

# ASSEMBLY, No. 689

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman JOHN DIMAIO**

**District 23 (Hunterdon, Somerset and Warren)**

**Assemblywoman GAIL PHOEBUS**

**District 24 (Morris, Sussex and Warren)**

**Co-Sponsored by:**

**Assemblymen Space and Dancer**

**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.

3

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

6

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

9

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.

15

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.

45

46 4. The Department of Health and Senior Services shall develop  
47 and distribute a form by which physicians who refer patients for  
48 abortions or perform abortion procedures must verify within 14

1 workdays that the patient was offered an opportunity to undergo an  
2 ultrasound or sonogram and view the ultrasound or sonogram image  
3 prior to the abortion procedure being performed.  
4

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

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

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

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

34 6. This act shall take effect on the 90th day after enactment, but  
35 the Commissioner of Health and Senior Services may take such  
36 anticipatory administrative action in advance thereof as shall be  
37 necessary for the implementation of the act.  
38  
39

40 STATEMENT  
41

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

1 the patient at least 24 hours prior to the scheduled abortion  
2 procedure.

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

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

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

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