

HOUSE BILL 177

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION RIGHTS ACT; ESTABLISHING PROCEDURES WHEN UNEMANCIPATED PREGNANT MINORS REQUEST AN ABORTION; PROVIDING FOR CLOSED JUDICIAL HEARINGS; PROVIDING FOR PHYSICIAN AND DEPARTMENT OF HEALTH REPORTING ON ABORTIONS RECEIVED BY UNEMANCIPATED PREGNANT MINORS; 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 Notification Rights Act".

SECTION 2. DEFINITIONS.--As used in the Parental Notification Rights Act:

A. "abortion" means the use of any means to

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1 terminate the pregnancy of a female known to be pregnant, with
2 knowledge that the termination will, with reasonable
3 likelihood, cause the death of the fetus;

4 B. "fetus" means an individual human organism from
5 fertilization until birth;

6 C. "parent" means a parent of an unemancipated
7 pregnant minor or a guardian of an unemancipated pregnant
8 minor; and

9 D. "unemancipated pregnant minor" means a pregnant
10 female who is under sixteen years of age and who:

11 (1) has never been married; and

12 (2) has not been declared by court order to be
13 emancipated.

14 SECTION 3. NOTIFICATION CONCERNING ABORTION.--

15 A. An abortion shall not be performed upon an
16 unemancipated pregnant minor until at least forty-eight hours
17 after written notice of the pending operation has been
18 delivered in the manner specified in this section.

19 B. The notice shall be addressed to the parent of
20 the unemancipated pregnant minor seeking an abortion at the
21 usual place of abode of the parent and delivered personally to
22 the parent by the physician or the physician's agent.

23 C. In lieu of the delivery required pursuant to
24 Subsection B of this section, notice shall be made by certified
25 mail addressed to the parent at the usual place of abode of the

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1 parent with return receipt requested and restricted delivery to
2 the parent. Time of delivery shall be deemed to occur at 12:00
3 noon on the next day subsequent to mailing on which regular
4 mail delivery takes place.

5 SECTION 4. LIMITATIONS.--A notice shall not be required
6 pursuant to the provisions of the Parental Notification Rights
7 Act if:

8 A. the attending physician certifies in the
9 unemancipated pregnant minor's medical record that the abortion
10 is necessary to protect the unemancipated pregnant minor's
11 health from danger and there is insufficient time to provide
12 the required notice; or

13 B. the person who is entitled to notice certifies
14 in writing that the person has already been notified.

15 SECTION 5. ELECTION BY UNEMANCIPATED PREGNANT MINOR NOT
16 TO ALLOW NOTICE--HEARING--APPEAL--PENALTY.--

17 A. If an unemancipated pregnant minor seeking an
18 abortion elects not to allow the notification of her parent
19 pursuant to the provisions of Section 3 of the Parental
20 Notification Rights Act, a judge of a court of competent
21 jurisdiction shall, upon petition or motion and after an
22 appropriate hearing, authorize a physician to perform the
23 abortion if the judge determines that the unemancipated
24 pregnant minor is mature and capable of giving informed consent
25 to the proposed abortion. If the judge determines that the

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

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

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

23 D. Any hearing pursuant to this section shall be
24 closed to the general public. The parties, the parties'
25 counsel, witnesses and other persons whose presence the court

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1 approves may be present at the hearings. The court may admit
2 to closed hearings those other persons whom the court finds to
3 have a proper interest in the case or in the work of the court,
4 on the condition that those persons refrain from divulging any
5 information that would identify the unemancipated pregnant
6 minor or the unemancipated pregnant minor's family.

7 E. A person or party granted admission to a closed
8 hearing who intentionally divulges information regarding the
9 hearing in violation of the provisions of this section is
10 guilty of a petty misdemeanor and shall be sentenced pursuant
11 to the provisions of Section 31-19-1 NMSA 1978.

12 F. The court shall rule on an application submitted
13 pursuant to this section no later than 5:00 p.m. on the
14 business day after the date of filing. Upon the request of the
15 unemancipated pregnant minor, the court shall grant an
16 extension of the period specified by this subsection. If the
17 unemancipated pregnant minor makes a request for an extension,
18 the court shall rule on the application no later than two days
19 after the date the unemancipated pregnant minor has stated in
20 her request for extension that she is ready to proceed by 5:00
21 p.m. If the court fails to rule on the application within the
22 period specified by this subsection, the application shall be
23 deemed granted. The clerk of the court shall issue a written
24 statement to the unemancipated pregnant minor indicating that
25 the time for granting a decision has expired and therefore the

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1 application is deemed granted.

2 G. An expedited confidential appeal shall be
3 available to an unemancipated pregnant minor for whom the court
4 denies an order authorizing an abortion without notification.
5 An order authorizing an abortion without notification shall not
6 be subject to appeal. Filing fees shall not be required of an
7 unemancipated pregnant minor at either the trial or the
8 appellate level. Access to the trial court for the purposes of
9 a petition or motion and access to the appellate courts for
10 purposes of making an appeal from denial of the same shall be
11 afforded to an unemancipated pregnant minor twenty-four hours a
12 day, seven days a week.

13 SECTION 6. PENALTY.--

14 A. Performance of an abortion in knowing or
15 reckless violation of the Parental Notification Rights Act is a
16 misdemeanor, and the offender shall be sentenced pursuant to
17 Section 31-19-1 NMSA 1978.

