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

6566

2013-2014 Regular Sessions

I N A S S E M B L Y

April 9, 2013

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

AN ACT to amend the public health law, in relation to ensuring that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion

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

Section 1. Short title. This act shall be known and may be cited as the "New York ultrasound informed consent act".

S 2. Article 25 of the public health law is amended by adding a new title 1-C to read as follows:

TITLE 1-C

ULTRASOUND INFORMED CONSENT ACT

SECTION 2516. DEFINITIONS.
2516-A. REQUIREMENT OF INFORMED CONSENT.
2516-B. EXCEPTION FOR MEDICAL EMERGENCIES.
2516-C. PENALTIES FOR FAILURE TO COMPLY.

S 2516. DEFINITIONS. AS USED IN THIS TITLE:

1. "ABORTION" MEANS THE INTENTIONAL USE OR PRESCRIPTION OF ANY INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE OR DEVICE OR METHOD TO TERMINATE THE LIFE OF AN UNBORN CHILD, OR TO TERMINATE THE PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT WITH AN INTENTION OTHER THAN:

(A) TO PRODUCE A LIVE BIRTH AND PRESERVE THE LIFE AND HEALTH OF THE CHILD AFTER LIVE BIRTH; OR

(B) TO REMOVE AN ECTOPIC PREGNANCY, OR TO REMOVE A DEAD UNBORN CHILD WHO DIED AS THE RESULT OF A SPONTANEOUS ABORTION, ACCIDENTAL TRAUMA, OR A CRIMINAL ASSAULT ON THE PREGNANT FEMALE OR HER UNBORN CHILD.

2. "ABORTION PROVIDER" MEANS ANY PERSON LEGALLY QUALIFIED TO PERFORM AN ABORTION UNDER APPLICABLE FEDERAL AND STATE LAWS.

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

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3. "UNBORN CHILD" MEANS A MEMBER OF THE SPECIES HOMO SAPIENS, AT ANY STAGE OF DEVELOPMENT PRIOR TO BIRTH.

4. "UNEMANCIPATED MINOR" MEANS A MINOR WHO IS SUBJECT TO THE CONTROL, AUTHORITY, AND SUPERVISION OF HIS OR HER PARENT OR GUARDIAN, AS DETERMINED UNDER STATE LAW.

5. "WOMAN" MEANS A FEMALE HUMAN BEING WHETHER OR NOT SHE HAS REACHED THE AGE OF MAJORITY.

S 2516-A. REQUIREMENT OF INFORMED CONSENT. 1. ANY ABORTION PROVIDER IN OR AFFECTING INTERSTATE OR FOREIGN COMMERCE, WHO KNOWINGLY PERFORMS ANY ABORTION, SHALL COMPLY WITH THE REQUIREMENTS OF THIS TITLE.

2. PRIOR TO A WOMAN GIVING INFORMED CONSENT TO HAVING ANY PART OF AN ABORTION PERFORMED, THE ABORTION PROVIDER WHO IS TO PERFORM THE ABORTION, OR AN AGENT UNDER THE SUPERVISION OF THE PROVIDER, SHALL:

(A) PERFORM AN OBSTETRIC ULTRASOUND ON THE PREGNANT WOMAN;

(B) PROVIDE A SIMULTANEOUS EXPLANATION OF WHAT THE ULTRASOUND IS DEPICTING;

(C) DISPLAY THE ULTRASOUND IMAGES SO THAT THE PREGNANT WOMAN MAY VIEW THEM; AND

(D) PROVIDE A COMPLETE MEDICAL DESCRIPTION OF THE ULTRASOUND IMAGES, WHICH SHALL INCLUDE ALL OF THE FOLLOWING: THE DIMENSIONS OF THE EMBRYO OR FETUS, CARDIAC ACTIVITY IF PRESENT AND VISIBLE, AND THE PRESENCE OF EXTERNAL MEMBERS AND INTERNAL ORGANS IF PRESENT AND VIEWABLE.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A PREGNANT WOMAN FROM TURNING HER EYES AWAY FROM THE ULTRASOUND IMAGES REQUIRED TO BE DISPLAYED AND DESCRIBED TO HER. NEITHER THE ABORTION PROVIDER NOR THE PREGNANT WOMAN SHALL BE SUBJECT TO ANY PENALTY UNDER THIS TITLE IF THE PREGNANT WOMAN DECLINES TO LOOK AT THE DISPLAYED ULTRASOUND IMAGES.

S 2516-B. EXCEPTION FOR MEDICAL EMERGENCIES. 1. THE PROVISIONS OF SECTION TWENTY-FIVE HUNDRED SIXTEEN-A OF THIS TITLE SHALL NOT APPLY TO AN ABORTION PROVIDER IF THE ABORTION IS NECESSARY TO SAVE THE LIFE OF A MOTHER WHOSE LIFE IS ENDANGERED BY A PHYSICAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY, INCLUDING A LIFE-ENDANGERING PHYSICAL CONDITION CAUSED BY OR ARISING FROM THE PREGNANCY ITSELF.

2. UPON A DETERMINATION BY AN ABORTION PROVIDER UNDER SUBDIVISION ONE OF THIS SECTION THAT AN ABORTION IS NECESSARY TO SAVE THE LIFE OF A MOTHER, SUCH PROVIDER SHALL INCLUDE IN THE MEDICAL FILE OF THE PREGNANT WOMAN A TRUTHFUL AND ACCURATE CERTIFICATION OF THE SPECIFIC MEDICAL CIRCUMSTANCES THAT SUPPORT SUCH DETERMINATION.

S 2516-C. PENALTIES FOR FAILURE TO COMPLY. 1. THE ATTORNEY GENERAL MAY COMMENCE A CIVIL ACTION IN STATE COURT UNDER THIS SECTION AGAINST ANY ABORTION PROVIDER WHO KNOWINGLY COMMITS AN ACT CONSTITUTING A VIOLATION OF THIS TITLE FOR A PENALTY IN AN AMOUNT NOT TO EXCEED:

(A) ONE HUNDRED THOUSAND DOLLARS FOR EACH VIOLATION IN THE FIRST PROCEEDING IN THE CASE OF THE FIRST SUCH VIOLATION; AND

(B) TWO HUNDRED FIFTY THOUSAND DOLLARS PER VIOLATION IN THE CASE OF EACH SUBSEQUENT PROCEEDING.

2. UPON THE ASSESSMENT OF A CIVIL PENALTY UNDER SUBDIVISION ONE OF THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE MEDICAL LICENSING AUTHORITY.

3. A WOMAN UPON WHOM AN ABORTION HAS BEEN PERFORMED IN VIOLATION OF THIS TITLE MAY COMMENCE A CIVIL ACTION AGAINST THE ABORTION PROVIDER FOR ANY VIOLATION OF THIS TITLE FOR ACTUAL AND PUNITIVE DAMAGES. FOR PURPOSES OF THE PRECEDING SENTENCE, ACTUAL DAMAGES ARE OBJECTIVELY VERIFIABLE MONEY DAMAGES FOR ALL INJURIES.

S 3. Severability. If any provision of this act, or any application thereof, is found to be unconstitutional, the remainder of this act and any application thereof shall not be affected by such finding.

S 4. This act shall take effect immediately.