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

2726

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. RABBITT, KOLB, CROUCH, FINCH -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the woman's right to know act; to repeal title 3 of article 25 of such law relating to the control of midwifery; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Title III of article 25 of the public health law is REPEALED and a new title III is added to read as follows:

TITLE III

WOMAN'S RIGHT TO KNOW ACT

SECTION 2560. SHORT TITLE.
2560-A. LEGISLATIVE FINDINGS AND PURPOSES.
2560-B. DEFINITIONS.
2560-C. INFORMED CONSENT REQUIREMENT.
2560-D. PUBLICATION OF MATERIALS.
2560-E. VIDEOTAPE.
2560-F. EMERGENCY.
2560-G. CRIMINAL PENALTIES.
2560-H. CIVIL PENALTIES.
2560-I. LIMITATION ON CIVIL LIABILITY.
2560-J. SEVERABILITY.
2560-K. CONSTRUCTION.

S 2560. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "WOMAN'S RIGHT TO KNOW ACT".

S 2560-A. LEGISLATIVE FINDINGS AND PURPOSES. 1. THE LEGISLATURE FINDS THAT:

(A) IT IS ESSENTIAL TO THE PSYCHOLOGICAL AND PHYSICAL WELL-BEING OF A WOMAN CONSIDERING AN ABORTION THAT SHE RECEIVE COMPLETE AND ACCURATE INFORMATION ON HER ALTERNATIVES.

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

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(B) THE KNOWLEDGEABLE EXERCISE OF A WOMAN'S DECISION TO HAVE AN ABORTION DEPENDS ON THE EXTENT TO WHICH THE WOMAN RECEIVES SUFFICIENT INFORMATION TO MAKE AN INFORMED CHOICE BETWEEN TWO ALTERNATIVES: GIVING BIRTH OR HAVING AN ABORTION.

(C) OVER EIGHTY PERCENT OF ALL ABORTIONS ARE PERFORMED IN CLINICS DEVOTED SOLELY TO PROVIDING ABORTIONS AND FAMILY PLANNING SERVICES. MOST WOMEN WHO SEEK ABORTIONS AT THESE FACILITIES DO NOT HAVE ANY RELATIONSHIP WITH THE PHYSICIAN WHO PERFORMS THE ABORTION, BEFORE OR AFTER THE PROCEDURE. THEY DO NOT RETURN TO THE FACILITY FOR POST-SURGICAL CARE. IN MOST INSTANCES, THE WOMAN'S ONLY ACTUAL CONTACT WITH THE PHYSICIAN OCCURS SIMULTANEOUSLY WITH THE ABORTION PROCEDURE, WITH LITTLE OPPORTUNITY TO RECEIVE COUNSELING CONCERNING HER DECISION.

(D) THE DECISION TO ABORT IS AN IMPORTANT AND OFTEN A STRESSFUL ONE, AND IT IS DESIRABLE AND IMPERATIVE THAT IT BE MADE WITH FULL KNOWLEDGE OF ITS NATURE AND CONSEQUENCES.

(E) THE MEDICAL, EMOTIONAL AND PSYCHOLOGICAL CONSEQUENCES OF AN ABORTION ARE SERIOUS AND CAN BE LASTING.

(F) ABORTION FACILITIES OR PROVIDERS OFFER ONLY LIMITED AND/OR IMPERSONAL COUNSELING OPPORTUNITIES.

(G) MANY ABORTION FACILITIES OR PROVIDERS HIRE UNTRAINED AND UNPROFESSIONAL "COUNSELORS" WHOSE PRIMARY GOAL IS TO SELL ABORTION SERVICES.

2. BASED ON THE FINDINGS IN SUBDIVISION ONE OF THIS SECTION, IT IS THE PURPOSE OF THIS TITLE TO:

(A) ENSURE THAT EVERY WOMAN CONSIDERING AN ABORTION RECEIVE COMPLETE INFORMATION ON HER ALTERNATIVES AND THAT EVERY WOMAN SUBMITTING TO AN ABORTION DO SO ONLY AFTER GIVING HER VOLUNTARY AND INFORMED CONSENT TO THE ABORTION PROCEDURE.

