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## FISCAL IMPACT REPORT

SPONSOR	<u>Chasey</u>	ORIGINAL DATE	<u>01/24/08</u>	HB	<u>244</u>
		LAST UPDATED		SB	
SHORT TITLE	<u>Freedom of Choice Act</u>				
				ANALYST	<u>Weber</u>

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)  
Human Services Department (HSD)  
Department of Health (DOH)  
Health Policy Commission (HPC)  
Medical Board

#### Responses Received From

Administrative Office of the Court

### SUMMARY

#### Synopsis of Bill

House Bill 244 enacts the “Freedom of Choice Act” which generally prohibits the state from denying or interfering with a person’s right to obtain and use contraceptives, or a female’s right to have an abortion prior to viability of the “conceptus”. The bill would also confer the right to provide reproductive services on health care providers unimpeded by state action.

The bill also repeals state laws (NMSA 30-5-1 to 30-5-3 (1978) which generally impose fourth degree felony penalties on persons performing abortions if the pregnancy termination is not a “justified medical termination”.

The bill appears to exempt from its provisions the general ban on “partial-birth abortions” provided in NMSA Sections 30-5A-3 (1978).

### SIGNIFICANT ISSUES

The Office of the Attorney General offers the following analysis along with the disclaimer.

*This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.*

The New Mexico state law sections prohibiting an abortion other than as a “justified medical

termination” were held unconstitutional by the New Mexico Court of Appeals in *State v. Strance*, 84 N.M. 670, 506 P.2d 1217 (Ct.App. 1973) relying on the United States Supreme Court holdings in *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973). This bill would therefore repeal ineffective and unconstitutional state law provisions which have remained in the statutory compilation in spite of their invalidity.

Furthermore, the New Mexico Supreme Court held in *New Mexico Right to Choose/NARAL v. Johnson*, 126 N.M. 788, 975 P.2d 841 (1998), *cert. denied sub nom. Klecan v. New Mexico Rights to Choose/NARAL*, 526 U.S. 1020, 119 S.Ct. 1256, 143 L.Ed.2d 352 (1999) that a rule adopted by the New Mexico Human Services Department prohibiting the use of state funds to pay for abortions for Medicaid-eligible women except when necessary to save the life of the mother, to end an ectopic pregnancy, or when the pregnancy resulted from rape or incest was unconstitutional under New Mexico’s Equal Rights Amendment to Article II, Section 18 of the State Constitution. The Court ruled:

*“Rule 766 undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women. [citations omitted]. “Since only women become pregnant, discrimination against pregnancy by not funding abortion when it is medically necessary and when all other medical[ly necessary] expenses are paid by the state for both men and women is sex oriented discrimination”. [citations omitted]. “We determine that Rule 766 employs a gender-based classification that operates to the disadvantage of women and is therefore presumptively unconstitutional.”*

However, The New Mexico Supreme Court did not decide the issue of whether a woman's right to reproductive choice is among the inherent rights guaranteed by Article II, Section 4 of the New Mexico Constitution.

Other provisions in state law address the issue of provision of contraceptives in certain situations. NMSA Sections 59A-22-42 and 59A-46-44 (1978) require insurance and HMO policy coverage for prescription contraceptive drugs and devices. The Family Planning Act, NMSA Sections 24-8-1 et seq. (1978) requires the provision of contraceptive procedures and services in family planning services programs operated by the state or its governmental units. The Sexual Assault Survivors Emergency Care Act, NMSA Sections 24-10D-1 et seq. (1978) requires the provision of emergency contraception at the hospital if requested. This bill appears to be consistent with those provisions.

The Department of Health adds the following:

HB 244 would repeal current state law which is inconsistent with federal jurisprudence with regard to a person’s privacy as it relates to the choice to have an abortion and it would further clarify that the state can only interfere with a person’s right to choose with regard to partial birth abortion; maintaining that partial birth abortion would still be illegal, unless very specific circumstances exist that threaten the life of the pregnant woman.

HB 244 would ensure New Mexican females’ right to choose and obtain reproductive health services, including safe and legal abortion care. The following seven states have passed a state law to ensure freedom of choice: California, Connecticut, Hawaii, Maine, Maryland, Nevada, Washington (<http://www.plannedparenthood.org>).

HB 244 supports the New Mexico Family Planning Act (§§ 24-8-1 to 24-8-8 NMSA 1978), which ensures that comprehensive family planning services are available to any New Mexican who needs them.

An estimated 43.6% of live births in New Mexico in 2005 were the result of an unintended pregnancy. Unintended pregnancies were those that were wanted later or never wanted at all. Unintended pregnancy is associated with adverse maternal health risk behaviors and adverse outcomes such as premature delivery, low birth weight and small size for gestational age (<http://www.health.state.nm.us/phd/prams/home.html>). Among New Mexican women with unintended pregnancy, 52.6% were using contraception at conception; nearly half were not. The Freedom of Choice Act would help reduce barriers for females to obtain contraception with the potential to reduce the rate of unintended pregnancy and improve the pregnancy outcomes in New Mexico.

MW/mt