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SENATE BILL 230

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION ACT;
ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN
ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PROVIDING FOR
PHYSICIAN AND DEPARTMENT OF HEALTH REPORTING ON ABORTIONS
RECEIVED BY CERTAIN FEMALES; PRESCRIBING PENALTIES; REPEALING
SECTION 30-5-3 NMSA 1978 (BEING LAWS 1969, CHAPTER 67, SECTION
3) RELATING TO CRIMINAL ABORTION.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Parental Notification Act".

SECTION 2. DEFINITIONS.--As used in the Parental
Notification Act:

A. "abortion" means the use of any means to
terminate the pregnancy of a female known to be pregnant, with

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1 knowledge that the termination will, with reasonable
2 likelihood, cause the death of the fetus;

3 B. "fetus" means an individual human organism from
4 fertilization until birth; and

5 C. "parent" means one parent of a pregnant female
6 or a guardian or conservator of a pregnant female.

7 SECTION 3. NOTIFICATION CONCERNING ABORTION.--

8 A. An abortion shall not be performed upon an
9 unemancipated minor or upon a female for whom a guardian or
10 conservator has been appointed because of a finding of
11 incompetency until at least forty-eight hours after written
12 notice of the pending operation has been delivered in the
13 manner specified in this section.

14 B. The notice shall be addressed to the parent,
15 guardian or conservator, as appropriate, at the usual place of
16 abode of the addressee and delivered personally to the
17 addressee by the physician or an agent.

18 C. In lieu of the delivery required pursuant to
19 Subsection B of this section, notice shall be made by certified
20 mail addressed to the parent, guardian or conservator at the
21 usual place of abode of the addressee with return receipt
22 requested and restricted delivery to the addressee. Time of
23 delivery shall be deemed to occur at 12:00 noon on the next day
24 subsequent to mailing on which regular mail delivery takes
25 place.

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1 SECTION 4. LIMITATIONS.--A notice shall not be required
2 pursuant to the provisions of the Parental Notification Act if:

3 A. the attending physician certifies in the
4 pregnant female's medical record that the abortion is necessary
5 to prevent the pregnant female's death and there is
6 insufficient time to provide the required notice; or

7 B. the person who is entitled to notice certifies
8 in writing that the person has been notified.

9 SECTION 5. ELECTION BY FEMALE NOT TO ALLOW NOTICE.--

10 A. If a pregnant female elects not to allow the
11 notification of her parent, guardian or conservator, a judge of
12 a court of competent jurisdiction shall, upon petition or
13 motion and after an appropriate hearing, authorize a physician
14 to perform the abortion if the judge determines that the
15 pregnant female is mature and capable of giving informed
16 consent to the proposed abortion. If the judge determines that
17 the pregnant female is not mature or if the pregnant female
18 does not claim to be mature, the judge shall determine whether
19 the performance of an abortion upon her without notification of
20 her parent, guardian or conservator would be in her best
21 interests and shall authorize a physician to perform the
22 abortion without such notification if the judge concludes that
23 the pregnant female's best interests would be served by the
24 abortion.

25 B. A pregnant female may participate in proceedings

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1 in the court on her own behalf and the court may appoint a
2 guardian ad litem for her. However, the court shall advise her
3 that she has a right to court-appointed counsel and shall, upon
4 her request, provide her with counsel.

5 C. Proceedings in the court pursuant to this
6 section shall be confidential and shall be given precedence
7 over other pending matters so that the court may reach a
8 decision promptly and without delay so as to serve the best
9 interests of the pregnant female. A judge of the court who
10 conducts proceedings pursuant to this section shall make in
11 writing specific factual findings and legal conclusions
12 supporting the decision and shall order a record of the
13 evidence to be maintained, including the judge's own findings
14 and conclusions.

15 D. The court shall rule on an application submitted
16 pursuant to this section no later than 5:00 p.m. on the
17 business day after the date of filing. Upon the request of the
18 pregnant female, the court shall grant an extension of the
19 period specified by this subsection. If the pregnant female
20 makes a request for an extension, the court shall rule on the
21 application no later than two days after the date the pregnant
22 female has stated in her request for extension that she is
23 ready to proceed by 5:00 p.m. If the court fails to rule on
24 the application within the period specified by this subsection,
25 the application shall be deemed granted. The clerk of the

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1 court shall issue a written statement to the pregnant female
2 indicating that the time for granting a decision has expired
3 and therefore the application is deemed granted.

4 E. An expedited confidential appeal shall be
5 available to a pregnant female for whom the court denies an
6 order authorizing an abortion without notification. An order
7 authorizing an abortion without notification shall not be
8 subject to appeal. Filing fees shall not be required of a
9 pregnant female at either the trial or the appellate level.
10 Access to the trial court for the purposes of a petition or
11 motion and access to the appellate courts for purposes of
12 making an appeal from denial of the same shall be afforded to a
13 pregnant female twenty-four hours a day, seven days a week.

14 SECTION 6. PENALTY.--

15 A. Performance of an abortion in knowing or
16 reckless violation of the Parental Notification Act is a
17 misdemeanor, and the offender shall be sentenced pursuant to
18 Section 31-19-1 NMSA 1978.