(B) PROTECT UNBORN CHILDREN FROM A WOMAN'S UNINFORMED DECISION TO HAVE AN ABORTION.

(C) REDUCE THE RISK THAT A WOMAN MAY ELECT AN ABORTION, ONLY TO DISCOVER LATER, WITH DEVASTATING PSYCHOLOGICAL CONSEQUENCES, THAT HER DECISION WAS NOT FULLY INFORMED.

S 2560-B. DEFINITIONS. AS USED IN THIS TITLE:

1. "ABORTION" MEANS THE USE OR PRESCRIPTION OF ANY INSTRUMENT, MEDICINE, DRUG OR ANY OTHER SUBSTANCE OR DEVICE WITH THE INTENT TO TERMINATE THE PREGNANCY OF A WOMAN KNOWN BY THE PERSON SO USING OR PRESCRIBING TO BE PREGNANT. SUCH USE OR PRESCRIPTION IS NOT AN ABORTION IF DONE WITH THE INTENT TO (A) SAVE THE LIFE OR PRESERVE THE HEALTH OF AN UNBORN CHILD, (B) REMOVE A DEAD UNBORN CHILD, OR (C) DELIVER AN UNBORN CHILD PREMATURELY IN ORDER TO PRESERVE THE HEALTH OF BOTH THE PREGNANT WOMAN AND HER UNBORN CHILD.

2. "CONCEPTION" MEANS THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN OVUM.

3. "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED SINCE THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

4. "MEDICAL EMERGENCY" MEANS THAT CONDITION WHICH, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

5. "PHYSICIAN" MEANS ANY PERSON LICENSED TO PRACTICE MEDICINE IN THIS STATE.

6. "PREGNANT" OR "PREGNANCY" MEANS THAT FEMALE REPRODUCTIVE CONDITION OF HAVING AN UNBORN CHILD IN THE WOMAN'S BODY.

7. "QUALIFIED PERSON" MEANS AN AGENT OF THE PHYSICIAN WHO IS A PSYCHOLOGIST, LICENSED SOCIAL WORKER, LICENSED PROFESSIONAL COUNSELOR, REGISTERED PROFESSIONAL NURSE OR PHYSICIAN.

8. "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS FROM CONCEPTION UNTIL BIRTH.

9. "VIABILITY" AND "VIABLE" MEANS THAT STAGE OF FETAL DEVELOPMENT WHEN THE LIFE OF THE UNBORN CHILD MAY BE CONTINUED INDEFINITELY OUTSIDE THE WOMB BY NATURAL OR ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.

10. "WOMAN" MEANS ANY FEMALE PERSON.

S 2560-C. INFORMED CONSENT REQUIREMENT. NO ABORTION SHALL BE PERFORMED OR INDUCED WITHOUT THE VOLUNTARY AND INFORMED CONSENT OF THE WOMAN UPON WHOM THE ABORTION IS TO BE PERFORMED OR INDUCED. EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, CONSENT TO AN ABORTION IS VOLUNTARY AND INFORMED IF AND ONLY IF:

1. AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR THE REFERRING PHYSICIAN HAS INFORMED THE WOMAN, ORALLY AND IN PERSON, OF:

(A) THE NAME OF THE PHYSICIAN WHO WILL PERFORM THE ABORTION;

(B) THE NATURE OF THE PROPOSED ABORTION METHOD AND OF THOSE RISKS AND ALTERNATIVES TO THE METHOD THAT A REASONABLE PATIENT WOULD CONSIDER MATERIAL TO THE DECISION OF WHETHER OR NOT TO UNDERGO THE ABORTION;

