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:

Section 1. Section 125.00 of the penal law is amended to read as follows:

§ 125.00 Homicide defined.

Homicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than [~~twenty-four~~] **twenty** weeks under circumstances constituting murder, manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.

§ 2. Subdivision 3 of section 125.05 of the penal law, as amended by chapter 127 of the laws of 1970, is amended to read as follows:

3. "Justifiable abortional act." An abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life **or prevent the substantial and irreversible impairment of a major bodily function**, or, (b) within [~~twenty-four~~] **twenty** weeks from the commencement of her pregnancy. A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician (1) that such act is necessary to preserve her life **or prevent the substantial and irreversible impairment of a major bodily function**, or, (2) within [~~twenty-four~~] **twenty** weeks from the commencement of her pregnancy. The submission by a female to an 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.

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

§ 3. Section 125.05 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. "Dismemberment abortion." The act of knowingly and purposefully causing the death of an unborn child by means of dismembering the 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. The term does not include an abortion which is exclusively performed through suction curettage.

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

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

§ 5. Section 125.45 of the penal law is amended to read as follows:

§ 125.45 Abortion in the first degree.

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

Abortion in the first degree is a class D felony.

§ 6. Section 125.55 of the penal law is amended to read as follows:

§ 125.55 Self-abortion in the first degree.

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

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

§ 7. 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. 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 judg-

ment, 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.

(c) The abortion is performed in a hospital.

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

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

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

§ 4164-a. Medical consultation and judgment. Except in a medical emergency where there is insufficient time before the abortion is performed, the woman upon whom the abortion is to be performed shall have a private, in-person medical consultation either with the physician who is to perform the abortion or with the referring physician. The consultation will be in a place, at a time and of a duration reasonably sufficient to enable the physician to determine whether, based on his or her best clinical judgment, the abortion is necessary.

§ 4164-b. Dismemberment abortion ban.

1. An individual may not perform or attempt to perform a dismemberment abortion upon another individual when the gestational age of the unborn child is twenty or more weeks unless all of the following apply:

(a) The individual performing or attempting to perform the dismemberment abortion is a physician and certifies in writing that, based upon the physician's medical examination of the pregnant woman and the physician's 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, 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.

(c) The abortion is performed in a hospital.

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

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

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

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

(a) The individual performing or attempting to perform the dismemberment abortion is a physician and certifies in writing that, based upon the physician's medical examination of the pregnant woman and the physician's 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) The 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, 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.

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

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

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

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

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

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

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

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

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

3. the woman's age;

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

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

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

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

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

9. the weight of the aborted child; and

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

§ 9. This act shall take effect immediately.