

178--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- 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

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 Title III of article 25 of the public health law is REPEALED and a new title III is added to read as follows: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

2560-F. INTERNET WEBSITE.

2560-G. ABORTION PROVIDER WEBSITE.

2560-H. EMERGENCY.

2560-I. REPORTING REQUIREMENTS.

2560-J. CRIMINAL PENALTIES.

2560-K. CIVIL PENALTIES.

2560-L. LIMITATION ON CIVIL LIABILITY.

2560-M. SEVERABILITY.

2560-N. CONSTRUCTION.

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

LBD01696-02-6

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

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

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

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

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

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

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

25 (F) ABORTION FACILITIES OR PROVIDERS OFFER ONLY LIMITED AND/OR IMPER-
26 SONAL COUNSELING OPPORTUNITIES.

27 (G) MANY ABORTION FACILITIES OR PROVIDERS HIRE UNTRAINED AND UNPROFES-
28 SIONAL "COUNSELORS" WHOSE PRIMARY GOAL IS TO SELL ABORTION SERVICES.

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

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

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

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

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

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

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

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

53 4. "MEDICAL EMERGENCY" MEANS THAT CONDITION WHICH, ON THE BASIS OF THE
54 PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL
55 CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE THE IMMEDIATE ABORTION
56 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 "VIALE" 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 VIALE 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;

1 (C) THE STATE ENCOURAGES HER TO VIEW THE ULTRASOUND IMAGE OF HER
2 UNBORN CHILD, AS DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-E OF
3 THIS TITLE, BEFORE SHE DECIDES TO HAVE AN ABORTION. IF THE WOMAN DOES
4 NOT HAVE PRIVATE HEALTH INSURANCE COVERAGE FOR THE ULTRASOUND SERVICE,
5 SHE SHALL BE PRESUMPTIVELY ELIGIBLE FOR MEDICAL ASSISTANCE COVERAGE FOR
6 THE ULTRASOUND SERVICE; AND

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

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

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

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

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

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

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

33 (A) GEOGRAPHICALLY INDEXED MATERIALS DESIGNED TO INFORM THE WOMAN OF
34 PUBLIC AND PRIVATE AGENCIES AND SERVICES AVAILABLE TO ASSIST A WOMAN
35 THROUGH PREGNANCY, UPON CHILDBIRTH AND WHILE HER CHILD IS DEPENDENT,
36 INCLUDING BUT NOT LIMITED TO, ADOPTION AGENCIES. THE MATERIALS SHALL
37 INCLUDE A COMPREHENSIVE LIST OF THE AGENCIES, A DESCRIPTION OF THE
38 SERVICES THEY OFFER, AND THE TELEPHONE NUMBERS AND ADDRESSES OF THE
39 AGENCIES; AND INFORM THE WOMAN ABOUT AVAILABLE MEDICAL ASSISTANCE BENE-
40 FITS FOR PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE, AND ABOUT THE
41 SUPPORT OBLIGATIONS OF THE FATHER OF A CHILD WHO IS BORN ALIVE. THE
42 DEPARTMENT SHALL ENSURE THAT THE MATERIALS DESCRIBED IN THIS SECTION ARE
43 COMPREHENSIVE AND DO NOT DIRECTLY OR INDIRECTLY PROMOTE, EXCLUDE OR
44 DISCOURAGE THE USE OF ANY AGENCY OR SERVICE DESCRIBED IN THIS SECTION.
45 THE MATERIALS SHALL ALSO CONTAIN A TOLL-FREE, TWENTY-FOUR HOUR A DAY
46 TELEPHONE NUMBER WHICH MAY BE CALLED TO OBTAIN, ORALLY, SUCH A LIST AND
47 DESCRIPTION OF AGENCIES IN THE LOCALITY OF THE CALLER AND OF THE
48 SERVICES THEY OFFER. THE MATERIALS SHALL STATE THAT IT IS UNLAWFUL FOR
49 ANY INDIVIDUAL TO COERCE A WOMAN TO UNDERGO AN ABORTION, THAT ANY PHYSI-
50 CIAN WHO PERFORMS AN ABORTION UPON A WOMAN WITHOUT HER INFORMED CONSENT
51 MAY BE LIABLE TO HER FOR DAMAGES IN A CIVIL ACTION AT LAW AND THAT THE
52 LAW PERMITS ADOPTIVE PARENTS TO PAY COSTS OF PRENATAL CARE, CHILDBIRTH
53 AND NEONATAL CARE. THE MATERIALS SHALL INCLUDE THE FOLLOWING STATEMENT:

54 "THERE ARE MANY PUBLIC AND PRIVATE AGENCIES WILLING AND ABLE TO HELP
55 YOU TO CARRY YOUR CHILD TO TERM, AND TO ASSIST YOU AND YOUR CHILD AFTER
56 YOUR CHILD IS BORN, WHETHER YOU CHOOSE TO KEEP YOUR CHILD OR TO PLACE

1 HER OR HIM FOR ADOPTION. THE STATE OF NEW YORK STRONGLY URGES YOU TO
2 CONTACT THEM BEFORE MAKING A FINAL DECISION ABOUT ABORTION. THE LAW
3 REQUIRES THAT YOUR PHYSICIAN OR HIS OR HER AGENT GIVE YOU THE OPPORTU-
4 NITY TO CALL AGENCIES LIKE THESE BEFORE YOU UNDERGO AN ABORTION."

5 (B) MATERIALS THAT INFORM THE PREGNANT WOMAN OF THE PROBABLE ANATOM-
6 ICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT TWO-WEEK
7 GESTATIONAL INCREMENTS FROM FERTILIZATION TO FULL TERM, INCLUDING
8 PICTURES OR DRAWINGS REPRESENTING THE DEVELOPMENT OF UNBORN CHILDREN AT
9 TWO-WEEK GESTATIONAL INCREMENTS, AND ANY RELEVANT INFORMATION ON THE
10 POSSIBILITY OF THE UNBORN CHILD'S SURVIVAL; PROVIDED THAT ANY SUCH
11 PICTURES OR DRAWINGS SHALL CONTAIN THE DIMENSIONS OF THE UNBORN CHILD
12 AND MUST BE REALISTIC. THE MATERIALS SHALL BE OBJECTIVE, NONJUDGMENTAL
13 AND DESIGNED TO CONVEY ONLY ACCURATE SCIENTIFIC INFORMATION ABOUT THE
14 UNBORN CHILD AT THE VARIOUS GESTATIONAL AGES. THE MATERIAL SHALL ALSO
15 CONTAIN OBJECTIVE INFORMATION DESCRIBING THE METHODS OF ABORTION PROCE-
16 DURES COMMONLY EMPLOYED, THE MEDICAL RISKS COMMONLY ASSOCIATED WITH EACH
17 SUCH PROCEDURE AND THE MEDICAL RISKS ASSOCIATED WITH CARRYING A CHILD TO
18 TERM.

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

21 3. THE MATERIALS REQUIRED UNDER THIS SECTION SHALL BE AVAILABLE AT NO
22 COST FROM THE DEPARTMENT UPON REQUEST AND IN APPROPRIATE NUMBER TO ANY
23 PERSON, FACILITY OR HOSPITAL.

24 S 2560-E. ULTRASOUND. 1. PRIOR TO A WOMAN GIVING INFORMED CONSENT TO
25 HAVING ANY PART OF AN ABORTION PERFORMED OR INDUCED, AND PRIOR TO THE
26 ADMINISTRATION OF ANY ANESTHESIA OR MEDICATION IN PREPARATION FOR THE
27 ABORTION ON THE WOMAN THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR A
28 QUALIFIED TECHNICIAN SHALL:

29 (A) PERFORM AN OBSTETRIC ULTRASOUND ON THE PREGNANT WOMAN, USING
30 WHICHEVER METHOD THE PHYSICIAN AND PATIENT AGREE IS BEST UNDER THE
31 CIRCUMSTANCE;

32 (B) PROVIDE A SIMULTANEOUS VERBAL EXPLANATION OF WHAT THE ULTRASOUND
33 IS DEPICTING, WHICH SHALL INCLUDE THE PRESENCE AND LOCATION OF THE
34 UNBORN CHILD WITHIN THE UTERUS AND THE NUMBER OF UNBORN CHILDREN
35 DEPICTED. IF THE ULTRASOUND IMAGE INDICATES THAT FETAL DEMISE HAS
36 OCCURRED, A WOMAN SHALL BE INFORMED OF THAT FACT;

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

39 (D) PROVIDE A MEDICAL DESCRIPTION OF THE ULTRASOUND IMAGES, WHICH
40 SHALL INCLUDE THE DIMENSIONS OF THE EMBRYO OR FETUS AND THE PRESENCE OF
41 EXTERNAL MEMBERS AND INTERNAL ORGANS, IF PRESENT AND VIEWABLE;