(C) THE PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME THE ABORTION IS TO BE PERFORMED. AND IF THE UNBORN CHILD IS VIABLE OR HAS REACHED THE GESTATIONAL AGE OF TWENTY-TWO WEEKS, THAT (I) THE UNBORN CHILD MAY BE ABLE TO SURVIVE OUTSIDE THE WOMB; (II) THE WOMAN HAS THE RIGHT TO REQUEST THE PHYSICIAN TO USE THE FORM OF TREATMENT THAT IS MOST LIKELY TO PRESERVE THE LIFE OF THE UNBORN CHILD; AND (III) IF THE UNBORN CHILD IS BORN ALIVE, THE ATTENDING PHYSICIAN HAS THE LEGAL OBLIGATION TO TAKE ALL REASONABLE STEPS NECESSARY TO MAINTAIN THE LIFE AND HEALTH OF THE CHILD;

(D) THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT THE TIME THE ABORTION IS TO BE PERFORMED;

(E) THE MEDICAL RISKS ASSOCIATED WITH CARRYING HER CHILD TO TERM;

(F) THE MEDICAL AND PSYCHOLOGICAL RISKS ASSOCIATED WITH ABORTION, INCLUDING, BUT NOT LIMITED TO, THE MEDICAL EVIDENCE REGARDING THE INCREASED RISK OF BREAST CANCER ASSOCIATED WITH THE PROPOSED ABORTION; AND

(G) ANY NEED FOR ANTI-RH IMMUNE GLOBULIN THERAPY, IF SHE IS RH NEGATIVE, THE LIKELY CONSEQUENCES OF REFUSING SUCH THERAPY AND THE COST OF THE THERAPY.

2. AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION, THE REFERRING PHYSICIAN OR A QUALIFIED PERSON HAS INFORMED THE WOMAN, ORALLY AND IN PERSON, THAT:

(A) THE PRINTED MATERIALS IN SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS TITLE DESCRIBE THE UNBORN CHILD AND LIST AGENCIES WHICH OFFER ALTERNATIVES TO ABORTION;

(B) THE FATHER OF THE UNBORN CHILD IS OBLIGATED TO ASSIST IN THE SUPPORT OF HER CHILD, EVEN IN INSTANCES WHERE HE HAS OFFERED TO PAY FOR THE ABORTION. IN THE CASE OF RAPE, THIS INFORMATION MAY BE OMITTED;

(C) SHE HAS THE RIGHT TO VIEW THE VIDEOTAPE DESCRIBED IN SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED SIXTY-E OF THIS TITLE FOLLOWING THE DISCLOSURE OF THE INFORMATION REQUIRED BY THIS TITLE. EACH PHYSICIAN WHO PERFORMS OR REFERS FOR ABORTION SHALL OBTAIN A COPY OF THE VIDEOTAPE DESCRIBED IN SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED SIXTY-E OF THIS TITLE AND SHALL MAKE IT AVAILABLE AT ALL FACILITIES WHERE ABORTIONS

ARE PERFORMED AND AT OFFICES OF PHYSICIANS WHO REFER FOR ABORTION DURING ALL TIMES WHEN THESE FACILITIES OR OFFICES ARE OPEN FOR BUSINESS;

(D) THE STATE ENCOURAGES HER TO VIEW AN ULTRASOUND IMAGE OF HER UNBORN CHILD BEFORE SHE DECIDES TO HAVE AN ABORTION. IF SHE CHOOSES TO VIEW AN ULTRASOUND IMAGE OF HER UNBORN CHILD, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR THE REFERRING PHYSICIAN SHALL ISSUE A MEDICAL ORDER FOR THE ULTRASOUND SERVICE AT ANY MEDICAL FACILITY THAT PROVIDES ULTRASOUND IMAGING SERVICES. IF THE WOMAN DOES NOT HAVE PRIVATE HEALTH INSURANCE COVERAGE FOR THE ULTRASOUND SERVICE, SHE SHALL BE PRESUMPTIVELY ELIGIBLE FOR MEDICAL ASSISTANCE COVERAGE FOR THE ULTRASOUND SERVICE; AND

(E) SHE IS FREE TO WITHHOLD OR WITHDRAW HER CONSENT TO THE ABORTION AT ANY TIME BEFORE OR DURING THE ABORTION WITHOUT AFFECTING HER RIGHT TO FUTURE CARE OR TREATMENT, AND WITHOUT THE LOSS OF ANY STATE OR FEDERALLY-FUNDED BENEFITS TO WHICH SHE MIGHT OTHERWISE BE ENTITLED.

