

1 SENATE BILL 459

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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5 David M. Gallegos and Ron Griggs
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10 AN ACT

11 RELATING TO ABORTION; AMENDING THE PARTIAL-BIRTH ABORTION BAN
12 ACT TO CHANGE THE TITLE TO THE LATE-TERM AND PARTIAL-BIRTH
13 ABORTION BAN ACT; PROHIBITING LATE-TERM ABORTIONS; PROVIDING AN
14 EXCEPTION UNDER WHICH LATE-TERM ABORTIONS MAY BE PERFORMED;
15 PROVIDING PENALTIES.
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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "30-5A-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 5A
21 NMSA 1978 may be cited as the "Late-Term and Partial-Birth
22 Abortion Ban Act"."

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

25 "30-5A-2. DEFINITIONS.--As used in the Late-Term and
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1 Partial-Birth Abortion Ban Act:

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

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

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

13 D. "physician" means a person licensed to practice
14 in the state as a licensed physician pursuant to the Medical
15 Practice Act [~~or an osteopathic physician licensed pursuant to~~
16 ~~Chapter 61, Article 10 NMSA 1978~~]; and

17 E. "viability" or "viable" means that stage of
18 fetal development when the life of the unborn child may be
19 continued indefinitely outside the womb by natural or
20 artificial life-support systems."

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

23 "30-5A-4. CIVIL REMEDIES.--

24 A. Except as provided in Subsection B of this
25 section, the following persons may bring a civil action to

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1 obtain relief pursuant to this section against a person who has
2 violated the provisions of Section [~~3 of the Partial-Birth~~
3 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978:

4 (1) the person on whom a partial-birth
5 abortion was performed;

6 (2) the biological father of the fetus that
7 was the subject of the partial-birth abortion; and

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

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

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

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

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

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

25 "30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

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1 A. Except as provided in Subsections B, C, D and E
2 of this section, a person who violates Section [~~3 of the~~
3 ~~Partial-Birth Abortion Ban Act~~] 30-5A-3 NMSA 1978 is guilty of
4 a fourth degree felony and shall be sentenced pursuant to
5 Section 31-18-15 NMSA 1978.

6 B. The provisions of [~~the Partial-Birth Abortion~~
7 ~~Ban Act~~] this section shall apply only to the exact procedure
8 specified in [~~that act~~] Subsection C of Section 30-5A-2 NMSA
9 1978.

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

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

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

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

25 "30-5A-6. [NEW MATERIAL] PROHIBITION OF LATE-TERM

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1 ABORTION.--

2 A. Late-term abortion consists of a physician
3 knowingly and willfully administering to any pregnant woman any
4 medicine, drug or other substance, or using any method or means
5 whereby an untimely termination of her pregnancy is produced,
6 or attempted to be produced, with the intent to destroy a
7 viable fetus of twenty or more weeks gestational age.

8 B. For the purposes of this section, there shall be
9 a legal presumption that viability occurs at the twentieth week
10 of pregnancy. Before a physician performs an abortion on a
11 woman that the physician has reason to believe is carrying a
12 fetus of twenty or more weeks gestational age, the physician
13 shall first determine, in a manner consistent with accepted
14 obstetrical and neonatal practices and standards, if the fetus
15 is viable. In making this determination of viability, the
16 physician shall perform or cause to be performed such medical
17 examinations and tests as are necessary to make a finding of
18 the gestational age, weight and lung maturity of the fetus and
19 shall enter such findings and determination of viability in the
20 medical record of the woman.

21 C. If a physician determines that the fetus is
22 twenty or more weeks gestational age and viable, the physician
23 shall not perform or induce a late-term abortion unless the
24 abortion is necessary to preserve the life of a pregnant woman
25 whose life is endangered by a physical disorder, physical

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1 illness or physical injury, including a life-endangering
2 physical condition caused by or arising from the pregnancy
3 itself; provided, however, that the physician shall take all
4 reasonable steps to preserve the life and health of the unborn
5 child."

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

9 "30-5A-7. [NEW MATERIAL] CIVIL PENALTY.--

10 A. A physician found to have knowingly and
11 willfully violated Section 30-5A-6 NMSA 1978 shall:

12 (1) be subject to a civil penalty of not less
13 than five thousand dollars (\$5,000) for each violation; and

14 (2) have the physician's license to practice
15 medicine revoked or suspended for no less than one year.

16 B. The New Mexico medical board shall enforce the
17 provisions of this section with respect to any violation by a
18 physician licensed pursuant to the Medical Practice Act."

19 SECTION 7. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2023.

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