42 (E) OBTAIN A WRITTEN CERTIFICATION FROM THE WOMAN, PRIOR TO THE
43 ABORTION, THAT THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION HAVE
44 BEEN COMPLIED WITH; AND

45 (F) RETAIN A COPY OF THE WRITTEN CERTIFICATION PRESCRIBED BY PARAGRAPH
46 (E) OF THIS SUBDIVISION. THE CERTIFICATION SHALL BE PLACED IN THE
47 MEDICAL FILE OF THE WOMAN AND SHALL BE KEPT BY THE ABORTION PROVIDER FOR
48 A PERIOD OF NOT LESS THAN SEVEN YEARS. IF THE WOMAN IS A MINOR, THEN THE
49 CERTIFICATION SHALL BE PLACED IN THE MEDICAL FILE OF THE MINOR AND KEPT
50 FOR AT LEAST SEVEN YEARS OR FOR FIVE YEARS AFTER THE MINOR REACHES THE
51 AGE OF MAJORITY, WHICHEVER IS GREATER.

52 2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A PREGNANT
53 WOMAN FROM AVERTING HER EYES FROM THE ULTRASOUND IMAGES REQUIRED TO BE
54 PROVIDED TO AND REVIEWED WITH HER. NEITHER THE PHYSICIAN NOR THE PREG-
55 NANT WOMAN SHALL BE SUBJECT TO ANY PENALTY IF SHE REFUSES TO LOOK AT THE
56 PRESENTED ULTRASOUND IMAGES.

1 3. PRIOR TO A WOMAN GIVING INFORMED CONSENT TO HAVING ANY PART OF AN
2 ABORTION PERFORMED OR INDUCED, IF THE PREGNANCY IS AT LEAST EIGHT WEEKS
3 AFTER FERTILIZATION (TEN WEEKS FROM THE FIRST DAY OF THE LAST MENSTRUAL
4 PERIOD), THE ABORTION PROVIDER WHO IS TO PERFORM OR INDUCE THE ABORTION,
5 A CERTIFIED TECHNICIAN, OR ANOTHER AGENT OF THE ABORTION PROVIDER SHALL,
6 USING A HAND-HELD DOPPLER FETAL MONITOR, MAKE THE EMBRYONIC OR FETAL
7 HEARTBEAT OF THE UNBORN CHILD AUDIBLE FOR THE PREGNANT WOMAN TO HEAR.

8 4. A PHYSICIAN, A CERTIFIED TECHNICIAN, OR ANOTHER AGENT OF THE PHYSI-
9 CIAN SHALL NOT BE IN VIOLATION OF SUBDIVISION THREE OF THIS SECTION IF:

10 (A) THE PHYSICIAN, CERTIFIED TECHNICIAN, OR AGENT HAS ATTEMPTED,
11 CONSISTENT WITH STANDARD MEDICAL PRACTICE, TO MAKE THE EMBRYONIC OR
12 FETAL HEARTBEAT OF THE UNBORN CHILD AUDIBLE FOR THE PREGNANT WOMAN TO
13 HEAR USING A HAND-HELD DOPPLER FETAL MONITOR;

14 (B) THAT ATTEMPT DOES NOT RESULT IN THE HEARTBEAT BEING MADE AUDIBLE;
15 AND

16 (C) THE PHYSICIAN HAS OFFERED TO ATTEMPT TO MAKE THE HEARTBEAT AUDIBLE
17 AT A SUBSEQUENT DATE.

18 5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE PREGNANT
19 WOMAN FROM NOT LISTENING TO THE SOUNDS DETECTED BY THE HAND-HELD DOPPLER
20 FETAL MONITOR, PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

21 S 2560-F. INTERNET WEBSITE. 1. THE DEPARTMENT SHALL DEVELOP AND MAIN-
22 TAIN A STABLE INTERNET WEBSITE TO PROVIDE THE INFORMATION DESCRIBED
23 UNDER SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS TITLE. NO INFORMATION
24 REGARDING WHO USES THE WEBSITE SHALL BE COLLECTED OR MAINTAINED. THE
25 DEPARTMENT SHALL MONITOR THE WEBSITE ON A DAILY BASIS TO PREVENT AND
26 CORRECT TAMPERING AND SHALL IMMEDIATELY NOTIFY ABORTION PROVIDERS OF ANY
27 CHANGE IN THE LOCATION OF THE MATERIAL ON ITS WEBSITE.

