STATE OF NEW YORK

5067

2017-2018 Regular Sessions

IN SENATE

March 6, 2017

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

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 Title III of article 25 of the public health law is REPEALED and a new title III is added to read as follows: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

§ 2560. Short title. This title shall be known and may be cited as the "woman's right to know act".

§ 2560-a. Legislative findings and purposes. 1. The legislature finds that:

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

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

(b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

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

(d) the decision to abort is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.

(e) 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.

(g) many abortion facilities or providers hire untrained and unprofessional "counselors" whose primary goal is to sell abortion services.

2. Based on the findings in subdivision one of this section, it is the purpose of this title to:

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

(b) protect unborn children from a woman's uninformed decision to have an abortion.

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

§ 2560-b. Definitions. As used in this title:

1. "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 woman known by the person so using or prescribing to be pregnant. Such use or prescription is not an abortion if done with the intent to (a) save the life or preserve the health of an unborn child, (b) remove a dead unborn child, or (c) deliver an unborn child prematurely in order to preserve the health of both the pregnant woman and her unborn child.

2. "Conception" means the fusion of a human spermatozoon with a human ovum.

3. "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

4. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion 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 "viable" 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.

§ 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 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;

(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;

(c) the state encourages her to view the ultrasound image of her unborn child, as described in section twenty-five hundred sixty-e of this title, before she decides to have an abortion. If the woman does not have private health insurance coverage for the ultrasound service,

she shall be presumptively eligible for medical assistance coverage for the ultrasound service; and

(d) she is free to withhold or withdraw her consent to the abortion at any time before or during the 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.

3. The information in subdivisions one and two of this section is provided to the woman individually and in a private room to protect her privacy and maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances and that she has an adequate opportunity to ask a question.

4. At least twenty-four hours before the abortion, the woman is given a copy of the printed materials described in section twenty-five hundred sixty-d of this title. If the woman is unable to read the materials, they shall be read to her. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

5. The woman certifies in writing, prior to the abortion, that the information required to be provided under subdivisions one, two and four of this section has been provided.

6. Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision five of this section.

7. The woman is not required to pay any amount for the abortion procedure until the twenty-four hour waiting period has expired.

§ 2560-d. Publication of materials. 1. The department shall cause to be published in English and Spanish, and shall update on an annual basis, the following easily comprehensible printed materials:

(a) geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman 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 a 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 shall 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 woman to undergo an abortion, that any physician who performs an abortion upon a woman 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 materials 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 to place her or him 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 or her agent give you the opportunity to call agencies like these before you undergo an abortion."

(b) materials that inform the pregnant woman 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 must be realistic. The materials shall be objective, 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.

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

3. 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.

§ 2560-e. Ultrasound. 1. Prior to a woman giving informed consent to having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman the physician who is to perform the abortion or a qualified technician shall:

(a) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and patient agree is best under the circumstance;

(b) provide a simultaneous verbal explanation of what the ultrasound is depicting, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted. If the ultrasound image indicates that fetal demise has occurred, a woman shall be informed of that fact;

(c) display the ultrasound images so that the pregnant woman may view them;

(d) provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable;

(e) obtain a written certification from the woman, prior to the abortion, that the requirements of subdivision two of this section have been complied with; and

(f) retain a copy of the written certification prescribed by paragraph (e) of this subdivision. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater.

2. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

3. Prior to a woman giving informed consent to having any part of an abortion performed or induced, if the pregnancy is at least eight weeks after fertilization (ten weeks from the first day of the last menstrual period), the abortion provider who is to perform or induce the abortion,

a certified technician, or another agent of the abortion provider shall, using a hand-held doppler fetal monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear.

4. A physician, a certified technician, or another agent of the physician shall not be in violation of subdivision three of this section if:

(a) the physician, certified technician, or agent has attempted, consistent with standard medical practice, to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear using a hand-held doppler fetal monitor;

(b) that attempt does not result in the heartbeat being made audible; and

(c) the physician has offered to attempt to make the heartbeat audible at a subsequent date.

5. Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the hand-held doppler fetal monitor, pursuant to subdivision three of this section.

§ 2560-f. Internet website. 1. The department shall develop and maintain a stable internet website to provide the information described under section twenty-five hundred sixty-d of this title. No information regarding who uses the website shall be collected or maintained. The department shall monitor the website on a daily basis to prevent and correct tampering and shall immediately notify abortion providers of any change in the location of the material on its website.

2. The website shall:

(a) use enhanced, user-friendly search capabilities to ensure that the information described in section twenty-five hundred sixty-d of this title is easily accessible, and must use searchable keywords and phrases, specifically to ensure that entering the term "abortion" yields the materials from section twenty-five hundred sixty-d of this title, regardless of how such materials are labeled;

(b) ensure that the material from section twenty-five hundred sixty-d of this title is printable;

(c) give clear prominent instructions on how to receive the information in printed form; and

(d) be accessible to the public without requiring registration or use of a user name, a password, or another user identification.

§ 2560-g. Abortion provider website. If an abortion provider has a website, the abortion provider's internet website home page, by use of at least two direct links, one of which is posted prominently, shall link to the department's informed consent materials.

§ 2560-h. Emergency. Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting his or her judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

§ 2560-i. Reporting requirements. 1. Within ninety days after this act is enacted, the department shall prepare a reporting form for physicians containing a reprint of this act and listing:

(a) the number of women to whom 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; and 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;

(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 seventeen 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 calendar years, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead

to the identification of any individual provided information in accordance with subdivision one of this section.

6. The department may by regulation alter the dates established by this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subdivision five of this section, is issued at least once every year.

§ 2560-j. Criminal penalties. Any person who intentionally, knowingly or recklessly violates the provisions of this title shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under section twenty-five hundred sixty-i of this title shall be guilty of a misdemeanor. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed. No penalty or civil liability may be assessed for failure to comply with section twenty-five hundred sixty-c of this title or that portion of section twenty-five hundred sixty-c of this title requiring a written certification that the woman has been informed of her opportunity to review the information referred to in such section may be assessed 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 view them.

§ 2560-k. Civil penalties. In addition to any remedies available under the common or statutory law of this state, failure to comply with the requirements of this title shall:

1. Provide a basis for a civil malpractice action. Any intentional violation of this title shall be admissible in a civil suit as prima facie evidence of a failure to obtain an informed consent.

2. Provide a basis for professional disciplinary action pursuant to title two-A of article two of this chapter.

3. Provide a basis for recovery by the woman in a wrongful death action, whether or not the unborn child was viable at the time the abortion was performed or was born alive.

§ 2560-l. Limitation on civil liability. Any physician who complies with the provisions of this title shall not be held civilly liable to his or her patient for failure to obtain informed consent to the abortion.

§ 2560-m. Severability. The provisions of this title are declared to be severable, and if any provision, word, phrase or clause of this title or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this title.

§ 2560-n. Construction. 1. Nothing in this title shall be construed as creating or recognizing a right to abortion.

2. It is not the intention of this title to make lawful an abortion that is currently unlawful.

§ 2. 1. The department of health shall cause to be published in English and Spanish within 102 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman 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 a child who is born alive. The department of health 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 shall 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 woman to undergo an abortion, that any physician who performs an abortion upon a woman 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 materials 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 to place her or him 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 or her agent give you the opportunity to call agencies like these before you undergo an abortion."

(b) Materials that inform the pregnant woman 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 must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, 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.

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

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

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