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SENATE BILL 411

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Ramsay Gorham

AN ACT

RELATING TO ABORTION; ENACTING THE WOMAN'S RIGHT TO KNOW ACT;
REQUIRING VOLUNTARY, INFORMED CONSENT AS A PREREQUISITE TO
ABORTION; PROVIDING EXCEPTIONS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Woman's Right to Know Act".

Section 2. DEFINITIONS.--As used in the Woman's Right to
Know Act:

A. "abortion" means the use or prescription of any
instrument, medicine, drug or any other substance or device
intentionally to terminate the pregnancy of a female known to
be pregnant with an intention other than to increase the
probability of a live birth, to preserve the life or health of
the child after live birth or to remove a dead fetus;

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1 B. "attempt to perform an abortion" means an act,
2 or an omission of a statutorily required act, that, under the
3 circumstances as the actor believes them to be, constitutes a
4 substantial step in a course of conduct planned to culminate
5 in the performance of an abortion in New Mexico in violation
6 of the Woman's Right to Know Act;

7 C. "medical emergency" means any condition that,
8 on the basis of the physician's good faith clinical judgment,
9 so complicates the medical condition of a pregnant female as
10 to necessitate the immediate abortion of her pregnancy to
11 avert her death or for which a delay will create serious risk
12 of substantial and irreversible impairment of a major bodily
13 function;

14 D. "physician" means a physician or osteopathic
15 physician licensed in New Mexico; and

16 E. "probable gestational age of the unborn child"
17 means what, in the judgment of the physician, will with
18 reasonable probability be the gestational age of the unborn
19 child at the time the abortion is planned to be performed.

20 Section 3. INFORMED CONSENT.--No abortion shall be
21 performed in this state except with the voluntary and informed
22 consent of the female upon whom the abortion is to be
23 performed. Except in the case of a medical emergency, consent
24 to an abortion is voluntary and informed only if:

25 A. the female is told the following, by telephone

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1 or in person, by the physician who is to perform the abortion
2 or by referring physician, at least twenty-four hours before
3 the abortion:

4 (1) the name of the physician who will
5 perform the abortion;

6 (2) the particular medical risks associated
7 with the particular abortion procedure to be employed,
8 including, when medically accurate, the risks of infection,
9 hemorrhage, breast cancer, danger to subsequent pregnancies
10 and infertility;

11 (3) the probable gestational age of the
12 unborn child at the time the abortion is to be performed; and

13 (4) the medical risks associated with
14 carrying her child to term.

15 The information required by this subsection may be
16 provided by telephone without conducting a physical
17 examination or test of the patient, in which case the
18 information required to be provided may be based on facts
19 supplied the physician by the female and whatever other
20 relevant information is reasonably available to the physician.
21 It may not be provided by a tape recording, but shall be
22 provided during a consultation in which the physician is able
23 to ask questions of the female and the female is able to ask
24 questions of the physician. If a physical examination, tests
25 or the availability of other information to the physician

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1 subsequently indicates, in the medical judgment of the
2 physician, revision of the information previously supplied to
3 the patient, that revised information may be communicated to
4 the patient at any time prior to the performance of the
5 abortion. Nothing in this section may be construed to
6 preclude provision of required information in a language
7 understood by the patient through a translator;

8 B. the female is informed, by telephone or in
9 person, by the physician who is to perform the abortion, by a
10 referring physician or by an agent of either physician at
11 least twenty-four hours before the abortion that:

12 (1) medical assistance benefits may be
13 available for prenatal care, childbirth and neonatal care;

14 (2) the father is liable to assist in the
15 support of her child, even in instances in which the father
16 has offered to pay for the abortion; and

17 (3) she has the right to review the printed
18 materials described in Section 4 of the Woman's Right to Know
19 Act.

20 The physician or the physician's agent shall orally
21 inform the female the materials have been provided by the
22 state and that they describe the unborn child and list
23 agencies that offer alternatives to abortion. If the female
24 chooses to view the materials, they shall either be given to
25 her at least twenty-four hours before the abortion or mailed

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1 to her at least seventy-two hours before the abortion by
2 certified mail, restricted delivery to addressee, which means
3 the postal employee can only deliver the mail to the
4 addressee.

5 The information required by this subsection may be
6 provided by a tape recording if provision is made to record or
7 otherwise register specifically whether the female does or
8 does not choose to review the printed materials;

9 C. the female certifies in writing, prior to the
10 abortion, that the information described in Subsections A and
11 B of this section has been furnished her and that she has been
12 informed of her opportunity to review the information referred
13 to in Paragraph (3) of Subsection B of this section; and

14 D. prior to the performance of the abortion, the
15 physician who is to perform the abortion or the physician's
16 agent receives a copy of the written certification prescribed
17 by Subsection C of this section.

