# STATE OF NEW YORK

5384

2017-2018 Regular Sessions

# IN ASSEMBLY

February 8, 2017

Introduced by M. of A. DiPIETRO, FRIEND, HAWLEY -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the requirement of testing for a fetal heartbeat prior to the performance of an abortion, establishing standards for informed consent, directing the department of public health to prepare and disseminate certain materials regarding abortion and providing for certain civil remedies; to amend the education law, in relation to expanding the definition of medical professional misconduct to include certain acts of abortion and authorizing certain sanctions for violations; to amend the penal law, in relation to criminalizing the performance of an abortion under certain circumstances; to establish the joint legislative committee on adoption promotion and support; to provide for certain remedies in the event that the supreme court of the United States overrules **Roe v. Wade**; and to authorize the commissioner of the department of health to promulgate certain rules and regulations

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

Section 1. The legislature declares that it finds, according to contemporary medical research, all of the following:

1. As many as thirty percent of natural pregnancies end in spontaneous miscarriage.

2. Less than five percent of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity.

3. Over ninety percent of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac.

4. Nearly ninety percent of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac.

5. Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth.

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

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6. Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

7. The state of New York has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born.

8. In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a legitimate interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

§ 2. Article 41 of the public health law is amended by adding a new title 5-B to read as follows:

**TITLE V-B**
**ABORTION**

**Section 4164-a. Definitions.**
**4164-b. Application.**
**4164-c. Detectable heartbeat.**
**4164-d. Preliminary informed consent.**
**4164-e. Informed consent after detection of a heartbeat.**
**4164-f. Performance of abortion.**
**4164-g. Medical emergency.**
**4164-h. Reporting.**
**4164-i. Duties of the department.**
**4164-j. Culpability of the physician.**
**4164-k. Culpability of the pregnant woman.**
**4164-l. Civil action.**

**§ 4164-a. Definitions. As used in this title:**

**1. "Conception" means fertilization.**

**2. "Contraceptive" means a drug, device, or chemical that prevents conception.**

**3. "DNA" means deoxyribonucleic acid.**

**4. "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.**

**5. "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.**

**6. "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.**

**7. "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.**

**8. "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.**

**9. "Medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion.**

**10. "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.**

**11. "Physician" means an individual licensed under article one hundred thirty-one of the education law to practice medicine and surgery or osteopathic medicine and surgery.**

12. "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

13. "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the physician informs a pregnant woman pursuant to section forty-one hundred sixty-four-d of this title.

14. "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

15. "Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of section forty-one hundred sixty-four-c of this title, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.

16. "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

§ 4164-b. Application. 1. The provisions of this title apply only to abortions involving intrauterine pregnancies.

2. The provisions of this title shall not apply to abortions in cases in which the method used to test for the presence of a fetal heartbeat in compliance with subdivision one of section forty-one hundred sixty-four-c of this title does not reveal a fetal heartbeat.

3. Nothing in this title shall prohibit the sale, use, prescription, or administration of a drug, device, or chemical that is designed for contraceptive purposes.

§ 4164-c. Detectable heartbeat. 1. Any person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good faith understanding of standard medical practice and in accordance with all applicable rules promulgated by the commissioner. The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.

2. Except as provided in section forty-one hundred sixty-four-g of this title, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before:

(a) determining in accordance with subdivision one of this section whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat; and

(b) complying with the notification and consent requirements of section forty-one hundred sixty-four-d, and if applicable, section forty-one hundred sixty-four-e of this title.

§ 4164-d. Preliminary informed consent. 1. Except when there is a medical emergency or medical necessity as provided in section forty-one hundred sixty-four-g of this title, an abortion shall be performed or induced only if all of the following conditions are satisfied:

(a) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following:

(1) the nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure;

(2) the probable gestational age of the embryo or fetus; and

(3) the medical risks associated with the pregnant woman carrying the pregnancy to term.

(b) The meeting described in paragraph (a) of this subdivision need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that facility or with the physician who is scheduled to perform or induce the abortion. The physician involved in the meeting shall provide to the pregnant woman the physician's name and contact information.