3. THE INFORMATION IN SUBDIVISIONS ONE AND TWO OF THIS SECTION IS PROVIDED TO THE WOMAN INDIVIDUALLY AND IN A PRIVATE ROOM TO PROTECT HER PRIVACY AND MAINTAIN THE CONFIDENTIALITY OF HER DECISION, TO ENSURE THAT THE INFORMATION FOCUSES ON HER INDIVIDUAL CIRCUMSTANCES AND THAT SHE HAS AN ADEQUATE OPPORTUNITY TO ASK A QUESTION.

4. AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION, THE WOMAN IS GIVEN A COPY OF THE PRINTED MATERIALS DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS TITLE. IF THE WOMAN IS UNABLE TO READ THE MATERIALS, THEY SHALL BE READ TO HER. IF THE WOMAN ASKS QUESTIONS CONCERNING ANY OF THE INFORMATION OR MATERIALS, ANSWERS SHALL BE PROVIDED TO HER IN HER OWN LANGUAGE.

5. THE WOMAN CERTIFIES IN WRITING, PRIOR TO THE ABORTION, THAT THE INFORMATION REQUIRED TO BE PROVIDED UNDER SUBDIVISIONS ONE, TWO AND FOUR OF THIS SECTION HAS BEEN PROVIDED.

6. PRIOR TO THE PERFORMANCE OF THE ABORTION, THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR HIS OR HER AGENT RECEIVES A COPY OF THE WRITTEN CERTIFICATION PRESCRIBED BY SUBDIVISION FIVE OF THIS SECTION.

7. THE WOMAN IS NOT REQUIRED TO PAY ANY AMOUNT FOR THE ABORTION PROCEDURE UNTIL THE TWENTY-FOUR HOUR WAITING PERIOD HAS EXPIRED.

S 2560-D. PUBLICATION OF MATERIALS. 1. THE DEPARTMENT SHALL CAUSE TO BE PUBLISHED IN ENGLISH AND SPANISH, AND SHALL UPDATE ON AN ANNUAL BASIS, THE FOLLOWING EASILY COMPREHENSIBLE PRINTED MATERIALS:

(A) GEOGRAPHICALLY INDEXED MATERIALS DESIGNED TO INFORM THE WOMAN OF PUBLIC AND PRIVATE AGENCIES AND SERVICES AVAILABLE TO ASSIST A WOMAN THROUGH PREGNANCY, UPON CHILDBIRTH AND WHILE HER CHILD IS DEPENDENT, INCLUDING BUT NOT LIMITED TO, ADOPTION AGENCIES. THE MATERIALS SHALL INCLUDE A COMPREHENSIVE LIST OF THE AGENCIES, A DESCRIPTION OF THE SERVICES THEY OFFER, AND THE TELEPHONE NUMBERS AND ADDRESSES OF THE AGENCIES; AND INFORM THE WOMAN ABOUT AVAILABLE MEDICAL ASSISTANCE BENEFITS FOR PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE, AND ABOUT THE SUPPORT OBLIGATIONS OF THE FATHER OF A CHILD WHO IS BORN ALIVE. THE DEPARTMENT SHALL ENSURE THAT THE MATERIALS DESCRIBED IN THIS SECTION ARE COMPREHENSIVE AND DO NOT DIRECTLY OR INDIRECTLY PROMOTE, EXCLUDE OR DISCOURAGE THE USE OF ANY AGENCY OR SERVICE DESCRIBED IN THIS SECTION. THE MATERIALS SHALL ALSO CONTAIN A TOLL-FREE, TWENTY-FOUR HOUR A DAY TELEPHONE NUMBER WHICH MAY BE CALLED TO OBTAIN, ORALLY, SUCH A LIST AND DESCRIPTION OF AGENCIES IN THE LOCALITY OF THE CALLER AND OF THE SERVICES THEY OFFER. THE MATERIALS SHALL STATE THAT IT IS UNLAWFUL FOR ANY INDIVIDUAL TO COERCE A WOMAN TO UNDERGO AN ABORTION, THAT ANY PHYSICIAN WHO PERFORMS AN ABORTION UPON A WOMAN WITHOUT HER INFORMED CONSENT MAY BE LIABLE TO HER FOR DAMAGES IN A CIVIL ACTION AT LAW AND THAT THE