18 Section 4. PRINTED INFORMATION. --

19 A. Within ninety days after the effective date of
20 the Woman's Right to Know Act, the department of health shall
21 cause to be published, in English and in each language that is
22 the primary language of two percent or more of the state's
23 population, the following printed materials in such a way as
24 to ensure that the information is easily comprehensible:

25 (1) geographically indexed materials designed

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1 to inform the female of public and private agencies and
2 services available to assist a female through pregnancy, upon
3 childbirth and while the child is dependent, including
4 adoption agencies, which shall include a comprehensive list of
5 the agencies available, a description of the services they
6 offer and a description of the manner, including telephone
7 numbers, in which they might be contacted or, at the option of
8 the department of health, printed materials, including a toll-
9 free twenty-four-hour-a-day telephone number that may be
10 called to obtain orally, such a list and description of
11 agencies in the locality of the caller and of the services
12 they offer; and

13 (2) materials designed to inform the female
14 of the probable anatomical and physiological characteristics
15 of the unborn child at two-week gestational increments from
16 the time when a female can be known to be pregnant to full
17 term, including any relevant information on the possibility of
18 the unborn child's survival and pictures or drawings
19 representing the development of unborn children at two-week
20 gestational increments, provided that any such pictures or
21 drawings must contain the dimensions of the fetus and must be
22 realistic and objective, nonjudgmental and designed to convey
23 only accurate scientific information about the unborn child at
24 the various gestational ages. The material shall also contain
25 objective information describing the methods of abortion

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1 procedures commonly employed, the medical risks commonly
2 associated with each such procedure, the possible detrimental
3 psychological effects of abortion and the medical risks
4 commonly associated with each such procedure and the medical
5 risks commonly associated with carrying a child to term.

6 B. The materials referred to in Subsection A of
7 this section shall be printed in a typeface large enough to be
8 clearly legible.

9 C. The materials required under this section shall
10 be available at no cost from the department of health upon
11 request and in appropriate number to any person, facility or
12 hospital.

13 Section 5. PROCEDURE IN CASE OF MEDICAL EMERGENCY. -- When
14 a medical emergency compels the performance of an abortion,
15 the physician shall inform the female, prior to the abortion
16 if possible, of the medical indications supporting the
17 physician's judgment that an abortion is necessary to avert
18 her death or that a twenty-four-hour delay will create serious
19 risk of substantial and irreversible impairment of a major
20 bodily function.

21 Section 6. REPORTING REQUIREMENTS. --

22 A. Within ninety days after the effective date of
23 the Woman's Right to Know Act, the department of health shall
24 prepare a reporting form for physicians containing a reprint
25 of the Woman's Right to Know Act and listing:

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1 (1) the number of females to whom the
2 physician provided the information described in Subsection A
3 of Section 3 of the Woman's Right to Know Act; of that number,
4 the number provided by telephone and the number provided in
5 person; and of each of those numbers, the number provided in
6 the capacity of a referring physician and the number provided
7 in the capacity of a physician who is to perform the abortion;

8 (2) the number of females to whom the
9 physician or an agent of the physician provided the
10 information described in Subsection B of Section 3 of the
11 Woman's Right to Know Act; of that number, the number provided
12 by telephone and the number provided in person; of each of
13 those numbers, the number provided in the capacity of a
14 referring physician and the number provided in the capacity of
15 a physician who is to perform the abortion; and of each of
16 those numbers, the number provided by the physician and the
17 number provided by an agent of the physician;

18 (3) the number of females who availed
19 themselves of the opportunity to obtain a copy of the printed
20 information described in Section 4 of the Woman's Right to
21 Know Act and the number who did not; and of each of those
22 numbers, the number who, to the best of the reporting
23 physician's information and belief, went on to obtain the
24 abortion; and

25 (4) the number of abortions performed by the

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1 physician in which information otherwise required to be
2 provided at least twenty-four hours before the abortion was
3 not so provided because an immediate abortion was necessary to
4 avert the female's death, and the number of abortions in which
5 such information was not so provided because a delay would
6 create serious risk of substantial and irreversible impairment
7 of a major bodily function.

8 B. The department of health shall ensure that
9 copies of the reporting forms described in Subsection A of
10 this section are provided:

11 (1) within one hundred twenty days after the
12 effective date of the Woman's Right to Know Act, to all
13 physicians licensed to practice in this state;

14 (2) to each physician who subsequently
15 becomes newly licensed to practice in this state, at the same
16 time as official notification to the physician that the
17 physician is so licensed; and

18 (3) by December 1 of each year, other than
19 the calendar year in which forms are distributed in accordance
20 with Paragraph (1) of this subsection, to all physicians
21 licensed to practice in this state.

22 C. By February 28 of each year following a
23 calendar year in any part of which the Woman's Right to Know
24 Act was in effect, each physician who provided, or whose agent
25 provided, information to one or more females in accordance

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1 with Section 3 of the Woman's Right to Know Act during the
2 previous calendar year shall submit to the department of
3 health a copy of the form described in Subsection A of this
4 section, with the requested data entered accurately and
5 completely.

