

# STATE OF NEW YORK

4777

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

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 § 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 § 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 abortional act." An abortional 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 abortional 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 abortional act is justifiable when she believes that it is being commit-

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

LBD05966-01-7

1 ted by a duly licensed physician, acting under a reasonable belief that  
2 such act is necessary to preserve her life or prevent the substantial  
3 and irreversible impairment of a major bodily function, or, within  
4 [~~twenty-four~~] twenty weeks from the commencement of her pregnancy.

5 § 3. Section 125.05 of the penal law is amended by adding a new subdivi-  
6 sion 4 to read as follows:

7 4. "Dismemberment abortion." The act of knowingly and purposefully  
8 causing the death of an unborn child by means of dismembering the unborn  
9 child and extracting the unborn child one piece at a time from the uter-  
10 us through the use of clamps, grasping forceps, tongs, scissors or simi-  
11 lar instruments. The term does not include an abortion which is exclu-  
12 sively performed through suction curettage.

13 § 4. Subdivision 3 of section 125.20 of the penal law, as amended by  
14 chapter 477 of the laws of 1990, is amended to read as follows:

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

19 § 5. Section 125.45 of the penal law is amended to read as follows:  
20 § 125.45 Abortion in the first degree.

21 A person is guilty of abortion in the first degree when he commits  
22 upon a female pregnant for more than [~~twenty-four~~] twenty weeks an abor-  
23 tional act which causes the miscarriage of such female, unless such  
24 abortional act is justifiable pursuant to subdivision three of section  
25 125.05.

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

27 § 6. Section 125.55 of the penal law is amended to read as follows:  
28 § 125.55 Self-abortion in the first degree.

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

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

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

37 TITLE V-A

38 REGULATION OF ABORTIONS

39 Section 4164. Regulation of abortions.

40 4164-a. Medical consultation and judgment.

41 4164-b. Dismemberment abortion ban.

42 § 4164. Regulation of abortions. Except in the case of a medical emer-  
43 gency which, in the reasonable medical judgment of the physician  
44 performing the abortion, prevents compliance with a particular require-  
45 ment of this section, no abortion shall be performed upon a woman when  
46 the gestational age of the unborn child is twenty or more weeks unless  
47 each of the following conditions is met:

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

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

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.

31 1. An individual may not perform or attempt to perform a dismemberment  
32 abortion upon another individual when the gestational age of the unborn  
33 child is twenty or 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. Liability. The following individuals shall not be liable for  
23 performing or attempting to perform a dismemberment abortion:

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

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

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

31 4. Penalty. Any individual who violates this section is guilty of a  
32 class D felony.

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

35 § 4160-b. Abortion reporting. For the purpose of promotion of maternal  
36 health and life by adding to the sum of medical and public health know-  
37 ledge through the compilation of relevant data, and to promote the  
38 state's interest in protection of the unborn child, a report of each  
39 abortion performed shall be made to the department on forms prescribed  
40 by it. The report forms shall not identify the individual patient by  
41 name and shall include the following information:

42 1. identification of the physician who performed the abortion, the  
43 concurring physician, the second physician as required by section  
44 forty-one hundred sixty-four of this article and the facility where the  
45 abortion was performed and of the referring physician, agency or  
46 service, if any;

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

48 3. the woman's age;

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

50 5. the gestational age of the unborn child at the time of the  
51 abortion;

52 6. the type of procedure performed or prescribed and the date of the  
53 abortion;

54 7. pre-existing medical conditions of the woman which would complicate  
55 pregnancy, if any, and, if known, any medical complication which  
56 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 § 9. This act shall take effect immediately.