



SPONSOR: Rep. Collins & Sen. Richardson
Reps. D. Short, Vanderwende, Yearick; Sens. Bonini,
Hocker

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 40

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE OFFER OF AN ULTRASOUND BEFORE TERMINATING A PREGNANCY.

1 WHEREAS, a nationwide study shows that 78% of abortion-minded women who see an ultrasound image of their
2 unborn baby before an abortion end up choosing life; and

3 WHEREAS, an informed choice is better than withholding information at a critical time in a woman's life,
4 especially since there is a risk of serious physical and psychological complications for women; and

5 WHEREAS, since it is the responsibility of legislators to do all they can to ensure a person's safety, part of that
6 responsibility includes providing women with timely information to make the best decisions to ensure their safety and well-
7 being; and

8 WHEREAS, the General Assembly finds that ultrasound requirements serve an essential medical purpose in
9 confirming the presence, location, and gestational age of a pregnancy; and

10 WHEREAS, the General Assembly finds that ultrasound requirements also serve an essential medical purpose in
11 diagnosing ectopic pregnancies which, if left undiagnosed, can result in infertility or even fatal blood loss; and

12 WHEREAS, the General Assembly finds that it is critical to the psychological and physical well-being of a woman
13 considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and
14 of her unborn child; and

15 WHEREAS, the U.S. Supreme Court found in 1976 that the decision to abort "is an important, and often a
16 stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences"; and

17 WHEREAS, the General Assembly finds that the knowledgeable exercise of a woman's decision to have an
18 abortion depends on the extent to which the woman receives sufficient information to make an informed choice between
19 two alternatives, giving birth or having an abortion; and

20 WHEREAS, the purpose of this Act is to protect the physical health and welfare of every woman considering an
21 abortion; and

22 WHEREAS, the purpose of this Act is to ensure that every woman considering an abortion receives complete
23 information on the reality and status of her pregnancy and of her unborn child; and

24 WHEREAS, this Act is intended to be consistent with the U.S. Supreme Court finding that “the risk that a woman
25 may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully
26 informed.”

27 NOW, THEREFORE:

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

29 Section 1. Amend § 1794, Title 24 of the Delaware Code by making deletions as shown by strike through and
30 insertions as shown by underline as follows:

31 § 1794. ~~Consent prior to~~ Ultrasound and auscultation services before termination of human pregnancy. ~~[Repealed].~~

32 (a)(1) Except in the case of a medical emergency, a physician, or an agent of the physician, must offer the patient
33 ultrasound imaging and auscultation of fetal heart tone services before terminating a pregnancy. The ultrasound image and
34 auscultation services offered must include all of the following:

35 a. An active ultrasound image, of a quality consistent with standard medical practice, that the patient may
36 view that includes all of the following:

37 1. Dimensions of the fetus.

38 2. An accurate portrayal of any external members and internal organs.

39 b. An auscultation of fetal heart tone, of a quality consistent with standard medical practice, that the
40 patient may hear.

41 (2) For purposes of this section, “medical emergency” means that condition which, on the basis of the
42 physician or other medically authorized person’s good faith clinical judgment, so complicates the medical condition of
43 the pregnant patient as to necessitate the immediate termination of her pregnancy to avert her death or for which delay
44 will create serious risk of substantial and irreversible impairment of a major bodily function.

45 (3) The patient may choose not to view the ultrasound image or listen to the fetal heart tone.

46 (b) Before terminating a pregnancy, a physician must obtain the patient’s signature on a form indicating that the
47 patient was offered ultrasound image and auscultation services under this section.

48 (c) Proof of compliance with this section is required for accreditation under § 122(3)z. of Title 16.

49 (d)(1) A person who intentionally terminates a pregnancy and who intentionally or knowingly fails to conform to
50 any requirement of this section is guilty of a class A misdemeanor.

51 (2) A person who had a good faith belief that the person was acting in compliance with this section when the
52 person terminated a pregnancy is not guilty of violating this section.

53 (3) The Superior Court has exclusive jurisdiction of violations of this section.

54 (e)(1) In addition to any and all remedies available under the common or statutory law of this State, failure to
55 comply with this section provides the basis for the following civil actions:

56 a. A civil malpractice action for actual and punitive damages and an intentional violation of this section is
57 admissible in a civil suit as prima facie evidence of medical malpractice.

58 b. Professional disciplinary action under this chapter.

59 c. A recovery for the woman for the wrongful death of her unborn child under § 3724 of Title 10.

60 (2) In a civil case, the plaintiff must prove by clear and convincing evidence, the absence of a good faith belief
61 by the physician of compliance with this section.

62 (3) In a civil action under this section, the court must permit any of the following:

63 a. When requested by the plaintiff, allow a plaintiff to proceed using solely her initials or a pseudonym.

64 b. When requested by the plaintiff, close any proceedings in the case and enter other protective orders to
65 preserve the privacy of the plaintiff upon whom the abortion was performed.

66 c. If judgment is rendered in favor of the plaintiff, render judgment for reasonable attorney's fees in favor
67 of the plaintiff against the defendant.

68 d. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was
69 frivolous and brought in bad faith, render judgment for reasonable attorney's fees in favor of the defendant against
70 the plaintiff.

71 Section 2. This Act is known as "The Woman's Ultrasound Right to Know Act".

SYNOPSIS

This Act requires a physician to offer a patient ultrasound imaging and auscultation of fetal heart tone services before terminating a pregnancy and provides civil and criminal penalties for the failure of a physician to comply with this requirement. The patient is free to choose not to view the ultrasound or listen to the heartbeat.

This Act is known as "The Woman's Ultrasound Right to Know Act."