S T A T E O F N E W Y O R K

424

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the public health law, in relation to enacting the fetal pain prevention act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 25 of the public health law is amended by adding a new title 1-C to read as follows:

TITLE I-C

FETAL PAIN PREVENTION ACT

SECTION 2518. SHORT TITLE.

2518-A. DEFINITIONS.

2518-B. FETAL PAIN INFORMATION.

2518-C. FETAL PAIN PREVENTION.

2518-D EXCEPTIONS.

2518-E. PENALTIES AND REMEDIES.

S 2518. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "FETAL PAIN PREVENTION ACT".

S 2518-A. DEFINITIONS. FOR PURPOSES OF THIS TITLE THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ABORTION" MEANS AN ACT PERFORMED UPON A PREGNANT FEMALE BY A DULY LICENSED PHYSICIAN, WITH THE CONSENT OF THE PREGNANT FEMALE, WHETHER DIRECTLY UPON HER BODY OR BY THE ADMINISTRATING, TAKING OR PRESCRIPTION OF DRUGS, OR IN ANY OTHER MANNER, WITH INTENT TO TERMINATE HER PREGNANCY AND WITH KNOWLEDGE THAT THE ACT WILL, WITH REASONABLE LIKELIHOOD, CAUSE THE DEATH OF THE FETUS.

2. "FETUS" MEANS A LIVING MEMBER OF THE HUMAN SPECIES AT ANY STAGE OF GESTATION WHO HAS NOT YET BEEN BORN.

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

LBD01904-01-9

S 2518-B. FETAL PAIN INFORMATION. 1. IF A PHYSICIAN WHO IS TO PERFORM AN ABORTION HAS REASON TO BELIEVE THAT THE PREGNANT FEMALE IS CARRYING A FETUS OF TWENTY OR MORE WEEKS GESTATIONAL AGE, THE PHYSICIAN SHALL:

(A) ORALLY AND IN PERSON PROVIDE HER WITH INFORMATION ON FETAL PAIN; AND

(B) PERSONALLY GIVE HER THE WRITTEN MATERIAL WITH INFORMATION ON FETAL PAIN THAT HAS BEEN PREPARED BY THE COMMISSIONER IN ACCORDANCE WITH THIS TITLE.

2. THE COMMISSIONER SHALL PREPARE AND IS EMPOWERED TO PUBLISH WRITTEN MATERIAL THAT CONTAINS INFORMATION ON FETAL PAIN, AND UPDATE THIS MATERIAL AS NECESSARY. THE MATERIALS SHALL BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO CONVEY ACCURATE SCIENTIFIC INFORMATION. THE MATERIALS SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION REGARDING:

(A) THE DEVELOPMENT OF THE NERVOUS SYSTEM OF THE FETUS;

(B) FETAL RESPONSIVENESS TO ADVERSE STIMULI;

(C) A DESCRIPTION OF THE ACTUAL STEPS IN THE ABORTION PROCEDURE TO BE ADMINISTERED.

3. THE PHYSICIAN SHALL CERTIFY, ON A FORM PRESCRIBED BY THE COMMISSIONER, THAT THE INFORMATION REQUIRED UNDER THIS SUBDIVISION HAS BEEN PERSONALLY PROVIDED TO THE PREGNANT FEMALE. THIS FORM SHALL BE PLACED IN THE MEDICAL RECORDS OF THE PREGNANT FEMALE.

S 2518-C. FETAL PAIN PREVENTION. 1. AFTER THE INFORMATION PRESCRIBED IN SECTION TWO THOUSAND FIVE HUNDRED EIGHTEEN-B OF THIS TITLE HAS BEEN PROVIDED TO THE PREGNANT FEMALE, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION SHALL PERSONALLY REQUEST HER VOLUNTARY AND KNOWING CONSENT FOR THE ADMINISTRATION OF AN ANESTHESIA OR ANALGESIC TO ELIMINATE OR ALLEVIATE FETAL PAIN DURING THE COURSE OF THE ABORTION.