28 2. THE WEBSITE SHALL:

29 (A) USE ENHANCED, USER-FRIENDLY SEARCH CAPABILITIES TO ENSURE THAT THE
30 INFORMATION DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS
31 TITLE IS EASILY ACCESSIBLE, AND MUST USE SEARCHABLE KEYWORDS AND PHRAS-
32 ES, SPECIFICALLY TO ENSURE THAT ENTERING THE TERM "ABORTION" YIELDS THE
33 MATERIALS FROM SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS TITLE,
34 REGARDLESS OF HOW SUCH MATERIALS ARE LABELED;

35 (B) ENSURE THAT THE MATERIAL FROM SECTION TWENTY-FIVE HUNDRED SIXTY-D
36 OF THIS TITLE IS PRINTABLE;

37 (C) GIVE CLEAR PROMINENT INSTRUCTIONS ON HOW TO RECEIVE THE INFORMA-
38 TION IN PRINTED FORM; AND

39 (D) BE ACCESSIBLE TO THE PUBLIC WITHOUT REQUIRING REGISTRATION OR USE
40 OF A USER NAME, A PASSWORD, OR ANOTHER USER IDENTIFICATION.

41 S 2560-G. ABORTION PROVIDER WEBSITE. IF AN ABORTION PROVIDER HAS A
42 WEBSITE, THE ABORTION PROVIDER'S INTERNET WEBSITE HOME PAGE, BY USE OF
43 AT LEAST TWO DIRECT LINKS, ONE OF WHICH IS POSTED PROMINENTLY, SHALL
44 LINK TO THE DEPARTMENT'S INFORMED CONSENT MATERIALS.

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

50 S 2560-I. REPORTING REQUIREMENTS. 1. WITHIN NINETY DAYS AFTER THIS
51 ACT IS ENACTED, THE DEPARTMENT SHALL PREPARE A REPORTING FORM FOR PHYSI-
52 CIANS CONTAINING A REPRINT OF THIS ACT AND LISTING:

53 (A) THE NUMBER OF WOMEN TO WHOM THE PHYSICIAN PROVIDED THE INFORMATION
54 DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-C OF THIS TITLE; OF THAT
55 NUMBER, THE NUMBER PROVIDED BY TELEPHONE AND THE NUMBER PROVIDED IN
56 PERSON; AND OF EACH OF THOSE NUMBERS, THE NUMBER PROVIDED IN THE CAPACI-

TY OF A REFERRING PHYSICIAN AND THE NUMBER PROVIDED IN THE CAPACITY OF A PHYSICIAN WHO IS TO PERFORM THE ABORTION;

(B) THE NUMBER OF WOMEN TO WHOM THE PHYSICIAN OR AN AGENT OF THE PHYSICIAN PROVIDED THE INFORMATION DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-C OF THIS TITLE; OF THAT NUMBER, THE NUMBER PROVIDED BY TELEPHONE AND THE NUMBER PROVIDED IN PERSON; OF EACH OF THOSE NUMBERS, THE NUMBER PROVIDED IN THE CAPACITY OF A REFERRING PHYSICIAN AND THE NUMBER PROVIDED IN THE CAPACITY OF A PHYSICIAN WHO IS TO PERFORM THE ABORTION; AND OF EACH OF THOSE NUMBERS, THE NUMBER PROVIDED BY THE PHYSICIAN AND THE NUMBER PROVIDED BY AN AGENT OF THE PHYSICIAN;

(C) THE NUMBER OF WOMEN WHO AVAILED THEMSELVES OF THE OPPORTUNITY TO OBTAIN A COPY OF THE PRINTED INFORMATION DESCRIBED IN SECTION TWENTY-FIVE HUNDRED SIXTY-D OF THIS TITLE OTHER THAN ON THE WEBSITE, AND THE NUMBER WHO DID NOT; AND OF EACH OF THOSE NUMBERS, THE NUMBER WHO, TO THE BEST OF THE REPORTING PHYSICIAN'S INFORMATION AND BELIEF, WENT ON TO OBTAIN THE ABORTION; AND

(D) THE NUMBER OF ABORTIONS PERFORMED BY THE PHYSICIAN IN WHICH INFORMATION OTHERWISE REQUIRED TO BE PROVIDED AT LEAST TWENTY-FOUR HOURS BEFORE THE ABORTION WAS NOT SO PROVIDED BECAUSE AN IMMEDIATE ABORTION WAS NECESSARY TO AVERT THE WOMAN'S DEATH, AND THE NUMBER OF ABORTIONS IN WHICH SUCH INFORMATION WAS NOT SO PROVIDED BECAUSE A DELAY WOULD CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