(c) At least twenty-four hours prior to the performance or inducement of the abortion, the physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(1) inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion;

(2) give the pregnant woman copies of the published materials described in section forty-one hundred sixty-four-i of this title; and

(3) inform the pregnant woman that the materials given pursuant to section forty-one hundred sixty-four-i of this title are published by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not to examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

(d) If it has been determined that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the physician who is to perform or induce the abortion shall comply with the informed consent requirements in section forty-one hundred sixty-four-e of this title in addition to complying with the informed consent requirements of this section.

(e) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies both of the following on that form:

(1) she has received the information and materials described in section forty-one hundred sixty-four-i of this title, and her questions about the abortion that will be performed or induced have been answered in a satisfactory manner; and

(2) she consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person, and she is not under the influence of any drug of abuse or alcohol.

(f) The form shall contain the name and contact information of the physician who provided to the pregnant woman the information described in paragraph (a) of this subdivision.

(g) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physi-

cian's agent receives a copy of the pregnant woman's signed form on which she consents to the abortion and that includes the certification required by paragraph (e) of this subdivision.

2. If the conditions specified in this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

§ 4164-e. Informed consent after detection of a heartbeat. 1. If a person who intends to perform or induce an abortion on a pregnant woman has determined, under section forty-one hundred sixty-four-c of this title, that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the person shall not, except as provided in subdivision two of this section, perform or induce the abortion until all of the following requirements have been met and at least twenty-four hours have elapsed after the last of the requirements is met:

(a) the person intending to perform or induce the abortion shall inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat;

(b) the person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual or, if the commissioner has specified statistical probability information pursuant to rules adopted under subdivision three of this section, shall provide to the pregnant woman that information; and

(c) the pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual the pregnant woman is carrying to term.

2. The provisions of subdivision one of this section shall not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with such subdivision.

3. The commissioner may adopt rules that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. The rules shall be based on available medical evidence.

4. This section shall not have the effect of repealing or limiting any other provision of law relating to informed consent for an abortion.

§ 4164-f. Performance of abortion. 1. (a) A person who performs or induces an abortion on a pregnant woman shall do whichever of the following is applicable:

(1) If the reason for the abortion purportedly is to preserve the health of the pregnant woman, the person shall specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition; or

(2) If the reason for the abortion is other than to preserve the health of the pregnant woman, the person shall specify in a written document that maternal health is not the purpose of the abortion.

(b) The person who specifies the information in the document described in paragraph (a) of this subdivision shall place the document in the pregnant woman's medical records. For at least seven years from the date

the document is created, the person who specifies the information shall maintain a copy of the document in the person's own records.

2. In the event that testing reveals a fetal heartbeat as provided in section forty-one hundred sixty-four-c of this title, except as provided in subdivision three of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying. Whoever violates the provisions of this subdivision is guilty of abortion in the third degree as provided in section 125.41 of the penal law.

3. (a) The provisions of subdivision two of this section shall not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, as provided in section forty-one hundred sixty-four-g of this title.

(b) A physician who performs a medical procedure as described in this subdivision shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(c) A physician who performs a medical procedure as described in this subdivision shall place the written document required by this subdivision in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in the physician's own records.

4. The provisions of subdivision two of this section shall not have the effect of repealing or limiting any other provision of law that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.

§ 4164-g. Medical emergency. 1. If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement, if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary.

2. The provisions of sections forty-one hundred sixty-four-d and forty-one hundred sixty-four-e of this title shall not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with those sections.

3. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in sections forty-one hundred sixty-four-d and forty-one hundred sixty-four-e of this title because of a medical emergency or medical necessity shall make written notations in the pregnant woman's medical records of the following:

(a) the physician's belief that a medical emergency necessitating the abortion existed;

(b) the medical condition of the pregnant woman that assertedly prevented compliance with the provisions of sections forty-one hundred sixty-four-d and forty-one hundred sixty-four-e of this title; and

(c) the reasons for the conclusion that a medical emergency or medical necessity exists.

