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HOUSE BILL 391

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Alonzo Baldonado

AN ACT

RELATING TO ABORTION; ENACTING THE PARENTAL NOTIFICATION OF
ABORTION ACT; REQUIRING NOTIFICATION OF A PARENT OR GUARDIAN
WHEN AN ABORTION IS TO BE PERFORMED ON A MINOR; CREATING
EXCEPTIONS TO NOTIFICATION; REQUIRING REPORTING; ESTABLISHING
PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 30, Article 5 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this
act may be cited as the "Parental Notification of Abortion
Act"."

SECTION 2. A new section of Chapter 30, Article 5 NMSA
1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Parental
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1 Notification of Abortion Act:

2 A. "abortion" means the intentional termination of
3 the pregnancy of a female by a person who knows the female is
4 pregnant;

5 B. "department" means the children, youth and
6 families department;

7 C. "emancipated minor" means a minor who is
8 emancipated pursuant to the provisions of the Emancipation of
9 Minors Act;

10 D. "fetus" means the biological offspring of human
11 parents;

12 E. "physician" means a person licensed to practice
13 in the state of New Mexico as a physician pursuant to the
14 Medical Practice Act or an osteopathic physician pursuant to
15 Chapter 61, Article 10 NMSA 1978; and

16 F. "pregnancy" means the implantation of a
17 developing embryo in the uterus."

18 SECTION 3. A new section of Chapter 30, Article 5 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] ABORTION--NOTIFICATION REQUIRED FOR
21 MINORS.--

22 A. Except as otherwise provided in the Parental
23 Notification of Abortion Act, a physician may only perform an
24 abortion at the request of a non-emancipated minor after
25 providing notice of the planned abortion procedure to one

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1 parent or guardian at least forty-eight hours prior to the
2 procedure.

3 B. Notice shall be delivered in a sealed envelope
4 addressed to a named parent or guardian by a courier or similar
5 service that requires acknowledgment of delivery by signature
6 of the named parent or guardian at that person's usual place of
7 residence or business. If two delivery attempts are made and
8 delivery is unsuccessful, or if delivery is refused,
9 notification required pursuant to the section shall be waived.
10 Alternatively, the parent or guardian of a non-emancipated
11 minor seeking an abortion may sign an acknowledgment at the
12 facility at which the abortion is to be performed acknowledging
13 that the minor is seeking an abortion. Nothing in this section
14 shall be construed to require consent of the minor's parent or
15 guardian in order for the abortion to be performed.

16 C. The physician shall keep records of such
17 notification for a period set by the vital records and health
18 statistics bureau of the department of health.

19 D. Notification required pursuant to this section
20 shall be waived if a physician certifies in the pregnant
21 female's medical record that the abortion is necessary to
22 prevent the pregnant female's death and there is insufficient
23 time to provide the required notice."

24 SECTION 4. A new section of Chapter 30, Article 5 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] EXCEPTION FOR SEXUAL ABUSE, RAPE OR
2 INCEST.--

3 A. Not later than October 1, 2015, the New Mexico
4 medical board shall promulgate a series of questions and
5 consultation procedures calculated to allow medical personnel
6 at a facility performing or inducing abortions to determine if
7 a minor who is seeking an abortion has a pregnancy that is the
8 result of sexual abuse, rape or incest. These questions and
9 consultation procedures shall be approved by the department.
10 No medical tests shall be required as part of these patient
11 questions or consultation procedures.

12 B. The medical staff, intake employees and
13 physicians at each facility seeking to perform abortions in
14 this state shall be required to receive no less than eight
15 hours of training per year concerning administration of the
16 questions and consultation procedures described in Subsection A
17 of this section. The cost of the training shall be borne by
18 the abortion facility.

19 C. Both the intake employee and the attending
20 physician shall be responsible for trying to determine if the
21 minor child's pregnancy is the result of sexual abuse, rape or
22 incest. If either the intake employee or the attending
23 physician has reasonable grounds to believe that the minor's
24 pregnancy is due to sexual abuse, rape or incest, the
25 department shall be immediately notified. The department shall

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1 immediately investigate the incident and, if the department
2 determines that there are reasonable grounds to believe that
3 the pregnancy is due to sexual abuse, rape or incest, the
4 department shall inform the abortion facility.

