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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino **ORIGINAL DATE** 02/23/11 **LAST UPDATED** _____ **HB** _____
SHORT TITLE Enact "Freedom of Access Act" **SB** 399
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See fiscal impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Department of Health (DOH)
Health Policy Commission (HPC)
New Mexico Medical Board (Board)

SUMMARY

Synopsis of Bill

Senate Bill 399 establishes the Freedom of Access Act (act) to ensure the safety of persons entering, exiting or using a reproductive health services facility or a reproductive justice site by making it unlawful to intentionally injure, intimidate or interfere with such persons. SB 399 also makes it unlawful to intentionally damage or destroy the property of a reproductive health services facility or reproductive justice site. SB 399 establishes criminal penalties for violations of the Act. In addition to the criminal penalties, SB 399 establishes that persons threatened with loss or injury may file civil actions for injunctive relief, and provides for privacy of a person aggrieved.

FISCAL IMPLICATIONS

The bill creates a misdemeanor penalty for damaging a health services facility or a reproductive justice site: a) a first violation is punishable by imprisonment not more than one year and a fine not to exceed \$15,000, and b) any subsequent violation is punishable by imprisonment not more than one year and a fine not to exceed \$25,000.

The bill provides for a person aggrieved to bring a civil action for compensatory or punitive damages, litigation costs and reasonable attorney fees. As an alternative to actual damages, a plaintiff may elect to recover an award of statutory damages in the amount of \$1,000 for each violation that is not a violent act and \$5,000 for each violent act.

SB 399 authorizes the Attorney General, a district attorney or a city attorney to bring a civil action to:

- a) recover compensatory damages on behalf of persons aggrieved by the violation; or
- b) recover a civil penalty against each person who has committed a violation, to not exceed:
 - o 2,000 for a first violation that is not a violent act;
 - o \$5,000 for a subsequent violation that is not a violent act;
 - o \$15,000 for a first violation that is a violent act; or
 - o \$25,000 for a subsequent violation that is a violent act.

*The bill gives the AGO, the District Attorney or a City Attorney the power to seek injunctive relief under the act, in addition to civil penalties, but provides no additional funding to support these activities. It is unknown to what extent the penalties imposed will cover these costs.

SIGNIFICANT ISSUES

A person may bring an action for injunctive relief for any threatened loss, damage or injury.

SB 399 provides that in its discretion, a court may permit a person who appears before the court in a civil proceeding relating to the act to use a pseudonym when reasonably required to safeguard the safety or privacy of that person.

DOH notes that there have been three arson events at abortion clinics in New Mexico since 1999. However, there has been a nationwide increase in providers reporting antiabortion harassment; from 82% in 2000 to 89% in 2008. Picketing was the most common form of harassment (reported by 55% of providers), followed by picketing combined with blocking patient access to facilities (21%).

PERFORMANCE IMPLICATIONS

A court may enjoin prohibited conduct if there is evidence that a person is likely to violate the act.

ADMINISTRATIVE IMPLICATIONS

There will be an administrative burden on the judiciary proportional to the enforcement of this law and commenced prosecutions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB399 may relate to the following bills:

- HB179 Pain-Capable Unborn Child Protection Act
- SB222 Pain-Capable Unborn Child Protection Act
- SB225 Unlawful Contact by Abortion Clinic Staff
- SB230 Parental Notification Act

- SB239 Prohibit Certain Late-Term Abortions

OTHER SUBSTANTIVE ISSUES

DOH notes that the Federal Freedom of Access to Clinic Entrances Act prohibits the following (1) the use or threat of physical force or obstruction to intentionally injure, intimidate, interfere with or attempt to injure, intimidate or interfere with any person who is obtaining or providing reproductive health services; and (2) the intentional damage or destruction of a reproductive health care facility.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Interference with access to reproductive health services may not be specifically provided for by state law.

AHO/bym