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HOUSE BILL 229

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Alonzo Baldonado

AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTICE OF ABORTION ACT; ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PROVIDING FOR REPORTING BY PHYSICIANS AND THE DEPARTMENT OF HEALTH ON ABORTIONS RECEIVED BY CERTAIN FEMALES; PRESCRIBING PENALTIES; REPEALING SECTION 30-5-3 NMSA 1978 (BEING LAWS 1969, CHAPTER 67, SECTION 3) RELATING TO CRIMINAL ABORTION.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Parental Notice of Abortion Act".

SECTION 2. DEFINITIONS.--As used in the Parental Notice of Abortion Act:

A. "abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant, with

1 knowledge that the termination will, with reasonable
2 likelihood, cause the death of the fetus;

3 B. "emancipated minor" means an individual between
4 the ages of sixteen and eighteen who has been married, who is
5 on active duty in the armed forces or who has been declared by
6 court order to be emancipated;

7 C. "fetus" means an individual human organism from
8 fertilization until birth;

9 D. "parent" means one parent of a pregnant female
10 or a guardian or conservator of a pregnant female; and

11 E. "unemancipated minor" means an individual who is
12 under the age of eighteen, who has never been married, who is
13 not on active duty in the armed forces and who has not been
14 declared by court order to be emancipated.

15 SECTION 3. NOTIFICATION CONCERNING ABORTION.--

16 A. An abortion shall not be performed upon a
17 pregnant female who is an unemancipated minor or who is an
18 individual for whom a guardian or conservator has been
19 appointed because of a finding of incapacity until at least
20 forty-eight hours after written notice of the pending operation
21 has been delivered in the manner specified in this section.

22 B. The notice shall be addressed to the parent,
23 guardian or conservator, as appropriate, of the pregnant female
24 at the usual place of abode of the addressee and delivered
25 personally to the addressee by the physician or an agent.

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1 C. In lieu of the delivery required pursuant to
2 Subsection B of this section, notice shall be made by certified
3 mail addressed to the pregnant female's parent, guardian or
4 conservator at the usual place of abode of the addressee with
5 return receipt requested and restricted delivery to the
6 addressee. Time of delivery shall be deemed to occur at 12:00
7 noon on the next day subsequent to mailing on which regular
8 mail delivery takes place.

9 **SECTION 4. LIMITATIONS.**--A notice shall not be required
10 pursuant to the provisions of the Parental Notice of Abortion
11 Act if:

12 A. the attending physician certifies in the
13 pregnant female's medical record that the abortion is necessary
14 to prevent the pregnant female's death and there is
15 insufficient time to provide the required notice; or

16 B. the person who is entitled to notice certifies
17 in writing that the person has been notified.

18 **SECTION 5. ELECTION BY FEMALE NOT TO ALLOW NOTICE.**--

19 A. If a pregnant female elects not to allow the
20 notification of her parent, guardian or conservator, a judge of
21 a court of competent jurisdiction shall, upon petition or
22 motion and after an appropriate hearing, authorize a physician
23 to perform the abortion if the judge determines that the
24 pregnant female is mature and capable of giving informed
25 consent to the proposed abortion. If the judge determines that

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1 the pregnant female is not mature or if the pregnant female
2 does not claim to be mature, the judge shall determine whether
3 the performance of an abortion upon her without notification of
4 her parent, guardian or conservator would be in her best
5 interests and shall authorize a physician to perform the
6 abortion without such notification if the judge concludes that
7 the pregnant female's best interests would be served by the
8 abortion.

9 B. A pregnant female may participate in proceedings
10 in the court on her own behalf and the court may appoint a
11 guardian ad litem for her. However, the court shall advise her
12 that she has a right to court-appointed counsel and shall, upon
13 her request, provide her with counsel.

14 C. Proceedings in the court pursuant to this
15 section shall be confidential and shall be given precedence
16 over other pending matters so that the court may reach a
17 decision promptly and without delay so as to serve the best
18 interests of the pregnant female. A judge of the court who
19 conducts proceedings pursuant to this section shall make in
20 writing specific factual findings and legal conclusions
21 supporting the decision and shall order a record of the
22 evidence to be maintained, including the judge's own findings
23 and conclusions.

24 D. The court shall rule on an application submitted
25 pursuant to this section no later than 5:00 p.m. on the

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1 business day after the date of filing. Upon the request of the
2 pregnant female, the court shall grant an extension of the
3 period specified by this subsection. If the pregnant female
4 makes a request for an extension, the court shall rule on the
5 application no later than two days after the date the pregnant
6 female has stated in her request for extension that she is
7 ready to proceed by 5:00 p.m. If the court fails to rule on
8 the application within the period specified by this subsection,
9 the application shall be deemed granted. The clerk of the
10 court shall issue a written statement to the pregnant female
11 indicating that the time for granting a decision has expired
12 and therefore the application is deemed granted.

13 E. An expedited confidential appeal shall be
14 available to a pregnant female for whom the court denies an
15 order authorizing an abortion without notification. An order
16 authorizing an abortion without notification shall not be
17 subject to appeal. Filing fees shall not be required of a
18 pregnant female at either the trial or the appellate level.
19 Access to the trial court for the purposes of a petition or
20 motion and access to the appellate courts for purposes of
21 making an appeal from denial of the same shall be afforded to a
22 pregnant female twenty-four hours a day, seven days a week.

23 SECTION 6. PENALTY.--

24 A. Performance of an abortion in knowing or
25 reckless violation of the Parental Notice of Abortion Act shall

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1 be a misdemeanor and the offender shall be sentenced pursuant
2 to Section 31-19-1 NMSA 1978.

3 B. Performance of an abortion in knowing or
4 reckless violation of the Parental Notice of Abortion Act shall
5 be grounds for a civil action by a person wrongfully denied
6 notification.