5 D. If the abortion facility is informed by the
6 department that, after its investigation, the minor's pregnancy
7 was the result of sexual abuse, rape or incest, then the
8 abortion may be performed without the notice required pursuant
9 to Section 3 of the Parental Notification of Abortion Act."

10 SECTION 5. A new section of Chapter 30, Article 5 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] JUDICIAL EXCEPTION TO NOTICE
13 REQUIREMENT.--

14 A. Notice shall not be required under Section 3 of
15 the Parental Notification of Abortion Act if a minor files a
16 petition in any district court for an order granting a waiver
17 of notice and participates in the proceedings on the minor's
18 own behalf. The court may appoint a guardian ad litem for the
19 minor.

20 B. The court shall make every effort to hold a
21 hearing within forty-eight hours. The proceedings shall be
22 confidential, ensure the anonymity of the minor and shall be
23 sealed.

24 C. The petition shall be granted if the court finds
25 that:

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1 (1) the minor is sufficiently mature and well
2 enough informed to decide intelligently whether to have an
3 abortion; or

4 (2) notification under Section 3 of the
5 Parental Notification of Abortion Act would not be in the best
6 interests of the minor. For the purpose of this paragraph,
7 there shall be a presumption that notification is not in the
8 best interest of the minor if the minor asserts that the
9 pregnancy was the result of sexual abuse, rape or incest. No
10 medical tests shall be required by the court.

11 D. The court shall issue written findings of fact
12 and conclusions of law supporting its decision and shall order
13 that a confidential record of the evidence and the judge's
14 findings and conclusion be maintained.

15 E. The petition shall be deemed granted if the
16 court does not issue a decision within forty-eight hours of the
17 filing of the petition and an extension is not requested by the
18 petitioner.

19 F. The petitioner shall have a direct appeal of the
20 decision of the district court to the New Mexico court of
21 appeals, and the appeal shall be expedited.

22 G. Filing fees in this procedure shall be waived."

23 SECTION 6. A new section of Chapter 30, Article 5 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] REPORTING REQUIREMENTS.--The vital records

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1 and health statistics bureau of the department of health shall
2 establish annual reporting requirements for physicians who
3 perform abortions and shall make the reports available for
4 statistical analysis and for verification of compliance with
5 the requirements by May 1 of each year for abortions performed
6 in the preceding year. Any personal identifying information in
7 the report shall be redacted by the physician prior to making
8 the reports available to the vital records and health
9 statistics bureau. Each physician shall report the following
10 data:

11 A. the number of females who requested the
12 physician to perform an abortion in the prior calendar year;

13 B. the number of actual abortions performed by the
14 physician in the prior calendar year;

15 C. the number of times the physician provided
16 notice as required under Section 3 of the Parental Notification
17 of Abortion Act;

18 D. the number of times that notice otherwise
19 required under Section 3 of the Parental Notification of
20 Abortion Act was waived by judicial order or any other
21 exception and the manner in which the physician received proof
22 of the waiver; and

23 E. the number of times an abortion was performed in
24 which the fetus was viable and the reason for the abortion
25 cited by the performing physician is sexual abuse, rape or

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1 incest. For the purpose of this subsection, "viable" means the
2 stage of human development when the fetus is potentially able
3 to live outside of the uterus with or without the aid of
4 artificial life support systems."

5 SECTION 7. A new section of Chapter 30, Article 5 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] PENALTIES.--

8 A. A physician found to have knowingly and
9 willfully failed to comply with Section 3 or 6 of the Parental
10 Notification of Abortion Act, or who commits perjury or
11 falsifies any record in relation to the reporting requirements
12 of that act, shall:

13 (1) be subject to a civil penalty of not less
14 than five thousand dollars (\$5,000) for each violation; and

15 (2) have the physician's license to practice
16 medicine revoked or suspended for no less than one year.

17 B. The New Mexico medical board shall enforce the
18 provisions of this section with respect to any violation by a
19 physician licensed pursuant to the Medical Practice Act, and
20 the board of osteopathic medical examiners shall enforce the
21 provisions of this section with respect to any violation by a
22 physician licensed pursuant to Chapter 61, Article 10 NMSA
23 1978."