2. THE PHYSICIAN SHALL CERTIFY, ON A FORM PRESCRIBED BY THE COMMISSIONER, IN THAT HE OR SHE HAS PERSONALLY REQUESTED THE CONSENT REQUIRED IN ACCORDANCE WITH THIS SECTION. THIS FORM SHALL BE PLACED IN THE MEDICAL RECORDS OF THE PREGNANT FEMALE.

3. THE PREGNANT FEMALE SHALL CERTIFY, ON A FORM PRESCRIBED BY THE COMMISSIONER, HER DECISION REGARDING GRANTING OR REFUSING THE CONSENT REQUIRED IN ACCORDANCE WITH THIS SECTION. THIS FORM SHALL BE PLACED IN HER MEDICAL RECORDS.

4. AFTER RECEIVING THE CONSENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE PHYSICIAN PERFORMING THE ABORTION SHALL ADMINISTER AN ANESTHESIA OR ANALGESIC WHICH IN SUCH PHYSICIAN'S REASONABLE MEDICAL JUDGMENT IS NECESSARY TO ELIMINATE OR ALLEVIATE FETAL PAIN DURING THE COURSE OF THE ABORTION. HOWEVER, THE PHYSICIAN SHALL NOT ADMINISTER ANY MEDICATION THAT WOULD TO A MEDICALLY SIGNIFICANT DEGREE DECREASE THE POSSIBILITY OF SUSTAINED SURVIVAL OF THE FETUS APART FROM THE BODY OF THE MOTHER, WITH OR WITHOUT ARTIFICIAL LIFE SUPPORT, OR THAT WOULD CAUSE THE DEATH OF THE FETUS.

S 2518-D. EXCEPTIONS. 1. THIS SECTION SHALL NOT APPLY IF IN THE REASONABLE MEDICAL JUDGMENT OF THE PHYSICIAN WHO PERFORMS THE ABORTION:

(A) THERE EXISTS A CONDITION THAT SO COMPLICATES THE MEDICAL CONDITION OF THE PREGNANT FEMALE AS TO NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY IN ORDER TO AVERT HER DEATH, OR FOR WHICH A DELAY WOULD CREATE A SERIOUS RISK OF A SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION; OR

(B) THE ADMINISTRATION OF AN ANESTHETIC OR ANALGESIC WOULD CAUSE THE PREGNANT WOMAN'S DEATH OR WOULD CREATE A SERIOUS RISK OF A SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

2. THE PHYSICIAN SHALL CERTIFY IN THE MEDICAL RECORDS OF THE PREGNANT FEMALE THE SPECIFIC MEDICAL GROUNDS FOR SUCH PHYSICIAN'S JUDGMENT IN APPLICATION OF THIS SECTION.

S 2518-E. PENALTIES AND REMEDIES. 1. IT SHALL CONSTITUTE PROFESSIONAL MISCONDUCT FOR ANY PHYSICIAN TO FAIL TO PROVIDE THE INFORMATION SPECIFIED UNDER SECTION TWO THOUSAND FIVE HUNDRED EIGHTEEN-B OF THIS TITLE, OR TO FAIL TO REQUEST THE CONSENT SPECIFIED UNDER SECTION TWO THOUSAND FIVE HUNDRED EIGHTEEN-C OF THIS TITLE.

2. IF A PHYSICIAN FAILS TO COMPLY WITH THIS SECTION, THE PREGNANT FEMALE UPON WHOM THE ABORTION WAS PERFORMED MAY BRING AN ACTION IN HER OWN NAME AGAINST THE PHYSICIAN TO RECOVER ACTUAL AND PUNITIVE DAMAGES. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

3. ANY PERSON WHO KNOWINGLY MAKES A FALSE ENTRY IN A MEDICAL RECORD AS REQUIRED BY THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR. THE FEMALE UPON WHOM AN ABORTION HAS BEEN PERFORMED SHALL NOT BE LIABLE FOR ANY OFFENSE UNDER THIS TITLE.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.