2. THE DEPARTMENT SHALL ENSURE THAT COPIES OF THE REPORTING FORMS DESCRIBED IN SUBDIVISION (A) OF THIS SECTION ARE PROVIDED:

(A) WITHIN ONE HUNDRED TWO DAYS AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND SIXTEEN WHICH ENACTED THIS TITLE, TO ALL PHYSICIANS LICENSED TO PRACTICE IN THIS STATE;

(B) TO EACH PHYSICIAN WHO SUBSEQUENTLY BECOMES NEWLY LICENSED TO PRACTICE IN THIS STATE, AT THE SAME TIME AS OFFICIAL NOTIFICATION TO THAT PHYSICIAN THAT THE PHYSICIAN IS SO LICENSED; AND

(C) BY DECEMBER FIRST OF EACH YEAR, OTHER THAN THE CALENDAR YEAR IN WHICH FORMS ARE DISTRIBUTED IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION, TO ALL PHYSICIANS LICENSED TO PRACTICE IN THIS STATE.

3. BY FEBRUARY TWENTY-EIGHTH OF EACH YEAR FOLLOWING A CALENDAR YEAR IN ANY PART OF WHICH THIS ACT WAS IN EFFECT, EACH PHYSICIAN WHO PROVIDED, OR WHOSE AGENT PROVIDED, INFORMATION TO ONE OR MORE WOMEN IN ACCORDANCE WITH SECTION TWENTY-FIVE HUNDRED SIXTY-C OF THIS TITLE DURING THE PREVIOUS CALENDAR YEAR SHALL SUBMIT TO THE DEPARTMENT A COPY OF THE FORM DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, WITH THE REQUESTED DATA ENTERED ACCURATELY AND COMPLETELY.

4. REPORTS THAT ARE NOT SUBMITTED BY THE END OF A GRACE PERIOD OF THIRTY DAYS FOLLOWING THE DUE DATE SHALL BE SUBJECT TO A LATE FEE OF FIVE HUNDRED DOLLARS FOR EACH ADDITIONAL THIRTY DAY PERIOD OR PORTION OF A THIRTY DAY PERIOD THEY ARE OVERDUE. ANY PHYSICIAN REQUIRED TO REPORT IN ACCORDANCE WITH THIS SECTION WHO HAS NOT SUBMITTED A REPORT, OR HAS SUBMITTED ONLY AN INCOMPLETE REPORT, MORE THAN ONE YEAR FOLLOWING THE DUE DATE, MAY, IN AN ACTION BROUGHT BY THE DEPARTMENT, BE DIRECTED BY A COURT OF COMPETENT JURISDICTION TO SUBMIT A COMPLETE REPORT WITHIN A PERIOD STATED BY COURT ORDER OR BE SUBJECT TO SANCTIONS FOR CIVIL CONTEMPT.

5. BY JUNE THIRTIETH OF EACH YEAR THE DEPARTMENT SHALL ISSUE A PUBLIC REPORT PROVIDING STATISTICS FOR THE PREVIOUS CALENDAR YEAR COMPILED FROM ALL OF THE REPORTS COVERING THAT YEAR SUBMITTED IN ACCORDANCE WITH THIS SECTION FOR EACH OF THE ITEMS LISTED IN SUBDIVISION ONE OF THIS SECTION. EACH SUCH REPORT SHALL ALSO PROVIDE THE STATISTICS FOR ALL PREVIOUS

1 CALENDAR YEARS, ADJUSTED TO REFLECT ANY ADDITIONAL INFORMATION FROM LATE
2 OR CORRECTED REPORTS. THE DEPARTMENT SHALL TAKE CARE TO ENSURE THAT NONE
3 OF THE INFORMATION INCLUDED IN THE PUBLIC REPORTS COULD REASONABLY LEAD
4 TO THE IDENTIFICATION OF ANY INDIVIDUAL PROVIDED INFORMATION IN ACCORD-
5 ANCE WITH SUBDIVISION ONE OF THIS SECTION.