4. The physician shall maintain in the physician's own records a copy of the notations referred to in subdivision three of this section for at least seven years from the date the notations are made.

§ 4164-h. Reporting. 1. A physician who performs or induces or attempts to perform or induce an abortion on a pregnant woman shall submit a report to the department in accordance with the forms, rules, and regulations adopted by the department that includes all of the information the physician is required to certify in writing or determine under the provisions of this title. If a person other than the physician makes or maintains a record as required on the physician's behalf or at the physician's direction, that person shall comply with the reporting requirements as if the person were the physician.

2. By September thirtieth of each year, the department shall issue a public report that provides statistics for the previous calendar year compiled from all of the reports covering that calendar year submitted to the department in accordance with this section for each of the items listed in subdivision one of this section. The report shall also provide the statistics for each previous calendar year in which a report was filed with the department pursuant to this section, adjusted to reflect any additional information that a physician provides to the department in a late or corrected report. The department shall ensure that none of the information included in the report could reasonably lead to the identification of any pregnant woman upon whom an abortion is performed.

3. The physician shall submit the report described in subdivision one of this section to the department within fifteen days after the woman is discharged. If the physician fails to submit the report more than thirty days after that fifteen-day deadline, the physician shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. A physician who is required to submit to the department a report under subdivision one of this section and who has not submitted a report or has submitted an incomplete report more than one year following the fifteen-day deadline may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report to the department within a period of time stated in a court order or be subject to contempt of court.

4. No person shall falsify any report required under this section. Whoever violates the provisions of this section is guilty of abortion report falsification, a class A misdemeanor.

§ 4164-i. Duties of the department. 1. The department shall publish in English and in Spanish, in a typeface large enough to be clearly legible, and in an easily comprehensible format, the following materials on the department's web site:

(a) Materials that inform the pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies. The materials shall be geographically indexed; include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and

addresses of the agencies; and inform the pregnant 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 paragraph are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this subdivision.

(b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first sixteen weeks of pregnancy and at four-week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published only after it consults with the medical society of the state of New York and the New York section of the American college of obstetricians and gynecologists relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

2. Upon the submission of a request to the department by any person, hospital, physician, or medical facility for one copy of the materials published in accordance with subdivision one of this section, the department shall make the requested copy of the materials available to the person, hospital, physician, or medical facility that requested the copy.

3. The department shall prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

§ 4164-j. Culpability of the physician. 1. The failure of a physician to satisfy the conditions of section forty-one hundred sixty-four-d of this title prior to performing or inducing an abortion upon a pregnant woman may be the basis of both of the following:

(a) A civil action for compensatory and exemplary damages as described in subdivision two of this section;

(b) disciplinary action under subdivision fifty of section sixty-five hundred thirty of the education law.

2. (a) Subject to the provisions of paragraph (b) of this subdivision, any physician who performs or induces an abortion with actual knowledge that the conditions specified in section forty-one hundred sixty-four-d of this title have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those

conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(b) The following shall be affirmative defenses in a civil action authorized by paragraph (a) of this subdivision:

(1) the physician performed or induced the abortion under the circumstances described in section forty-one hundred sixty-four-g of this title; and

(2) the physician made a good faith effort to satisfy the conditions specified in section forty-one hundred sixty-four-d of this title.

3. An employer or other principal is not liable in damages in a civil action authorized by paragraph (a) of subdivision two of this section on the basis of the doctrine of respondent superior unless either of the following applies:

(a) the employer or other principal had actual knowledge or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced an abortion with actual knowledge that the conditions specified in section forty-one hundred sixty-four-d of this title had not been satisfied or with a heedless indifference as to whether those conditions had been satisfied; or

(b) the employer or other principal negligently failed to secure the compliance of an employee or agent with section forty-one hundred sixty-four-d of this title.

4. The provisions of this section shall be the exclusive civil remedy for persons, or the representatives of estates of persons, who allegedly sustain injury, death, or loss to person or property as a result of a failure to satisfy the conditions specified in section forty-one hundred sixty-four-d of this title.

