STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. CURRAN, FINCH, GIGLIO, GRAF, HARRIS -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the family court act, in relation to enacting the "family protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "family protection act".

§ 2. Legislative intent. 1. The legislature finds and declares that:

(a) it is the intent of this legislature by enacting this act to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, protecting the rights of parents to rear children who are members of their household, and protecting the health of minor children.

(b) immature minors often lack the ability to make fully-informed choices that take account of both immediate and long-range consequences and that the medical, emotional and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related. Parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning the child and, further, parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion. The legislature concludes then, that, parental consultation is usually desirable and in the best interest of the minor.

(c) it is essential to the psychological and physical well-being of a female considering an abortion that she receive complete and accurate information on her alternatives. The knowledgeable exercise of a woman's

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

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decision to have an abortion depends on the extent to which the female receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

(d) over eighty percent of all abortions are performed in clinics devoted solely to providing abortions and family planning services. Most females 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 female's only actual contact with the physician occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning her decision.

(e) the decision to abort is an important, and often stressful one and it is desirable and imperative that it be made with full knowledge of its nature and consequences. 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. Many abortion facilities or providers hire untrained and unprofessional "counselors" whose primary goal is to sell abortion services.

2. Based on the findings and declarations set forth in subdivision one of this section, it is the intent of this act to:

(a) provide that pregnant minors have the benefit of parental guidance;

(b) ensure that every female considering an abortion receive complete information on her alternatives and that every female submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

(c) protect unborn children from a mother's uninformed decision to have an abortion; and

(d) reduce the risk that a mother may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.

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

TITLE I-C
FAMILY PROTECTION ACT

Section 2515-e. Definitions.
2515-f. Consent concerning an abortion.
2515-g. Limitations.
2515-h. Coercion prohibited.
2515-i. Informed consent requirement.
2515-j. Publication of materials.
2515-k. Emergency.
2515-l. Penalties.
2515-m. Anonymity.

§ 2515-e. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "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 female known to be pregnant with intent other than to increase probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(b) "Attempt to perform an abortion" means an act or omission of a statutorily required act, that, under the circumstances as the actor

believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in the state of New York in violation of this title.

(c) "Unemancipated minor" means a female who has not attained the age of eighteen years and is not an emancipated minor as defined in subdivision (d) of this section.

(d) "Emancipated minor" means a female who is or has been lawfully married or has by court order or otherwise been freed from the care, custody and control of her parents.

(e) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which delay will create serious risk of substantial or irreversible impairment of a major bodily function.

(f) "Parent" means one parent of the pregnant female, or guardian or conservator if the pregnant female has one.

(g) "Conception" means the fusion of a human spermatozoon with a human ovum.

(h) "Gestational age" means the time that has elapsed since the first day of a female's last menstrual period.

(i) "Physician" means any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy.

(j) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the female's body.

(k) "Agent" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse or physician.

(l) "Unborn child" means the offspring of human beings from conception until birth.

(m) "Viability" and "viable" means that stage in fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

(n) "Female" means any person of the female gender.

§ 2515-f. Consent concerning an abortion. No person shall knowingly perform an abortion upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed because of a finding of incompetency, unless the attending physician has secured the written consent of one parent or guardian or conservator if the pregnant female has one. In obtaining the consent of the unemancipated minor's parent or the female's guardian or conservator, the physician shall provide the information and materials specified in section twenty-five hundred fifteen-i of this title and shall obtain from them the certification required by subdivision (c) of section twenty-five hundred fifteen-i of this title.

(a) The written consent shall be addressed to the parent or guardian at the usual place of abode of the parent or guardian and delivered personally to the parent or guardian by the physician or an agent.

(b) In lieu of the delivery required by subdivision (a) of this section, notice shall be made by certified mail addressed to the parent or guardian at the usual place of abode of the parent or guardian with return receipt requested with restricted delivery to the addressee. Time of delivery shall be deemed to occur at twelve o'clock noon on the third day after mailing.

§ 2515-g. Limitations. No consent shall be required under this title if:

(a) the attending physician certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to obtain the required consent; or

(b) the person who is entitled to consent certifies in writing that he/she has consented; or

(c) the minor elects not to obtain consent of her parent or guardian or conservator and obtains an order issued by a judge of the family court as provided in article ten-D of the family court act, or by any other judge or justice of this state having jurisdiction, dispensing with such consent.

§ 2515-h. Coercion prohibited. No parent, guardian or other person shall coerce any female to undergo an abortion. Any female who is threatened with such coercion may apply to a court of competent jurisdiction for relief. The court shall provide a minor with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion. Should a minor be denied financial support of her parents by reason of her refusal to undergo an abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

§ 2515-i. Informed consent requirement. No abortion shall be performed or induced without the voluntary and informed consent of the female 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:

(a) at least twenty-four hours prior to the abortion, the physician who is to perform the abortion or the referring physician has informed the female, by telephone or in person, of:

1. the name of the physician who will perform the abortion;

2. 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 or whether or not to undergo the abortion;

3. 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;

4. the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

5. the medical risks associated with carrying her child to term;

6. the medical and psychological risks associated with abortion; and

7. 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.

