HOUSE BILL 391

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

INTRODUCED BY

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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
Notification of Abortion Act:

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

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

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

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

E. "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

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

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

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

A. Except as otherwise provided in the Parental Notification of Abortion Act, a physician may only perform an abortion at the request of a non-emancipated minor after providing notice of the planned abortion procedure to one
parent or guardian at least forty-eight hours prior to the
procedure.

B. Notice shall be delivered in a sealed envelope
addressed to a named parent or guardian by a courier or similar
service that requires acknowledgment of delivery by signature
of the named parent or guardian at that person's usual place of
residence or business. If two delivery attempts are made and
delivery is unsuccessful, or if delivery is refused,
notification required pursuant to the section shall be waived.

Alternatively, the parent or guardian of a non-emancipated
minor seeking an abortion may sign an acknowledgment at the
facility at which the abortion is to be performed acknowledging
that the minor is seeking an abortion. Nothing in this section
shall be construed to require consent of the minor's parent or
guardian in order for the abortion to be performed.

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

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

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

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

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

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

C. Both the intake employee and the attending physician shall be responsible for trying to determine if the minor child's pregnancy is the result of sexual abuse, rape or incest. If either the intake employee or the attending physician has reasonable grounds to believe that the minor's pregnancy is due to sexual abuse, rape or incest, the department shall be immediately notified. The department shall
immediately investigate the incident and, if the department
determines that there are reasonable grounds to believe that
the pregnancy is due to sexual abuse, rape or incest, the
department shall inform the abortion facility.

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

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

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

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

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

C. The petition shall be granted if the court finds
that:
(1) the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion; or

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

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

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

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

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

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

"[NEW MATERIAL] REPORTING REQUIREMENTS.—The vital records
and health statistics bureau of the department of health shall
establish annual reporting requirements for physicians who
perform abortions and shall make the reports available for
statistical analysis and for verification of compliance with
the requirements by May 1 of each year for abortions performed
in the preceding year. Any personal identifying information in
the report shall be redacted by the physician prior to making
the reports available to the vital records and health
statistics bureau. Each physician shall report the following
data:

A. the number of females who requested the
physician to perform an abortion in the prior calendar year;
B. the number of actual abortions performed by the
physician in the prior calendar year;
C. the number of times the physician provided
notice as required under Section 3 of the Parental Notification
of Abortion Act;
D. the number of times that notice otherwise
required under Section 3 of the Parental Notification of
Abortion Act was waived by judicial order or any other
exception and the manner in which the physician received proof
of the waiver; and
E. the number of times an abortion was performed in
which the fetus was viable and the reason for the abortion
cited by the performing physician is sexual abuse, rape or
incest. For the purpose of this subsection, "viable" means the stage of human development when the fetus is potentially able to live outside of the uterus with or without the aid of artificial life support systems."

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

"[NEW MATERIAL] PENALTIES.--

A. A physician found to have knowingly and willfully failed to comply with Section 3 or 6 of the Parental Notification of Abortion Act, or who commits perjury or falsifies any record in relation to the reporting requirements of that act, 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 8. 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 9. 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] Chapter 30, Article 5 NMSA 1978 does not require a
hospital or any medical facility 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 [a justified medical termination has been
authorized and] an abortion will be performed who objects to
the [justified medical termination] abortion on moral [or],
religious 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 10. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
1969, Chapter 67, Section 3) is repealed.

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

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

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