19 B. Performance of an abortion in knowing or
20 reckless violation of the Parental Notification Act is grounds
21 for a civil action by a person wrongfully denied notification.

22 C. A person shall not be held liable pursuant to
23 this section if the person establishes by written evidence that
24 the person relied upon evidence sufficient to convince a
25 careful and prudent person that the representations of the

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1 pregnant female regarding information necessary to comply with
2 this section were bona fide and true or if the person attempted
3 with reasonable diligence to deliver notice, but was unable to
4 do so.

5 SECTION 7. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
6 FEES.--

7 A. No later than October 1, 2011, the department of
8 health shall prepare a reporting form for physicians regarding:

9 (1) the number of parents to whom the
10 physician or an agent of the physician provided the notice
11 described in Section 3 of the Parental Notification Act; of
12 that number, the number provided personally and the number
13 provided by mail, and of each of those numbers, the number of
14 females who, to the best of the reporting physician's
15 information and belief, went on to obtain an abortion;

16 (2) the number of females upon whom the
17 physician performed an abortion without providing to the parent
18 of the female the notice described in Section 3 of the Parental
19 Notification Act; of that number, the number who were
20 emancipated minors and the numbers for whom each of the
21 subsections of Section 5 of the Parental Notification Act were
22 applicable;

23 (3) the number of abortions performed by the
24 physician after receiving judicial authorization to do so
25 without parental notification; and

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1 (4) the same information described in
2 Paragraphs (1) through (3) of this subsection with respect to
3 females for whom a guardian or conservator has been appointed
4 because of a finding of incompetency.

5 B. The department of health shall ensure that
6 copies of the reporting form described in Subsection A of this
7 section, together with a reprint of the Parental Notification
8 Act, are provided:

9 (1) no later than October 1, 2011 to all
10 physicians licensed to practice in this state;

11 (2) to each physician who subsequently becomes
12 licensed to practice in this state at the same time that the
13 physician receives official notification of licensure; and

14 (3) by December 1 of every year, other than
15 the calendar year in which forms are distributed in accordance
16 with Paragraph (1) of this subsection, to all physicians
17 licensed to practice in this state.

18 C. By February 28 of each year following a calendar
19 year in any part of which the Parental Notification Act was in
20 effect, each physician who provided, or whose agent provided,
21 the notice described in Section 3 of that act and any physician
22 who knowingly performed an abortion upon a female or upon a
23 female for whom a guardian or conservator had been appointed
24 due to a finding of incompetency during the previous calendar
25 year shall submit to the department of health a copy of the

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1 form described in Subsection A of this section with the
2 requested data entered accurately and completely.

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

14 E. By June 30 of each year, the department of
15 health shall issue a public report providing:

16 (1) statistics for the previous calendar year
17 compiled from all of the reports covering that year submitted
18 in accordance with this section for each of the items listed in
19 Subsection A of this section;

20 (2) statistics that shall be provided to the
21 department by the administrative office of the courts setting
22 forth the total number of petitions or motions filed pursuant
23 to Section 5 of the Parental Notification Act, and of that
24 number:

25 (a) the number in which the court

1 appointed a guardian ad litem;

2 (b) the number in which the court
3 appointed counsel;

4 (c) the number in which the judge issued
5 an order authorizing an abortion without notification;

6 (d) the number in which the judge denied
7 an order;

8 (e) the number of denials from which an
9 appeal was filed;

10 (f) the number of appeals that resulted
11 in the denials being affirmed; and

12 (g) the number of appeals that resulted
13 in reversals of denials;

14 (3) statistics for all previous calendar years
15 for which such a public statistical report was required to be
16 issued, adjusted to reflect any additional information from
17 late or corrected reports; and

18 (4) no information that could reasonably lead
19 to the identification of any individual female or of any female
20 for whom a guardian or conservator has been appointed.

21 F. The department of health may by rule alter the
22 dates established in this section or consolidate the forms or
23 reports to achieve administrative convenience or fiscal savings
24 or to reduce the burden of reporting requirements, so long as
25 reporting forms are sent to all licensed physicians in the

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1 state at least once every year and the report described in
2 Subsection E of this section is issued at least once every
3 year.

4 G. If the department of health fails to issue the
5 public report required by Subsection E of this section, any
6 group of ten or more citizens of this state may seek an
7 injunction in a court of competent jurisdiction against the
8 secretary of health requiring that a complete report be issued
9 within a period stated by court order. Failure to abide by
10 such an injunction shall subject the secretary of health to
11 sanctions for civil contempt.

12 H. If judgment is rendered in favor of the
13 plaintiff in any action described in this section, the court
14 shall also render judgment for reasonable attorney fees in
15 favor of the plaintiff against the defendant. If judgment is
16 rendered in favor of the defendant and the court finds that the
17 plaintiff's suit was frivolous and brought in bad faith, the
18 court shall also render judgment for reasonable attorney fees
19 in favor of the defendant against the plaintiff.

20 SECTION 8. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
21 1969, Chapter 67, Section 3) is repealed.

22 SECTION 9. SEVERABILITY.--If any part or application of
23 the Parental Notification Act is held invalid, the remainder or
24 its application to other situations or persons shall not be
25 affected.

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SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.