The information required by this subdivision may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. It may not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the female and the female is able to ask questions of the physician. If a physical examination, tests, or the availability of other information to the

physician subsequently indicates in the medical judgment of the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) at least twenty-four hours prior to the abortion, the physician who is to perform the abortion, the referring physician, or an agent of either physician shall inform the female, by telephone or in person, that:

1. medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

2. the father of the unborn child is liable to assist in the support of her child, even in the instances where he has offered to pay for the abortion. In the case of forcible rape, this information may be omitted;

3. she has the right to review the printed materials published pursuant to section twenty-five hundred fifteen-j of this title. The physician or physician's agent shall orally inform the woman the materials have been provided by the state of New York and that they describe the unborn child and list agencies which offer alternatives to abortion. If the female chooses to view the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee. The information required by this paragraph may be provided by a tape recording if the provision is made to record or otherwise register whether the woman does or does not choose to review the printed materials;

4. 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 female does not have private health insurance coverage for the ultrasound service, she shall be presumptively eligible for medical assistance coverage for the ultrasound service;

5. she is free to withhold or withdraw her consent to the abortion at any time before or during an 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.

(c) the female certifies in writing, prior to the abortion, that the information required to be provided under subdivisions (a) and (b) of this section has been provided.

(d) prior to the performance of the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification prescribed by subdivision (c) of this section.

(e) the female is not required to pay any amount for the abortion procedure until the twenty-four hour waiting period has expired.

§ 2515-j. Publication of materials. (a) The department shall cause to be published in English and Spanish, within one hundred two days after the effective date of this title, and shall update on an annual basis, the following easily comprehensible printed materials:

1. geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a female 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 the 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 should 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 female to undergo an abortion, that any physician who performs an abortion 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 material 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 place your child 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 agent give you the opportunity to call agencies like these before you undergo an abortion."

2. materials that inform the pregnant female 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 shall be realistic. The materials shall be objective and 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.

(b) The materials shall be printed in a typeface large enough to be clearly legible.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

§ 2515-k. Emergency. Where a medical emergency compels the performance of an abortion, the physician shall inform the female, before the abortion, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

§ 2515-l. Penalties. (a) Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this title shall be guilty of a felony. No penalty shall be assessed against the female upon whom the abortion is performed or attempted to be performed. No penalty or civil liability shall be assessed for failure to comply with paragraph three of subdivision (b) or subdivision (c) of section twenty-five hundred fifteen-i of this title unless the department has made the printed materials available at the time the physician or the

physician's agent is required to inform the woman of her right to review them.

(b) In addition to whatever remedies are available under the common or statutory law of this state, any person upon whom an abortion has been performed without complying with the provisions of this title, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of this title for actual and punitive damages. Any person upon whom an abortion has been attempted without complying with this title may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of this title for actual and punitive damages. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

§ 2515-m. Anonymity. In every civil or criminal proceeding or action brought under this title, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion sua sponte, shall make such a ruling and upon determining that her anonymity should be preserved, shall issue orders to their parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from the courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official who brings an action under subdivision (b) of section twenty-five hundred fifteen-l of this title shall do so under a pseudonym.

§ 4. The family court act is amended by adding a new article 10-D to read as follows:

ARTICLE 10-D
PROCEEDING TO OBTAIN AN ORDER WAIVING PARENTAL CONSENT

Section 1097. Purposes.
1098. Definitions.
1099. Jurisdiction.
1100. Procedure.

§ 1097. Purposes. This article is intended to establish procedures to implement the provisions contained in title one-C of article twenty-five of the public health law.

§ 1098. Definitions. When used in this article, the term abortion shall have the same meanings as set forth in subdivision (a) of section twenty-five hundred fifteen-e of the public health law and the term "mature minor" shall mean a person under the age of eighteen who is unemancipated as that term is defined in subdivision (c) of section twenty-five hundred fifteen-e of the public health law and who is able

to make an informed, reasoned and considered judgment in connection with a decision whether or not to proceed with the abortion.

§ 1099. Jurisdiction. The family court has exclusive original jurisdiction over proceedings under this article to obtain an order waiving parental consent of an abortion.

§ 1100. Procedure. Notwithstanding any other provision of law:

1. the waiver of parental consent to an abortion upon or with respect to an unemancipated minor may be obtained by order of a judge of the family court in the county where such person resides or if she is not a resident of this state in the county where the abortion is to be performed, on application by such person or by a relative of such person or other interested party.

2. such court proceedings shall be commenced ex parte and may be commenced and continued without the payment of any fees. The court shall advise the minor that she has a right to court-appointed counsel and shall provide her with such counsel upon her request.

3. such application shall be given immediate consideration and a hearing shall be held immediately at which the person upon or with respect to whom the abortion is to be performed shall be present. The court shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained. All proceedings with respect to such application, including an appeal therefrom, shall protect the anonymity of the minor. Such proceedings shall be sealed and no other person shall be allowed access to such sealed records except upon an order of a judge of the court in which the application was processed or of a justice of the supreme court of the judicial district, and no such order shall be granted except for good cause shown.

4. an order shall issue only upon a finding by the court (a) that such person desires to submit to such abortion; (b) that such person is either a mature minor or that such abortion is in the best interest of such person; and (c) that a previous application for such order has not been made and denied upon the same grounds. If the court so finds the order shall issue.

5. in the event that the court shall deny the application for the order, an expedited anonymous appeal shall be available to such applicant to the appellate division of the supreme court of the judicial department in which the court which rendered the decision is located. The notice of intent to appeal shall be filed within twenty-four hours from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal. Because time may be of the essence regarding the performance of the abortion, the supreme court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

6. the office of court administration shall promulgate any rules and regulations necessary to ensure that proceedings under this section are handled in an expeditious and anonymous matter.

7. the supreme court, in its discretion, may issue such other and further lawful orders as it deems necessary to protect such person.

§ 5. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, para-

graph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law.