18 B. Performance of an abortion in knowing or
19 reckless violation of the Parental Notification Rights Act is
20 grounds for a civil action by a person wrongfully denied
21 notification.

22 C. A person shall not be held liable pursuant to
23 this section if the person establishes by written evidence that
24 the person relied upon evidence sufficient to convince a
25 careful and prudent person that the representations of the

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1 unemancipated pregnant minor regarding information necessary to
2 comply with this section were bona fide and true or if the
3 person attempted with reasonable diligence to deliver notice,
4 but was unable to do so.

5 SECTION 7. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
6 FEES.--

7 A. No later than October 1, 2013, the department of
8 health shall prepare a reporting form for physicians regarding:

9 (1) the number of parents to whom the
10 physician or an agent of the physician provided the notice
11 described in Section 3 of the Parental Notification Rights Act;

12 (2) the number of notices the department
13 provided to a parent in person and the number provided by mail;

14 (3) the number of unemancipated pregnant
15 minors who, to the best of the reporting physician's
16 information and belief, went on to obtain an abortion after the
17 department notified the parent of the unemancipated pregnant
18 minor;

19 (4) the number of unemancipated pregnant
20 minors upon whom the physician performed an abortion without
21 providing to the parent of the unemancipated pregnant minor the
22 notice described in Section 3 of the Parental Notification
23 Rights Act; of that number, the number for whom each of the
24 subsections of Section 5 of the Parental Notification Rights
25 Act were applicable; and

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1 (5) the number of abortions performed by the
2 physician after receiving judicial authorization to do so
3 without parental notification.

4 B. The department of health shall ensure that
5 copies of the reporting form described in Subsection A of this
6 section, together with a reprint of the Parental Notification
7 Rights Act, are provided:

8 (1) no later than October 1, 2013 to all
9 physicians licensed to practice in this state;

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

13 (3) by December 1 of every year, other than
14 the calendar year in which forms are distributed in accordance
15 with Paragraph (1) of this subsection, to all physicians
16 licensed to practice in this state.

17 C. By February 28, 2014 and by February 28 of each
18 year thereafter, the following individuals shall submit to the
19 department of health a copy of the form described in Subsection
20 A of this section with the requested data entered accurately
21 and completely:

22 (1) a physician who provided or whose agent
23 provided during the previous calendar year the notice described
24 in Section 3 of the Parental Notification Rights Act; and

25 (2) a physician who knowingly performed an

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1 abortion upon an unemancipated pregnant minor during the
2 previous calendar year.

3 D. Reports required pursuant to Subsections A and C
4 of this section that are not submitted within a grace period of
5 thirty days following the due date shall be subject to a late
6 fee of five hundred dollars (\$500) for each additional thirty-
7 day period or portion of a thirty-day period they are overdue.
8 A physician required to report in accordance with this section
9 who has not submitted a report, or has submitted only an
10 incomplete report, more than one year following the due date,
11 may, in an action brought by the department of health, be
12 directed by a court of competent jurisdiction to submit a
13 complete report within a period stated by court order or be
14 subject to sanctions for civil contempt.

15 E. By June 30, 2014 and by June 30 of each year
16 thereafter, the department of health shall issue a public
17 report providing:

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

22 (2) statistics that shall be provided to the
23 department by the administrative office of the courts setting
24 forth the total number of petitions or motions filed pursuant
25 to Section 5 of the Parental Notification Rights Act, and of

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1 that number:

2 (a) the number in which the court
3 appointed a guardian ad litem;

4 (b) the number in which the court
5 appointed counsel;

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

8 (d) the number in which the judge denied
9 an order;

10 (e) the number of denials from which an
11 appeal was filed;

12 (f) the number of appeals that resulted
13 in the denials being affirmed; and

14 (g) the number of appeals that resulted
15 in reversals of denials;

16 (3) statistics for all previous calendar years
17 for which such a public statistical report was required to be
18 issued, adjusted to reflect any additional information from
19 late or corrected reports; and

20 (4) no information that could reasonably lead
21 to the identification of any unemancipated pregnant minor.

22 F. The department of health may by rule alter the
23 dates established in this section or consolidate the forms or
24 reports to achieve administrative convenience or fiscal savings
25 or to reduce the burden of reporting requirements, so long as

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1 reporting forms are sent to all licensed physicians in the
2 state at least once every year and the report described in
3 Subsection E of this section is issued at least once every
4 year.

5 G. If the department of health fails to issue the
6 public report required by Subsection E of this section, any
7 group of ten or more citizens of this state may seek an
8 injunction in a court of competent jurisdiction against the
9 secretary of health requiring that a complete report be issued
10 within a period stated by court order. Failure to abide by
11 such an injunction shall subject the secretary of health to
12 sanctions for civil contempt.

13 H. If judgment is rendered in favor of the
14 plaintiff in any action described in this section, the court
15 shall also render judgment for reasonable attorney fees in
16 favor of the plaintiff against the defendant. If judgment is
17 rendered in favor of the defendant and the court finds that the
18 plaintiff's suit was frivolous and brought in bad faith, the
19 court shall also render judgment for reasonable attorney fees
20 in favor of the defendant against the plaintiff.

21 SECTION 8. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
22 1969, Chapter 67, Section 3) is repealed.

23 SECTION 9. SEVERABILITY.--If any part or application of
24 the Parental Notification Rights Act is held invalid, the
25 remainder or its application to other situations or persons

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1 shall not be affected.

2 SECTION 10. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2013.

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