§ 4164-k. Culpability of the pregnant woman. A pregnant woman on whom an abortion is performed or induced in violation of the provisions of this title is not guilty of violating any of those provisions; is not guilty of attempting to commit, conspiring to commit, or complicity in committing a violation of any of those provisions; and is not subject to a civil penalty based on the abortion being performed or induced in violation of any of those provisions.

§ 4164-l. Civil action. 1. A woman who meets any one or more of the following criteria may file a civil action for the wrongful death of her unborn child:

(a) A woman on whom an abortion was performed or induced in violation of the provisions of subdivision two of section forty-one hundred sixty-four-c or subdivision two of section forty-one hundred sixty-four-f of this title;

(b) A woman on whom an abortion was performed or induced who was not given the information described in paragraphs (a) and (b) of subdivision one of section forty-one hundred sixty-four-e of this title or who did not sign a form described in paragraph (c) of subdivision one of section forty-one hundred sixty-four-e of this title.

2. A woman who prevails in an action filed under subdivision one of this section shall receive both of the following from the person who committed the one or more acts described in subdivision one of this section:

(a) damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence (at the mother's election at any time prior to final judgment) subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive; and

**(b) court costs and reasonable attorney's fees.**

**3. If the defendant in an action filed under subdivision one of this section prevails and the court finds the action to be frivolous, the court shall award the defendant reasonable attorney's fees in accordance with section eighty-three hundred three-a of the civil practice law and rules.**

§ 3. Section 6530 of the education law is amended by adding a new subdivision 50 to read as follows:

**(50) Failure to comply with any of the requirements regarding making or maintaining medical records or documents described in subdivision one of section forty-one hundred sixty-four-c, subdivisions one and three of section forty-one hundred sixty-four-f or subdivision three of section forty-one hundred sixty-four-g of the public health law.**

§ 4. The penal law is amended by adding a new section 125.41 to read as follows:

**§ 125.41 Abortion in the third degree.**

**A person is guilty of abortion in the third degree when he or she commits an abortional act upon a female, before determining whether the unborn human individual the pregnant female is carrying has a detectable heartbeat, as provided in title five-B of article forty-one of the public health law.**

**Abortion in the third degree is a class E felony.**

§ 5. a. There is hereby created the joint legislative committee on adoption promotion and support. The committee may review or study any matter that it considers relevant to the operation of the adoption process in New York, with priority given to the study or review of mechanisms to enhance the effectiveness and awareness of the process.

b. The committee shall consist of three members of the assembly appointed by the speaker of the assembly and three members of the senate appointed by the temporary president of the senate. Not more than two members appointed by the speaker of the assembly and not more than two members appointed by the temporary president of the senate may be of the same political party. Each member of the committee shall hold office during the legislative session in which the member is appointed and until a successor has been appointed, notwithstanding the adjournment of the session in which the member was appointed or the expiration of the member's term as a member of the legislature. Any vacancies occurring among the members of the committee shall be filled in the manner of the original appointment.

c. The committee shall have the same powers as other standing or select committees of the legislature.

§ 6. a. A court judgment or order suspending enforcement of any provision of this act shall not to be regarded as tantamount to repeal of that provision.

b. After the issuance of a decision by the supreme court of the United States overruling **Roe v. Wade**, 410 U.S. 113 (1973), the issuance of any other court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the Constitution of the United States restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, the attorney general may apply to the pertinent state or federal court for either or both of the following:

(1) A declaration that any one or more provisions of this act are constitutional;

(2) A judgment or order lifting an injunction against the enforcement of any one or more provisions of this act.

c. If the attorney general fails to apply for the relief described in this section within the thirty-day period after the occurrence of an event described in subdivision b of this section, any county prosecutor may apply to the appropriate state or federal court for such relief.

§ 7. The commissioner of the department of health is authorized and directed to promulgate all rules and regulations he or she deems necessary and appropriate to implement the provisions of this act on or before its effective date, including, but not limited to:

a. rules specifying the appropriate methods of determining the presence of a fetal heartbeat of an unborn individual based on standard medical practice; and

b. information required to be submitted by a physician performing abortions to the department of health.

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

§ 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.