6 6. THE DEPARTMENT MAY BY REGULATION ALTER THE DATES ESTABLISHED BY
7 THIS SECTION OR CONSOLIDATE THE FORMS OR REPORTS DESCRIBED IN THIS
8 SECTION WITH OTHER FORMS OR REPORTS TO ACHIEVE ADMINISTRATIVE CONVEN-
9 IENCE OR FISCAL SAVINGS OR TO REDUCE THE BURDEN OF REPORTING REQUIRE-
10 MENTS, SO LONG AS REPORTING FORMS ARE SENT TO ALL LICENSED PHYSICIANS IN
11 THE STATE AT LEAST ONCE EVERY YEAR AND THE REPORT DESCRIBED IN SUBDIVI-
12 SION FIVE OF THIS SECTION, IS ISSUED AT LEAST ONCE EVERY YEAR.

13 S 2560-J. CRIMINAL PENALTIES. ANY PERSON WHO INTENTIONALLY, KNOWINGLY
14 OR RECKLESSLY VIOLATES THE PROVISIONS OF THIS TITLE SHALL BE GUILTY OF A
15 FELONY. ANY PHYSICIAN WHO KNOWINGLY OR RECKLESSLY SUBMITS A FALSE REPORT
16 UNDER SECTION TWENTY-FIVE HUNDRED SIXTY-I OF THIS TITLE SHALL BE GUILTY
17 OF A MISDEMEANOR. NO PENALTY MAY BE ASSESSED AGAINST THE WOMAN UPON WHOM
18 THE ABORTION IS PERFORMED OR ATTEMPTED TO BE PERFORMED. NO PENALTY OR
19 CIVIL LIABILITY MAY BE ASSESSED FOR FAILURE TO COMPLY WITH SECTION TWEN-
20 TY-FIVE HUNDRED SIXTY-C OF THIS TITLE OR THAT PORTION OF SECTION TWEN-
21 TY-FIVE HUNDRED SIXTY-C OF THIS TITLE REQUIRING A WRITTEN CERTIFICATION
22 THAT THE WOMAN HAS BEEN INFORMED OF HER OPPORTUNITY TO REVIEW THE INFOR-
23 MATION REFERRED TO IN SUCH SECTION MAY BE ASSESSED UNLESS THE DEPARTMENT
24 HAS MADE THE PRINTED MATERIALS AVAILABLE AT THE TIME THE PHYSICIAN OR
25 THE PHYSICIAN'S AGENT IS REQUIRED TO INFORM THE WOMAN OF HER RIGHT TO
26 VIEW THEM.

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

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

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

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

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

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

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

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

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

55 (a) Geographically indexed materials designed to inform the woman of
56 public and private agencies and services available to assist a woman

1 through pregnancy, upon childbirth and while her child is dependent,
2 including but not limited to, adoption agencies. The materials shall
3 include a comprehensive list of the agencies, a description of the
4 services they offer, and the telephone numbers and addresses of the
5 agencies; and inform the woman about available medical assistance bene-
6 fits for prenatal care, childbirth, and neonatal care and about the
7 support obligations of the father of a child who is born alive. The
8 department of health shall ensure that the materials described in this
9 section are comprehensive and do not directly or indirectly promote,
10 exclude, or discourage the use of any agency or service described in
11 this section. The materials shall also contain a toll-free twenty-four-
12 hour a day telephone number which may be called to obtain, orally, such
13 a list and description of agencies in the locality of the caller and of
14 the services they offer. The materials shall state that it is unlawful
15 for any individual to coerce a woman to undergo an abortion, that any
16 physician who performs an abortion upon a woman without her informed
17 consent may be liable to her for damages in a civil action at law and
18 that the law permits adoptive parents to pay costs of prenatal care,
19 childbirth and neonatal care. The materials shall include the following
20 statement:

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

28 (b) Materials that inform the pregnant woman of the probable anatom-
29 ical and physiological characteristics of the unborn child at two-week
30 gestational increments from fertilization to full term, including
31 pictures or drawings representing the development of unborn children at
32 two-week gestational increments, and any relevant information on the
33 possibility of the unborn child's survival; provided that any such
34 pictures or drawings must contain the dimensions of the unborn child and
35 must be realistic. The materials shall be objective, nonjudgmental and
36 designed to convey only accurate scientific information about the unborn
37 child at the various gestational ages. The material shall also contain
38 objective information describing the methods of abortion procedures
39 commonly employed, the medical risks commonly associated with each such
40 procedure, and the medical risks associated with carrying a child to
41 term.

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

44 3. The materials required under this section shall be available at no
45 cost from the department of health upon request and in appropriate
46 numbers to any person, facility or hospital.

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