

ASSEMBLY, No. 108

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Morris, Sussex and Warren)

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

Assemblyman Space

SYNOPSIS

Requires physicians to provide patients opportunity to undergo obstetrical ultrasound or sonogram within 48 hours of performing abortion.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning obstetrical ultrasounds and supplementing Title
2 26 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the “Full
8 Disclosure Ultrasound Act.”

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10 2. All facilities in which abortion procedures are performed,
11 and all facilities whose practitioners refer patients for abortions,
12 shall have either functional ultrasound or sonogram equipment on
13 site or shall have access to such equipment through other medical
14 facilities.

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16 3. a. As part of the informed consent to the abortion procedure,
17 a patient desiring an abortion shall be offered an opportunity to
18 undergo an ultrasound or sonogram and view the ultrasound or
19 sonogram image of the embryo or fetus.

20 b. The ultrasound or sonogram examination shall be performed
21 within 48 hours of a referral by a physician for an abortion, or not
22 less than 48 hours prior to an abortion procedure being performed,
23 whichever is later.

24 c. Any health irregularity disclosed by the ultrasound or
25 sonogram that may endanger the health or safety of the patient,
26 either as a result of the abortion or other health problem that may
27 exist, shall be made known to the patient not less than 24 hours
28 prior to the scheduled abortion procedure.

29 d. The requirements of subsections b. and c. of this section
30 shall not apply if the physician who refers the patient for an
31 abortion or who shall perform the abortion procedure, as applicable,
32 determines that a medical emergency exists with respect to the
33 patient, in which case the physician shall certify the specific
34 medical condition that constitutes the emergency and include such
35 certification in the medical file of the patient. For purposes of this
36 act, a “medical emergency” is defined as a condition which, in the
37 reasonable medical judgment made by a responsible licensed
38 physician who is knowledgeable about the patient’s medical
39 condition and her treatment options, and by virtue of the
40 physician’s knowledge and experience, establishes that a delay in
41 commencing an abortion procedure would create a serious risk or
42 cause grave and irreversible physical harm entailing substantial
43 impairment of a major bodily function, not including any
44 psychological or emotional condition or function.

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46 4. The Department of Health and Senior Services shall develop
47 and distribute a form by which physicians who refer patients for

1 abortions or perform abortion procedures must verify within 14
2 workdays that the patient was offered an opportunity to undergo an
3 ultrasound or sonogram and view the ultrasound or sonogram image
4 prior to the abortion procedure being performed.

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6 5. A physician who knowingly fails or refuses to offer a patient
7 desiring an abortion an opportunity to undergo an ultrasound or
8 sonogram and view the ultrasound or sonogram image prior to
9 performing the abortion procedure pursuant to section 3 of this act
10 shall be subject to a civil penalty as provided in this section. The
11 civil penalty prescribed by this section shall be collected and
12 enforced by summary proceedings in the court having jurisdiction
13 pursuant to the provisions of the "Penalty Enforcement Law of
14 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

15 a. Upon a finding by a court of competent jurisdiction in this
16 State that a respondent in an action commenced under this act has
17 knowingly violated a provision of this act, the court shall notify the
18 State Board of Medical Examiners, and assess a civil penalty
19 against the respondent in an amount of no less than \$10,000, but not
20 to exceed \$100,000.

21 b. Upon a second or subsequent offense upon a finding by a
22 court of competent jurisdiction in this State that a respondent in an
23 action commenced under this act has knowingly violated a
24 provision of this act, and has knowingly violated a provision of this
25 act on a prior occasion, the court shall notify the State Board of
26 Medical Examiners, and assess a civil penalty against the
27 respondent in an amount of no less than \$25,000, but not to exceed
28 \$250,000.

29 c. A patient upon whom an abortion procedure has been
30 performed in violation of this act, or the parent or legal guardian of
31 the patient if the patient is an unemancipated minor, may commence
32 a civil action against the physician for any willful violation of this
33 act for actual and punitive damages.

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35 6. This act shall take effect on the 90th day after enactment, but
36 the Commissioner of Health and Senior Services may take such
37 anticipatory administrative action in advance thereof as shall be
38 necessary for the implementation of the act.

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STATEMENT

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43 This bill requires a physician to provide a patient with an
44 opportunity to undergo an ultrasound or sonogram and view an
45 ultrasound or sonogram image of the embryo or fetus within 48
46 hours of a referral for an abortion, or at least 48 hours prior to an
47 abortion procedure being performed, whichever is later. Any health

1 irregularity that may endanger the health or safety of the patient
2 disclosed by the ultrasound or sonogram must be communicated to
3 the patient at least 24 hours prior to the scheduled abortion
4 procedure.

5 If a “medical emergency” exists with respect to the patient, the
6 physician is not required to comply with the ultrasound or
7 sonogram requirements of this bill, but must certify the specific
8 medical condition that exists and include the certification in the
9 patient’s medical file. A “medical emergency,” as defined by this
10 bill, means a condition which, in the reasonable medical judgment
11 made by a responsible licensed physician who is knowledgeable
12 about the patient’s medical condition and her treatment options, and
13 by virtue of the physician’s knowledge and experience, establishes
14 that a delay in commencing an abortion procedure would create a
15 serious risk or cause grave and irreversible physical harm entailing
16 substantial impairment of a major bodily function, not including
17 any psychological or emotional condition or function.

18 Pursuant to the bill, the Department of Health and Senior
19 Services is required to develop and distribute a form for physicians
20 to use to verify in writing, within 14 workdays of the procedure or
21 referral for the procedure, that the patient was offered an
22 opportunity to undergo an ultrasound or sonogram and view the
23 ultrasound or sonogram image prior to the abortion procedure being
24 performed.

25 Under the bill, a physician who knowingly fails or refuses to
26 offer a patient desiring an abortion the opportunity undergo an
27 ultrasound or sonogram and view the ultrasound or sonogram image
28 prior to performing the abortion procedure shall be subject to civil
29 penalties. Upon a finding by a court of competent jurisdiction that
30 a respondent in an action commenced under this bill has knowingly
31 violated a provision thereof, the court shall notify the State Board
32 of Medical Examiners, and assess a civil penalty against the
33 respondent in an amount of no less than \$10,000, but not to exceed
34 \$100,000. Upon a second or subsequent offense, the court shall
35 notify the State Board of Medical Examiners, and assess a civil
36 penalty against the respondent in an amount of no less than
37 \$25,000, but not to exceed \$250,000. A patient who has had an
38 abortion in violation of the provisions of this bill, or a parent or
39 legal guardian of an unemancipated minor who has had an abortion
40 in violation of the provisions of this bill, may commence a civil
41 action against the physician for any willful violation thereof and
42 seek actual and punitive damages.

43 This bill takes effect on the 90th day after enactment, but the
44 Commissioner of Health and Senior Services may take anticipatory
45 administrative action in advance thereof in order to implement the
46 provisions of this bill.