LAW PERMITS ADOPTIVE PARENTS TO PAY COSTS OF PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE. THE MATERIALS SHALL INCLUDE THE FOLLOWING STATEMENT:

"THERE ARE MANY PUBLIC AND PRIVATE AGENCIES WILLING AND ABLE TO HELP YOU TO CARRY YOUR CHILD TO TERM, AND TO ASSIST YOU AND YOUR CHILD AFTER YOUR CHILD IS BORN, WHETHER YOU CHOOSE TO KEEP YOUR CHILD OR TO PLACE HER OR HIM FOR ADOPTION. THE STATE OF NEW YORK STRONGLY URGES YOU TO CONTACT THEM BEFORE MAKING A FINAL DECISION ABOUT ABORTION. THE LAW REQUIRES THAT YOUR PHYSICIAN OR HIS OR HER AGENT GIVE YOU THE OPPORTUNITY TO CALL AGENCIES LIKE THESE BEFORE YOU UNDERGO AN ABORTION."

(B) MATERIALS THAT INFORM THE PREGNANT WOMAN OF THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT TWO-WEEK GESTATIONAL INCREMENTS FROM FERTILIZATION TO FULL TERM, INCLUDING PICTURES OR DRAWINGS REPRESENTING THE DEVELOPMENT OF UNBORN CHILDREN AT TWO-WEEK GESTATIONAL INCREMENTS, AND ANY RELEVANT INFORMATION ON THE POSSIBILITY OF THE UNBORN CHILD'S SURVIVAL; PROVIDED THAT ANY SUCH PICTURES OR DRAWINGS SHALL CONTAIN THE DIMENSIONS OF THE UNBORN CHILD AND MUST BE REALISTIC. THE MATERIALS SHALL BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO CONVEY ONLY ACCURATE SCIENTIFIC INFORMATION ABOUT THE UNBORN CHILD AT THE VARIOUS GESTATIONAL AGES. THE MATERIAL SHALL ALSO CONTAIN OBJECTIVE INFORMATION DESCRIBING THE METHODS OF ABORTION PROCEDURES COMMONLY EMPLOYED, THE MEDICAL RISKS COMMONLY ASSOCIATED WITH EACH SUCH PROCEDURE AND THE MEDICAL RISKS ASSOCIATED WITH CARRYING A CHILD TO TERM.

2. THE MATERIALS SHALL BE PRINTED IN A TYPEFACE LARGE ENOUGH TO BE CLEARLY LEGIBLE.

3. THE MATERIALS REQUIRED UNDER THIS SECTION AND THE VIDEOTAPE DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-E OF THIS TITLE SHALL BE AVAILABLE AT NO COST FROM THE DEPARTMENT UPON REQUEST AND IN APPROPRIATE NUMBER TO ANY PERSON, FACILITY OR HOSPITAL.

S 2560-E. VIDEOTAPE. 1. ALL FACILITIES WHERE ABORTIONS ARE PERFORMED AND OFFICES OF PHYSICIANS WHO REFER FOR ABORTION SHALL HAVE VIDEO VIEWING EQUIPMENT.

2. THE DEPARTMENT SHALL CAUSE TO BE DEVELOPED OR ACQUIRED, A VIDEO WHICH DEPICTS LIVING UNBORN CHILDREN AT VARIOUS GESTATIONAL INCREMENTS FROM FERTILIZATION TO FULL TERM, AN EXPLANATION OF THE PROBABLE ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF UNBORN CHILDREN AT THESE VARIOUS STAGES, AND ANY OTHER RELEVANT INFORMATION ON THE DEVELOPMENT OF UNBORN LIFE. THE VIDEO SHALL BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO CONVEY ONLY ACCURATE SCIENTIFIC INFORMATION ABOUT THE UNBORN CHILD AT THE VARIOUS GESTATIONAL AGES. THE DEPARTMENT SHALL MAKE COPIES OF THE VIDEO AVAILABLE FOR PURCHASE BY PHYSICIANS AND OTHER INTERESTED INDIVIDUALS.

