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

5161--D

2015-2016 Regular Sessions

I N A S S E M B L Y

February 12, 2015

Introduced by M. of A. BRAUNSTEIN, SKOUFIS, MOSLEY, JAFFEE, MILLER, BRINDISI, ARROYO, HOOPER, GOTTFRIED, ZEBROWSKI, COOK, MONTESANO, FINCH, SALADINO, ROBINSON, SEAWRIGHT, FRIEND, RUSSELL, GALEF, KAVANAGH, HEVESI -- Multi-Sponsored by -- M. of A. CERETTO, HIKIND, McDONOUGH, PALMESANO, PEOPLES-STOKES, SCHIMMINGER, SIMON, TITONE -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- 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:

Section 1. The public health law is amended by adding a new section 2806-c to read as follows:

S 2806-C. RESTRICTIONS ON BROADCASTING OF PATIENTS. 1. EVERY PATIENT IN A HEALTH CARE FACILITY SHALL HAVE THE RIGHT TO HAVE PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING THE BROADCASTING OF THE RECOGNIZABLE IMAGE OR SPEECH OF SUCH PATIENT INVOLVED IN A HEALTH CARE PROCEDURE IN SUCH FACILITY, WITH THE EXCEPTION OF BROADCASTING SUCH IMAGE OR SPEECH FOR THE PURPOSES OF ADVANCING THE HEALTH CARE TREATMENT OF THE INDIVIDUAL, A QUALITY ASSURANCE PROGRAM, THE EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL, OR NECESSARY SECURITY PURPOSES.

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

LBD08232-21-6

2. SUCH PRIVACY IN TREATMENT SHALL INCLUDE THE OBTAINING BY THE HEALTH CARE FACILITY OF EXPRESS WRITTEN CONSENT ON A SEPARATE DOCUMENT USED SOLELY FOR SUCH PURPOSE FROM AN INDIVIDUAL RECEIVING TREATMENT IN SUCH FACILITY PRIOR TO BROADCASTING THE RECOGNIZABLE IMAGE OR SPEECH OF SUCH PATIENT INVOLVED IN SUCH TREATMENT. IN THE CASE OF BROADCASTING THE RECOGNIZABLE IMAGE OR SPEECH FOR EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL, THE PATIENT SHALL HAVE THE RIGHT TO KNOW OF AND SHALL HAVE THE RIGHT TO REFUSE THE BROADCASTING FOR THAT PURPOSE. A PERSON LEGALLY AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR THE PATIENT OR OTHERWISE AUTHORIZED TO CONSENT MAY GRANT SUCH CONSENT OR EXERCISE SUCH REFUSAL IF THE PATIENT CANNOT REASONABLY DO SO DUE TO SUCH PATIENT'S INCAPACITY.

3. FOR THE PURPOSES OF THIS SECTION:

(A) "HEALTH CARE FACILITY" SHALL MEAN A RESIDENTIAL HEALTH CARE FACILITY, GENERAL HOSPITAL, FREE-STANDING AMBULATORY CARE FACILITY, DIAGNOSTIC AND/OR TREATMENT CENTER AND CLINIC AUTHORIZED UNDER THIS ARTICLE, OR AMBULANCE OPERATED BY AN AMBULANCE SERVICE AS DEFINED BY SUBDIVISION TWO OF SECTION THREE THOUSAND ONE OF THIS CHAPTER OR BY A VOLUNTARY AMBULANCE SERVICE AS DEFINED BY SUBDIVISION THREE OF SECTION THREE THOUSAND ONE OF THIS CHAPTER;

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

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

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

4. NOTHING IN THIS SECTION SHALL DIMINISH OR IMPAIR ANY RIGHT OR REMEDY OTHERWISE APPLICABLE TO ANY PATIENT.

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

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

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

S 3. This act shall take effect immediately.