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

17 E. By June 30 of each year the department of
18 health shall issue a public report providing statistics for
19 the previous calendar year compiled from all of the reports
20 covering that year submitted in accordance with this section
21 for each of the items listed in Subsection A of this section.
22 Each such report shall also provide the statistics for all
23 previous calendar years, adjusted to reflect any additional
24 information from late or corrected reports. The department
25 shall take care to ensure that none of the information

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1 included in the public reports could reasonably lead to the
2 identification of any individual provided information in
3 accordance with Subsection A, B or C of Section 3 of the
4 Woman's Right to Know Act.

5 F. The department of health may by rule alter the
6 dates established by Paragraph (3) of Subsection B or
7 Subsection C or E of this section or consolidate the forms or
8 reports described in this section with other forms or reports
9 to achieve administrative convenience or fiscal savings or to
10 reduce the burden of reporting requirements, so long as
11 reporting forms are sent to all licensed physicians in the
12 state at least once every year and the report described in
13 Subsection E of this section is issued at least once every
14 year.

15 Section 7. CRIMINAL PENALTIES. -- Any person who knowingly
16 or recklessly performs or attempts to perform an abortion in
17 violation of the Woman's Right to Know Act is guilty of a
18 felony. Any physician who knowingly or recklessly submits a
19 false report under Subsection C of Section 6 of the Woman's
20 Right to Know Act is guilty of a misdemeanor. No penalty may
21 be assessed against the female upon whom the abortion is
22 performed or attempted to be performed. No penalty or civil
23 liability may be assessed for failure to comply with Paragraph
24 (3) of Subsection B of Section 3 or that portion of Subsection
25 C of Section 3 of the Woman's Right to Know Act requiring a

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1 written certification that the female has been informed of her
2 opportunity to review the information referred to in Paragraph
3 (3) of Subsection B of Section 3 of the Woman's Right to Know
4 Act unless the department of health has made the printed
5 materials available at the time the physician or the
6 physician's agent is required to inform the female of her
7 right to review them.

8 Section 8. CIVIL REMEDIES. --

9 A. Any person upon whom an abortion has been
10 performed without complying with the Woman's Right to Know
11 Act, the father of the unborn child who was the subject of
12 such an abortion or the grandparent of such an unborn child
13 may maintain an action against the person who performed the
14 abortion in knowing or reckless violation of that act for
15 actual and punitive damages. Any person upon whom an abortion
16 has been attempted without complying with that act may
17 maintain an action against the person who attempted to perform
18 the abortion in knowing or reckless violation of that act for
19 actual and punitive damages.

20 B. If the department of health fails to issue the
21 public report required by Subsection E of Section 6 of the
22 Woman's Right to Know Act, any group of ten or more citizens
23 of the state may seek an injunction in a court of competent
24 jurisdiction against the secretary of health requiring that a
25 complete report be issued within a period stated by the court

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1 order. Failure to abide by such an injunction shall subject
2 the secretary to sanctions for civil contempt.

3 C. If judgment is rendered in favor of the
4 plaintiff in any action described in this section, the court
5 shall also render judgment for a reasonable attorney fee in
6 favor of the plaintiff against the defendant. If judgment is
7 rendered in favor of the defendant and the court finds that
8 the plaintiff's suit was frivolous and brought in bad faith,
9 the court shall also render judgment for a reasonable attorney
10 fee in favor of the defendant against the plaintiff.

11 Section 9. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. --
12 In every civil or criminal proceeding or action brought
13 pursuant to the Woman's Right to Know Act, the court shall
14 rule whether the anonymity of any female upon whom an abortion
15 has been performed or attempted shall be preserved from public
16 disclosure if she does not give her consent to such
17 disclosure. The court, upon motion or sua sponte, shall make
18 such a ruling and, upon determining that her anonymity should
19 be preserved, shall issue orders to the parties, witnesses and
20 counsel and shall direct the sealing of the record and
21 exclusion of individuals from courtrooms or hearing rooms to
22 the extent necessary to safeguard her identity from public
23 disclosure. Each order shall be accompanied by specific
24 written findings explaining why the anonymity of the female
25 should be preserved from public disclosure, why the order is

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1 essential to that end, how the order is narrowly tailored to
2 serve that interest and why no reasonable less restrictive
3 alternative exists. In the absence of written consent of the
4 female upon whom an abortion has been performed or attempted,
5 anyone, other than a public official, who brings an action
6 under Subsection A of Section 8 of the Woman's Right to Know
7 Act shall do so under a pseudonym. This section does not
8 require concealment of the identity of the plaintiff or of
9 witnesses from the defendant.

10 Section 10. SEVERABILITY. --If any part or application of
11 the Woman's Right to Know Act is held invalid, the remainder
12 of its application to other situations or persons shall not be
13 affected.