERTIFIES IN WRITING THAT, BASED UPON
10 THE PHYSICIAN'S MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND THE PHYSI-
11 CIAN'S MEDICAL JUDGMENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE
12 DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIR-
13 MENT OF A MAJOR BODILY FUNCTION OF THE WOMAN.

14 (B) THE PHYSICIAN'S JUDGMENT WITH RESPECT TO THE NECESSITY FOR THE
15 ABORTION HAS BEEN CONCURRED IN BY ONE OTHER LICENSED PHYSICIAN WHO
16 CERTIFIES IN WRITING THAT, BASED UPON HIS OR HER SEPARATE PERSONAL
17 MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND HIS OR HER MEDICAL JUDG-
18 MENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE DEATH OF THE PREG-
19 NANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR
20 BODILY FUNCTION OF THE WOMAN.

21 3. LIABILITY. THE FOLLOWING INDIVIDUALS SHALL NOT BE LIABLE FOR
22 PERFORMING OR ATTEMPTING TO PERFORM A DISMEMBERMENT ABORTION:

23 (A) THE FEMALE PATIENT UPON WHOM THE DISMEMBERMENT ABORTION IS
24 PERFORMED OR ATTEMPTED TO BE PERFORMED.

25 (B) A NURSE, TECHNICIAN, SECRETARY OR RECEPTIONIST WHO IS NOT A PHYSI-
26 CIAN BUT IS ACTING AT THE DIRECTION OF A PHYSICIAN.

27 (C) A PHARMACIST OR OTHER INDIVIDUAL WHO FILLS A PRESCRIPTION OR
28 PROVIDES INSTRUMENTS OR MATERIALS USED IN A DISMEMBERMENT ABORTION AT
29 THE DIRECTION OF OR TO A PHYSICIAN.

30 4. PENALTY. ANY INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A
31 CLASS D FELONY.

32 S 8. The public health law is amended by adding a new section 4160-b
33 to read as follows:

34 S 4160-B. ABORTION REPORTING. FOR THE PURPOSE OF PROMOTION OF MATERNAL
35 HEALTH AND LIFE BY ADDING TO THE SUM OF MEDICAL AND PUBLIC HEALTH KNOW-
36 LEDGE THROUGH THE COMPILATION OF RELEVANT DATA, AND TO PROMOTE THE
37 STATE'S INTEREST IN PROTECTION OF THE UNBORN CHILD, A REPORT OF EACH
38 ABORTION PERFORMED SHALL BE MADE TO THE DEPARTMENT ON FORMS PRESCRIBED
39 BY IT. THE REPORT FORMS SHALL NOT IDENTIFY THE INDIVIDUAL PATIENT BY
40 NAME AND SHALL INCLUDE THE FOLLOWING INFORMATION:

41 1. IDENTIFICATION OF THE PHYSICIAN WHO PERFORMED THE ABORTION, THE
42 CONCURRING PHYSICIAN, THE SECOND PHYSICIAN AS REQUIRED BY SECTION
43 FORTY-ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND THE FACILITY WHERE THE
44 ABORTION WAS PERFORMED AND OF THE REFERRING PHYSICIAN, AGENCY OR
45 SERVICE, IF ANY;

46 2. THE COUNTY AND STATE IN WHICH THE WOMAN RESIDES;

47 3. THE WOMAN'S AGE;

48 4. THE NUMBER OF PRIOR PREGNANCIES AND PRIOR ABORTIONS OF THE WOMAN;

49 5. THE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME OF THE
50 ABORTION;

51 6. THE TYPE OF PROCEDURE PERFORMED OR PRESCRIBED AND THE DATE OF THE
52 ABORTION;

53 7. PRE-EXISTING MEDICAL CONDITIONS OF THE WOMAN WHICH WOULD COMPLICATE
54 PREGNANCY, IF ANY, AND, IF KNOWN, ANY MEDICAL COMPLICATION WHICH
55 RESULTED FROM THE ABORTION ITSELF;

1 8. THE BASIS FOR THE MEDICAL JUDGMENT OF THE PHYSICIAN WHO PERFORMED
2 THE ABORTION THAT THE ABORTION WAS NECESSARY TO PREVENT EITHER THE DEATH
3 OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF
4 A MAJOR BODILY FUNCTION OF THE WOMAN;

5 9. THE WEIGHT OF THE ABORTED CHILD; AND

6 10. THE BASIS FOR ANY MEDICAL JUDGMENT THAT A MEDICAL EMERGENCY
7 EXISTED WHICH EXCUSED THE PHYSICIAN FROM COMPLIANCE WITH ANY PROVISION
8 OF THIS SECTION.

9 S 9. This act shall take effect immediately.