HOUSE BILL 390
52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY
Yvette Herrell

AN ACT
RELATING TO ABORTION; AMENDING THE PARTIAL-BIRTH ABORTION BAN ACT TO CHANGE THE TITLE TO THE "LATE-TERM AND PARTIAL-BIRTH ABORTION BAN ACT"; PROVIDING EXCEPTIONS UNDER WHICH LATE-TERM ABORTION MAY BE PERFORMED; PROVIDING PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE.

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

SECTION 1.
Section 30-5A-1 NMSA 1978 (being Laws 2000, Chapter 55, Section 1) is amended to read:

"30-5A-1. SHORT TITLE.--This act may be cited as the "Late-Term and Partial-Birth Abortion Ban Act".

SECTION 2.
Section 30-5A-2 NMSA 1978 (being Laws 2000, Chapter 55, Section 2) is amended to read:

"30-5A-2. DEFINITIONS.--As used in the Late-Term and Partial-Birth Abortion Ban Act, "late-term abortion" means the intentional termination of a viable human pregnancy after the twenty-fourth week of gestation for the purpose of fetal survival. A "viable human pregnancy" is a pregnancy in which a fetus is capable of surviving outside the mother's body with a likelihood of survival of at least 1 percent. A "viability determination" is a determination made by a licensed health care provider acting in good faith and on the basis of a conscientious medical opinion."

SECTION 3.
The General Power of立法 may enact abrogation laws for the purpose of enacting laws to be enacted as the Late-Term and Partial-Birth Abortion Ban Act.
Partial-Birth Abortion Ban Act:

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

B. "fetus" means the biological offspring of human
parents;

C. "partial-birth abortion" means a procedure in
which any person, including a physician or other health care
professional, intentionally extracts an independently viable
fetus from the uterus into the vagina and mechanically extracts
the cranial contents of the fetus in order to induce death; and

D. "physician" means a person licensed to practice
in the state as a licensed physician pursuant to the Medical
Practice Act or an osteopathic physician licensed pursuant to
Chapter 61, Article 10 NMSA 1978."

SECTION 3. Section 30-5A-4 NMSA 1978 (being Laws 2000,
Chapter 55, Section 4) is amended to read:

"30-5A-4. CIVIL REMEDIES.--

A. Except as provided in Subsection B of this
section, the following persons may bring a civil action to
obtain relief pursuant to this section against a person who has
violated the provisions of Section [3 of the Partial-Birth
Abortion Ban Act] 30-5A-3 NMSA 1978:

(1) the person on whom a partial-birth
abortion was performed;
(2) the biological father of the fetus that
was the subject of the partial-birth abortion; and

(3) the parents of the person on whom the
partial-birth abortion was performed if that person had not
reached the age of majority at the time of the abortion.

B. The persons named as having a right of action in
Subsection A of this section are barred from bringing a civil
action pursuant to this section if:

(1) the pregnancy of the person on whom the
partial-birth abortion was performed resulted from criminal
conduct of the person seeking to bring the action; or

(2) the partial-birth abortion was consented
to by the person seeking to bring the action.

C. A person authorized to bring a civil action
pursuant to this section may recover compensatory damages for
loss caused by violation of Section [3 of the Partial-Birth
Abortion Ban Act] 30-5A-3 NMSA 1978."

SECTION 4. Section 30-5A-5 NMSA 1978 (being Laws 2000,
Chapter 55, Section 5) is amended to read:

"30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

A. Except as provided in Subsections B, C, D and E
of this section, a person who violates Section [3 of the
Partial-Birth Abortion Ban Act] 30-5A-3 NMSA 1978 is guilty of
a fourth degree felony and shall be sentenced pursuant to
B. The provisions of [the Partial-Birth Abortion Ban Act] this section shall apply only to the exact procedure specified in [that act] Subsection C of Section 30-5A-2 NMSA 1978.

C. The provisions of [the Partial-Birth Abortion Ban Act] this section are not intended to criminalize any other method of terminating a woman's pregnancy.

D. The provisions of [the Partial-Birth Abortion Ban Act] this section are not intended to subject a woman, upon whom [the procedure specified in that act] an abortion is performed, to criminal culpability as an accomplice, aider, abettor, solicitor or conspirator.

E. The provisions of [the Partial-Birth Abortion Ban Act] this section are not intended to subject any person to criminal culpability pursuant to laws governing attempt, solicitation or conspiracy to commit a crime."

