SPONSOR: Sen. Richardson & Rep. Collins
Sens. Bonini, Hocker, Lawson, Pettyjohn; Reps. Morris, Postles, Yearick

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 108

AN ACT TO AMEND TITLE 10 AND TITLE 24 OF THE DELAWARE CODE RELATING TO THE OFFER OF AN ULTRASOUND AND AUSCULTATION SERVICES BEFORE TERMINATING A PREGNANCY.

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

WHEREAS, courts have ruled that as the patient must bear the expense, pain and suffering of any injury from medical treatment, a patient's right to know all material facts pertaining to the proposed treatment cannot be dependent upon the standards of the medical profession, *Cooper v. Roberts,* 286 A.2d 647, *Wilkinson v. Vesey*, 295 A.2d 676; and

WHEREAS, true consent to what happens to oneself is the exercise of a choice, and that entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each, *Canterbury v. Spence*, 464 F.2d 772; and

WHEREAS, though the physician may feel strongly about the correct course of action, "it is the prerogative of the patient, not the physician, to determine for himself/herself the direction in which his/her interests lie," and that requires full disclosure of the nature of the procedure and all the risks and alternatives which a reasonable patient would need to make an informed choice. C*anterbury v. Spence*, 464 F.2d 772; and

WHEREAS, even complications occurring only 1% of the time must be disclosed. *Canterbury, Wilson v. Scoll*, 412 SW2d 299; and

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

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

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

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

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

WHEREAS, the U.S. Supreme Court found in 1976 that 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", *Planned Parenthood v. Danforth*, 428 U.S. 52; and

WHEREAS, the General Assembly finds that 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; and

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

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

WHEREAS, this Act is intended to be consistent with the U.S. Supreme Court finding that "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood v. Casey*, 505 U.S. 833.

NOW, THEREFORE:

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

Section 1. Amend Subchapter IX, Chapter 17, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1796. Ultrasound and auscultation services before termination of human pregnancy.

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

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

1. Dimensions of the fetus.

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

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

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

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

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

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

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

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

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

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

b. Professional disciplinary action under this chapter.

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

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

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

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

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

d. 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, render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

Section 2. Amend § 3724, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3724. Action for wrongful death.

(a)(1) An action under this subchapter shall be for the benefit of the spouse, parent, ~~child~~ child, and siblings of the deceased person.

(2) An action under this subchapter may be for the benefit of a woman for the wrongful death of her unborn child under § 1796 of Title 24.

Section 3. This Act is known as “The Woman’s 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 Right to Know Act."

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Richardson