S 2560-F. EMERGENCY. WHERE A MEDICAL EMERGENCY COMPELS THE PERFORMANCE OF AN ABORTION, THE PHYSICIAN SHALL INFORM THE WOMAN, BEFORE THE ABORTION IF POSSIBLE, OF THE MEDICAL INDICATIONS SUPPORTING HIS OR HER JUDGMENT THAT AN ABORTION IS NECESSARY TO AVERT HER DEATH OR TO AVERT SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

S 2560-G. CRIMINAL PENALTIES. ANY PERSON WHO INTENTIONALLY, KNOWINGLY OR RECKLESSLY VIOLATES THE PROVISIONS OF THIS TITLE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

S 2560-H. CIVIL PENALTIES. IN ADDITION TO ANY REMEDIES AVAILABLE UNDER THE COMMON OR STATUTORY LAW OF THIS STATE, FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE SHALL:

1. PROVIDE A BASIS FOR A CIVIL MALPRACTICE ACTION. ANY INTENTIONAL VIOLATION OF THIS TITLE SHALL BE ADMISSIBLE IN A CIVIL SUIT AS PRIMA FACIE EVIDENCE OF A FAILURE TO OBTAIN AN INFORMED CONSENT.

2. PROVIDE A BASIS FOR PROFESSIONAL DISCIPLINARY ACTION PURSUANT TO TITLE TWO-A OF ARTICLE TWO OF THIS CHAPTER.

3. PROVIDE A BASIS FOR RECOVERY BY THE WOMAN IN A WRONGFUL DEATH ACTION, WHETHER OR NOT THE UNBORN CHILD WAS VIABLE AT THE TIME THE ABORTION WAS PERFORMED OR WAS BORN ALIVE.

S 2560-I. LIMITATION ON CIVIL LIABILITY. ANY PHYSICIAN WHO COMPLIES WITH THE PROVISIONS OF THIS TITLE SHALL NOT BE HELD CIVILLY LIABLE TO HIS OR HER PATIENT FOR FAILURE TO OBTAIN INFORMED CONSENT TO THE ABORTION.

S 2560-J. SEVERABILITY. THE PROVISIONS OF THIS TITLE ARE DECLARED TO BE SEVERABLE, AND IF ANY PROVISION, WORD, PHRASE OR CLAUSE OF THIS TITLE OR THE APPLICATION THEREOF TO ANY PERSON SHALL BE HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS TITLE.

S 2560-K. CONSTRUCTION. 1. NOTHING IN THIS TITLE SHALL BE CONSTRUED AS CREATING OR RECOGNIZING A RIGHT TO ABORTION.

2. IT IS NOT THE INTENTION OF THIS TITLE TO MAKE LAWFUL AN ABORTION THAT IS CURRENTLY UNLAWFUL.

S 2. 1. The department of health shall cause to be published in English and Spanish within 102 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer, and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The department of health shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free twenty-four-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action at law and that the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

"There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The state of New York strongly urges you to contact them before making a final decision about abortion. The law requires that your physician or his or her agent give you the opportunity to call agencies like these before you undergo an abortion."

(b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments, and any relevant information on the

possibility of the unborn child's survival; provided that any such pictures or drawings must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, and the medical risks associated with carrying a child to term.

2. The materials shall be printed in a typeface large enough to be clearly legible.

3. The materials required under this section and the videotape described in section 2560-e of the public health law, as added by section one of this act, shall be available at no cost from the department of health upon request and in appropriate numbers to any person, facility or hospital.

S 3. This act shall take effect immediately, provided that section one of this act shall take effect on the one hundred second day after this act shall have become a law, where upon such date section two of this act shall expire and be deemed repealed.