24 SECTION 8. Section 30-5-1 NMSA 1978 (being Laws 1969,
25 Chapter 67, Section 1) is amended to read:

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1 "30-5-1. DEFINITIONS.--As used in [~~this~~] Chapter 30,
2 Article 5 NMSA 1978:

3 A. "abortion" means the intentional termination of
4 the pregnancy of a female by a person who knows the female is
5 pregnant;

6 B. "pharmacist" means a person licensed pursuant to
7 the provisions of the Pharmacy Act;

8 C. "physician" means a person licensed to practice
9 in the state of New Mexico as a physician pursuant to the
10 Medical Practice Act or an osteopathic physician pursuant to
11 Chapter 61, Article 10 NMSA 1978; and

12 [~~A.~~] D. "pregnancy" means the implantation of [an]
13 a developing embryo in the uterus.

14 [~~B. "accredited hospital" means one licensed by the~~
15 ~~health and social services department;~~

16 [~~G. "justified medical termination" means the~~
17 ~~intentional ending of the pregnancy of a woman at the request~~
18 ~~of said woman or if said woman is under the age of eighteen~~
19 ~~years, then at the request of said woman and her then living~~
20 ~~parent or guardian, by a physician licensed by the state of New~~
21 ~~Mexico using acceptable medical procedures in an accredited~~
22 ~~hospital upon written certification by the members of a special~~
23 ~~hospital board that:~~

24 [~~(1) the continuation of the pregnancy, in~~
25 ~~their opinion, is likely to result in the death of the woman or~~

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1 ~~the grave impairment of the physical or mental health of the~~
2 ~~woman; or~~

3 ~~(2) the child probably will have a grave~~
4 ~~physical or mental defect; or~~

5 ~~(3) the pregnancy resulted from rape, as~~
6 ~~defined in Sections 40A-9-2 through 40A-9-4 NMSA 1953. Under~~
7 ~~this paragraph, to justify a medical termination of the~~
8 ~~pregnancy, the woman must present to the special hospital board~~
9 ~~an affidavit that she has been raped and that the rape has been~~
10 ~~or will be reported to an appropriated law enforcement~~
11 ~~official; or~~

12 ~~(4) the pregnancy resulted from incest.~~

13 ~~D. "special hospital board" means a committee of two~~
14 ~~licensed physicians or their appointed alternates who are~~
15 ~~members of the medical staff at the accredited hospital where~~
16 ~~the proposed justified medical termination would be performed,~~
17 ~~and who meet for the purpose of determining the question of~~
18 ~~medical justification in an individual case, and maintain a~~
19 ~~written record of the proceedings and deliberations of such~~
20 ~~board.]"~~

21 SECTION 9. Section 30-5-2 NMSA 1978 (being Laws 1969,
22 Chapter 67, Section 2) is amended to read:

23 "30-5-2. ABORTION--PERSONS AND INSTITUTIONS EXEMPT.--
24 [~~This~~] Chapter 30, Article 5 NMSA 1978 does not require a
25 hospital or any medical facility to admit any patient for the

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1 purposes of performing an abortion [~~nor is any hospital~~
2 ~~required to create a special hospital board~~]. A person who is
3 a member of, or associated with, the staff of a hospital or any
4 medical facility; any person under the direction of a
5 physician; any pharmacist or any person under the direction of
6 a pharmacist; or any employee of a hospital or any medical
7 facility in which [~~a justified medical termination has been~~
8 ~~authorized and~~] an abortion will be performed who objects to
9 the [~~justified medical termination~~] abortion on moral [~~or~~],
10 religious or personal conviction grounds shall not be required
11 to participate in medical procedures, [~~which~~] including the
12 dispensing of medication, that will result in the termination
13 of pregnancy. [~~and~~] The refusal of [~~any such~~] the person to
14 participate shall not form the basis of any disciplinary or
15 other recriminatory action against [~~such~~] the person."

16 SECTION 10. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
17 1969, Chapter 67, Section 3) is repealed.

18 SECTION 11. SEVERABILITY.--If any part or application of
19 the Parental Notification of Abortion Act is held invalid, the
20 remainder or its application to other situations or persons
21 shall not be affected.

22 SECTION 12. EFFECTIVE DATE.--The effective date for the
23 provisions of this act is July 1, 2015.