7 C. A person shall not be held liable pursuant to
8 this section if the person establishes by written evidence that
9 the person relied upon evidence sufficient to convince a
10 careful and prudent person that the representations of the
11 pregnant female regarding information necessary to comply with
12 this section were bona fide and true or if the person attempted
13 with reasonable diligence to deliver notice, but was unable to
14 do so.

15 SECTION 7. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
16 FEES.--

17 A. No later than October 1, 2011, the department of
18 health shall prepare a reporting form for physicians regarding:

19 (1) the number of parents to whom the
20 physician or an agent of the physician provided the notice
21 described in Section 3 of the Parental Notice of Abortion Act;
22 of that number, the number provided personally and the number
23 provided by mail; and of each of those numbers, the number of
24 females who, to the best of the reporting physician's
25 information and belief, went on to obtain an abortion;

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1 (2) the number of females upon whom the
2 physician performed an abortion without providing to the parent
3 of the female the notice described in Section 3 of the Parental
4 Notice of Abortion Act; and of that number, the number who were
5 emancipated minors and the numbers for whom each of the
6 subsections of Section 5 of the Parental Notice of Abortion Act
7 were applicable;

8 (3) the number of abortions performed by the
9 physician after receiving judicial authorization to do so
10 without parental notification; and

11 (4) the same information described in
12 Paragraphs (1) through (3) of this subsection with respect to
13 females for whom a guardian or conservator has been appointed
14 because of a finding of incompetency.

15 B. The department of health shall ensure that
16 copies of the reporting form described in Subsection A of this
17 section, together with a reprint of the Parental Notice of
18 Abortion Act, are provided:

19 (1) no later than October 1, 2011 to all
20 physicians licensed to practice in this state;

21 (2) to each physician who subsequently becomes
22 licensed to practice in this state at the same time that the
23 physician receives official notification of licensure; and

24 (3) by December 1 of every year, other than
25 the calendar year in which forms are distributed in accordance

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1 with Paragraph (1) of this subsection, to all physicians
2 licensed to practice in this state.

3 C. By February 28 of each year following a calendar
4 year in any part of which the Parental Notice of Abortion Act
5 was in effect, each physician who provided, or whose agent
6 provided, the notice described in Section 3 of that act and any
7 physician who knowingly performed an abortion upon a female or
8 upon a female for whom a guardian or conservator had been
9 appointed due to a finding of incompetency during the previous
10 calendar year shall submit to the department of health a copy
11 of the form described in Subsection A of this section with the
12 requested data entered accurately and completely.

13 D. Reports that are not submitted within a grace
14 period of thirty days following the due date shall be subject
15 to a late fee of five hundred dollars (\$500) for each
16 additional thirty-day period or portion of a thirty-day period
17 they are overdue. A physician required to report in accordance
18 with this section who has not submitted a report, or has
19 submitted only an incomplete report, more than one year
20 following the due date, may, in an action brought by the
21 department of health, be directed by a court of competent
22 jurisdiction to submit a complete report within a period stated
23 by court order or be subject to sanctions for civil contempt.

24 E. By June 30 of each year, the department of
25 health shall issue a public report providing:

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1 (1) statistics for the previous calendar year
2 compiled from all of the reports covering that year submitted
3 in accordance with this section for each of the items listed in
4 Subsection A of this section;

5 (2) statistics that shall be provided to the
6 department by the administrative office of the courts setting
7 forth the total number of petitions or motions filed pursuant
8 to Section 5 of the Parental Notice of Abortion Act, and of
9 that number:

10 (a) the number in which the court
11 appointed a guardian ad litem;

12 (b) the number in which the court
13 appointed counsel;

14 (c) the number in which the judge issued
15 an order authorizing an abortion without notification;

16 (d) the number in which the judge denied
17 an order;

18 (e) the number of denials from which an
19 appeal was filed;

20 (f) the number of appeals that resulted
21 in the denials being affirmed; and

22 (g) the number of appeals that resulted
23 in reversals of denials;

24 (3) statistics for all previous calendar years
25 for which such a public statistical report was required to be

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1 issued, adjusted to reflect any additional information from
2 late or corrected reports; and

3 (4) no information that could reasonably lead
4 to the identification of any individual female or of any female
5 for whom a guardian or conservator has been appointed.

6 F. The department of health may by rule alter the
7 dates established in this section or consolidate the forms or
8 reports to achieve administrative convenience or fiscal savings
9 or to reduce the burden of reporting requirements, so long as
10 reporting forms are sent to all licensed physicians in the
11 state at least once every year and the report described in
12 Subsection E of this section is issued at least once every
13 year.

14 G. If the department of health fails to issue the
15 public report required by Subsection E of this section, any
16 group of ten or more citizens of this state may seek an
17 injunction in a court of competent jurisdiction against the
18 secretary of health requiring that a complete report be issued
19 within a period stated by court order. Failure to abide by
20 such an injunction shall subject the secretary of health to
21 sanctions for civil contempt.

22 H. If judgment is rendered in favor of the
23 plaintiff in any action described in this section, the court
24 shall also render judgment for reasonable attorney fees in
25 favor of the plaintiff against the defendant. If judgment is

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1 rendered in favor of the defendant and the court finds that the
2 plaintiff's suit was frivolous and brought in bad faith, the
3 court shall also render judgment for reasonable attorney fees
4 in favor of the defendant against the plaintiff.

5 SECTION 8. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
6 1969, Chapter 67, Section 3) is repealed.

7 SECTION 9. SEVERABILITY.--If any part or application of
8 the Parental Notice of Abortion Act is held invalid, the
9 remainder or its application to other situations or persons
10 shall not be affected.

11 SECTION 10. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.