

4622--C

2015-2016 Regular Sessions

I N   S E N A T E

April 1, 2015

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Introduced by Sens. GOLDEN, ADDABBO, COMRIE, DILAN, GALLIVAN, HAMILTON, HOYLMAN, KRUEGER, LATIMER, PANEPINTO, PARKER, PERSAUD, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the civil rights law, in relation to prohibiting the making and/or broadcasting of visual images of individuals undergoing medical treatment without prior written consent

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

1     Section 1. The public health law is amended by adding a new section  
2     2806-c to read as follows:  
3     S 2806-C. RESTRICTIONS ON BROADCASTING OF PATIENTS. 1. EVERY PATIENT  
4     IN A HEALTH CARE FACILITY SHALL HAVE THE RIGHT TO HAVE PRIVACY IN TREAT-  
5     MENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING THE BROADCASTING OF THE  
6     RECOGNIZABLE IMAGE OR SPEECH OF SUCH PATIENT INVOLVED IN A HEALTH CARE  
7     PROCEDURE IN SUCH FACILITY, WITH THE EXCEPTION OF BROADCASTING SUCH  
8     IMAGE OR SPEECH FOR THE PURPOSES OF ADVANCING THE HEALTH CARE TREATMENT  
9     OF THE INDIVIDUAL, A QUALITY ASSURANCE PROGRAM, THE EDUCATION OR TRAIN-  
10    ING OF HEALTH CARE PERSONNEL, OR NECESSARY SECURITY PURPOSES.  
11    2. SUCH PRIVACY IN TREATMENT SHALL INCLUDE THE OBTAINING BY THE HEALTH  
12    CARE FACILITY OF EXPRESS WRITTEN CONSENT ON A SEPARATE DOCUMENT USED  
13    SOLELY FOR SUCH PURPOSE FROM AN INDIVIDUAL RECEIVING TREATMENT IN SUCH  
14    FACILITY PRIOR TO BROADCASTING THE RECOGNIZABLE IMAGE OR SPEECH OF SUCH  
15    PATIENT INVOLVED IN SUCH TREATMENT. IN THE CASE OF BROADCASTING THE

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

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1 RECOGNIZABLE IMAGE OR SPEECH FOR EDUCATION OR TRAINING OF HEALTH CARE  
2 PERSONNEL, THE PATIENT SHALL HAVE THE RIGHT TO KNOW OF AND SHALL HAVE  
3 THE RIGHT TO REFUSE THE BROADCASTING FOR THAT PURPOSE. A PERSON LEGALLY  
4 AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR THE PATIENT OR OTHERWISE  
5 AUTHORIZED TO CONSENT MAY GRANT SUCH CONSENT OR EXERCISE SUCH REFUSAL IF  
6 THE PATIENT CANNOT REASONABLY DO SO DUE TO SUCH PATIENT'S INCAPACITY.

7 3. FOR THE PURPOSES OF THIS SECTION:

8 (A) "HEALTH CARE FACILITY" SHALL MEAN A RESIDENTIAL HEALTH CARE FACIL-  
9 ITY, GENERAL HOSPITAL, FREE-STANDING AMBULATORY CARE FACILITY, DIAGNOS-  
10 TIC AND/OR TREATMENT CENTER AND CLINIC AUTHORIZED UNDER THIS ARTICLE, OR  
11 AMBULANCE OPERATED BY AN AMBULANCE SERVICE AS DEFINED BY SUBDIVISION TWO  
12 OF SECTION THREE THOUSAND ONE OF THIS CHAPTER OR BY A VOLUNTARY AMBU-  
13 LANCE SERVICE AS DEFINED BY SUBDIVISION THREE OF SECTION THREE THOUSAND  
14 ONE OF THIS CHAPTER;

15 (B) "QUALITY ASSURANCE" SHALL MEAN ANY EVALUATION OF SERVICES PROVIDED  
16 IN OR BY A HEALTH CARE FACILITY FOR PURPOSES OF IMPROVEMENT IN SAFETY,  
17 QUALITY OR OUTCOMES;

18 (C) "EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL" SHALL MEAN A  
19 PROGRAM OF EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL OR STUDENTS  
20 BEING EDUCATED OR TRAINED TO BE HEALTH CARE PERSONNEL, THAT THE HEALTH  
21 CARE FACILITY HAS AUTHORIZED;

22 (D) "BROADCASTING" OF AN IMAGE OR SPEECH SHALL MEAN TRANSMISSION BY  
23 BROADCAST, CABLE, CLOSED CIRCUIT, INTERNET OR OTHER TELEVISION OR VISUAL  
24 MEDIUM, SOCIAL MEDIA, OR OTHER SYSTEM BY WHICH IT CAN BE VIEWED IN  
25 VIOLATION OF THE PRIVACY RIGHTS AND EXPECTATIONS OF A PATIENT.

26 4. NOTHING IN THIS SECTION SHALL DIMINISH OR IMPAIR ANY RIGHT OR REME-  
27 DY OTHERWISE APPLICABLE TO ANY PATIENT.

28 S 2. Section 50-c of the civil rights law, as amended by chapter 643  
29 of the laws of 1999, is amended to read as follows:

30 S 50-c. Private right of action. 1. If the identity of the victim of  
31 an offense defined in subdivision one of section fifty-b of this article  
32 is disclosed in violation of such section, any person injured by such  
33 disclosure may bring an action to recover damages suffered by reason of  
34 such wrongful disclosure. In any action brought under this section, the  
35 court may award reasonable [attorney's] ATTORNEYS' fees to a prevailing  
36 plaintiff.

37 2. IF THE PRIVACY OF AN INDIVIDUAL AS DEFINED IN SECTION TWENTY-EIGHT  
38 HUNDRED SIX-C OF THE PUBLIC HEALTH LAW REGARDING THE RIGHT TO HAVE  
39 PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING THE  
40 BROADCASTING OF THE RECOGNIZABLE IMAGE OR SPEECH OF A PATIENT INVOLVED  
41 IN A HEALTH CARE PROCEDURE IN SUCH A FACILITY HAS BEEN VIOLATED, SUCH  
42 INDIVIDUAL OR HIS OR HER ESTATE REPRESENTATIVE MAY BRING AN ACTION TO  
43 RECOVER DAMAGES SUFFERED BY REASON OF SUCH VIOLATION. IN ANY ACTION  
44 BROUGHT UNDER THIS SECTION, THE COURT MAY AWARD REASONABLE ATTORNEYS'  
45 FEES TO A PREVAILING PLAINTIFF. THE CAUSE OF ACTION CREATED HEREIN SHALL  
46 SURVIVE THE DEATH OF SUCH INDIVIDUAL.

47 S 3. This act shall take effect immediately.