F I S C A L I M P A C T R E P O R T

SPONSOR Cadena/Egolf/ Ferrary/Armstrong, D/Louis **ORIGINAL DATE** 1/26/21 **LAST UPDATED** 2/1/21 **HB** 7

SHORT TITLE Repeal Abortion Ban **SB**

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Senate Bill 10

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the Attorney General (NMAG)
Department of Health (DOH)
Administrative Office of the Court (AOC)
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 7 repeals the provisions in statute, Sections 30-5-1 through 30-5-3 NMSA 1978, which make abortion illegal in New Mexico and punish providing abortion services with a felony conviction except in the circumstances of rape or threat to the pregnant person's life. These provisions have been considered inoperable following the 1973 US Supreme Court decision in *Roe v Wade.* Passage of House Bill 7 would thus not have immediate effect, but removal of the three sections currently in statute would have effect if the US Supreme Court revisits *Roe v Wade.*

A summary of the sections to be repealed by HB 7:
§30-5-1 Defines terms used in the remainder of the section, including "justified medical termination" as occurring in cases of rape, incest, risk of maternal death or "grave impairment of physical or mental health" or the probability that the newborn will have a "grave physical or

mental defect."
§30-5-2 Permits institutions and individuals to refuse to participate in abortion procedures and prohibits retaliation against them for such refusal.
§30-5-3 Broadly defines "criminal abortion", exempting "justified medical termination" from that definition, and penalizes it as a fourth degree felony, or, in the case of an abortion resulting in death of the woman, as a second degree felony.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There is no appropriation in this bill. There is likely to be no significant fiscal impact of this bill, although failing to delete these provisions might lead to expensive litigation if the US Supreme Court overturns *Roe v Wade.*

SIGNIFICANT ISSUES

DOH points out the consequences of restrictive abortion laws:

> Data indicate an association between unsafe abortions and restrictive abortion laws. The median rate of unsafe abortions in the 82 countries with the most restrictive abortion laws is 23/1000 women compared to 2/1000 in nations that allow abortions. Unsafe abortions are one of the leading causes of maternal mortality annually, accounting for approximately 68,000 or 13 percent of all maternal mortality deaths worldwide (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/). Repealing restrictive abortion laws can reduce the risk of unsafe abortions and therefore reduce the risk of maternal mortality.
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> According to the World Health Organization, girls and women who do not have access to sexual and reproductive health services and information, including contraception and safe abortion care, are at risk of unsafe abortion (https://www.who.int/reproductivehealth/topics/unsafe_abortion/abortion-safety-estimates/en/).

The office of the Attorney General makes the following significant comments summarizing the history of the sections to be deleted and the effects (or lack of effects) of removal of those sections:

> The 1973 United States Supreme Court decision in *Roe v. Wade,* 410 U.S. 113 (1973), established a woman's right to choose whether or not to bear a child and a system to formalize the State's interests in a pregnancy as increasing with the viability of a fetus. With the decisions in *Roe* and *Doe v. Bolton*, 410 U.S. 179 (1973) the United States Supreme Court struck down criminal abortion statutes elsewhere in the country.
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> NMSA 1978, § 30-5-1 defines "justified medical termination" allowing for an abortion in cases of rape or incest, when continuing a pregnancy will result in death or grave mental health impairment of the mother, severe mental or physical defects in the fetus" and defines a "special hospital board." This provision was declared unconstitutional by our Court of Appeals in 1973, the same year *Roe* was decided. *State v. Strance*, 1973-

> NMCA-024, ¶¶ 6-10 (remanding with orders to discharge Lea County doctor John Gordon Strance). Therefore, this section of law has been unenforceable for almost 50 years.
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> NMSA 1978, §30-5-2 states that hospitals and individuals are not required to participate in abortion procedures if against their moral or religious beliefs. This protection is already provided by the federal Church Amendment, 42 U.S.C. § 300a-7, which provides that health care entities receiving certain federal funds may "refuse to provide abortion or sterilization if such services are contrary to their religious or moral beliefs." While §30-5-2 could be enforced, the fact that federal law provides protection for a moral or religious exemption makes it unlikely that a challenge to the law would be brought under this section.
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> NMSA 1978, §30-5-3 defines "criminal abortion" as "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 attempted to be produced, with the intent to destroy the fetus, and the termination is not a justified medical termination." This section defines "criminal abortion" as a fourth degree felony, warranting a two-year term or, if the woman dies during the procedure or medical regimen, a second degree felony. The *Strance* court concluded this section was also unconstitutional, especially as it is read with §30-5-1. *Strance* at ¶8.
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> Because §§30-5-1 and 30-5-3 were considered unconstitutional as in New Mexico under New Mexico law as of 1973, their repeal under SB 10 is not substantive change. As such, their repeal can be considered as a means of removing archaic, and arguably invalid, statutes our appellate court has already disapproved. Although § 30-5-2 is valid on its face, it is of little consequence as it provides protections already available under federal law.

AOC's analysis concurs with these opinions, and adds the following regarding the assertion that passing this bill would force medical care providers and institutions to perform abortions against their will or beliefs:

> As of 2017, 47 states and the District of Columbia had enacted "conscience clauses," allowing medical facilities and individuals to refuse to perform or take part in abortions. Although HB7 would remove that clause from New Mexico law (Section 30-5-2), federal law would continue to allow such refusal on the part of institutions and of individuals: Congress enacted the Church Amendment, 42 U.S.C. § 300a-7, which provides that health care entities receiving certain federal funds may refuse to provide abortion or sterilization if such services are contrary to their religious or moral beliefs.

Duplicates Senate Bill 10.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

CYFD notes that "Young people involved with CYFD utilize and rely on reproductive health services. Failure to pass this bill would jeopardize their ability to safely access these kinds of services [if *Roe v Wade* were overturned]."

LAC/al/rl