SECTION 5. A new section of the Late-Term and Partial-Birth Abortion Ban Act, Section 30-5A-6 NMSA 1978, is enacted to read:

"30-5A-6. [NEW MATERIAL] PROHIBITION OF LATE-TERM ABORTION.--

A. Late-term abortion consists of knowingly and willfully administering to any pregnant woman any medicine, drug or other substance, or using any method or means whereby an untimely termination of her pregnancy is produced, or

.199447.4

- 4 -
attempted to be produced, with the intent to destroy a viable fetus of twenty or more weeks gestational age. Viability shall be determined pursuant to Subsection C of this section.

B. Only a physician may perform an abortion. If the physician determines that the fetus is twenty or more weeks gestational age and viable, the physician shall not perform or induce a late-term abortion unless:

   (1) the physician has determined that in the physician's opinion the late-term abortion is necessary to preserve the life or health of the pregnant woman; provided, however, that the physician shall take all reasonable steps to preserve the life and health of the fetus; or

   (2) the pregnant woman asserts that the pregnancy resulted from sexual abuse, rape or incest.

C. For the purposes of this section, there shall be a legal presumption that viability occurs at the twentieth week of pregnancy. Before a physician performs an abortion on a woman that the physician has reason to believe is carrying a fetus of twenty or more weeks gestational age, the physician shall first determine, in a manner consistent with accepted obstetrical and neonatal practices and standards, if the fetus is viable. The physician shall use and exercise that degree of care, skill and proficiency commonly exercised by the ordinarily skillful, careful and prudent physician engaged in similar practice under the same or similar conditions. In
making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age, weight and lung maturity of the fetus and shall enter such findings and determination of viability in the medical record of the woman."

SECTION 6. A new section of the Late-Term and Partial-Birth Abortion Ban Act, Section 30-5A-7 NMSA 1978, is enacted to read:

"30-5A-7. [NEW MATERIAL] CIVIL PENALTY.--
A. A physician found to have knowingly and willfully violated Section 30-5A-6 NMSA 1978 shall:
   (1) be subject to a civil penalty of not less than five thousand dollars ($5,000) for each violation; and 
   (2) have the physician's license to practice medicine revoked or suspended for no less than one year.
B. The New Mexico medical board shall enforce the provisions of this section with respect to any violation by a physician licensed pursuant to the Medical Practice Act, and the board of osteopathic medical examiners shall enforce the provisions of this section with respect to any violation by a physician licensed pursuant to Chapter 61, Article 10 NMSA 1978."

SECTION 7. Section 30-5-1 NMSA 1978 (being Laws 1969, Chapter 67, Section 1) is amended to read:
"30-5-1. DEFINITIONS.--As used in [this] Chapter 30, Article 5 NMSA 1978:

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

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

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

[A-] D. "pregnancy" means the implantation of a developing embryo in the uterus.

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

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

(1) the continuation of the pregnancy, in their opinion, is likely to result in the death of the woman or
the grave impairment of the physical or mental health of the
woman; or

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

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

   (4) the pregnancy resulted from incest.

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

SECTION 8. Section 30-5-2 NMSA 1978 (being Laws 1969,
Chapter 67, Section 2) is amended to read:

"30-5-2. ABORTION--PERSONS AND INSTITUTIONS EXEMPT.--
[This article does not require] A hospital or medical facility
shall not be required to admit any patient for the purposes of
performing an abortion [nor is any hospital required to create
a special hospital board]. A person who is a member of, or
associated with, the staff of a hospital or any medical
facility; any person under the direction of a physician; any
pharmacist or any person under the direction of a pharmacist;
or any employee of a hospital or any medical facility in which
[justified medical termination has been authorized and] an
abortion will be performed who objects to the [justified
medical termination] abortion on moral [or
personal conviction] grounds shall not be required to
participate in medical procedures, [which] including the
dispensing of medication, that will result in the termination
of pregnancy. [and] The refusal of [any such] the person to
participate shall not form the basis of any disciplinary or
other recriminatory action against [such] the person."

SECTION 9. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
1969, Chapter 67, Section 3) is repealed.

SECTION 10. SEVERABILITY.--If any part or application of
the Late-Term and Partial-Birth Abortion Ban Act is held
invalid, the remainder or its application to other situations
or persons shall not be affected.

SECTION 11. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2015.

- 9 -