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SENATE BILL 239

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

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO HEALTH CARE; AMENDING THE PARTIAL-BIRTH ABORTION ACT TO PROHIBIT CERTAIN LATE-TERM ABORTIONS; PROVIDING FOR CIVIL REMEDIES AND 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.** Section 30-5A-1 NMSA 1978 (being Laws 2000, Chapter 55, Section 1) is amended to read:

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

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

"30-5A-2. DEFINITIONS.--As used in the Late-Term Abortion  
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1 and 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. "late-term abortion" means an abortion performed  
8 after a physician has determined the fetus to be viable;

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

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

19 F. "viable" means able to survive outside the womb  
20 indefinitely by natural or artificial life-support systems."

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

23 "30-5A-3. PROHIBITION OF LATE-TERM ABORTIONS AND PARTIAL-  
24 BIRTH ABORTIONS.--No person shall perform a late-term abortion  
25 or partial-birth abortion except a physician who has determined

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1 that in [~~his~~] the physician's opinion the late-term abortion or  
2 partial-birth abortion is necessary to save the life of a  
3 pregnant female or prevent great bodily harm to a pregnant  
4 female:

5 A. because her life is endangered or she is at risk  
6 of great bodily harm due to a physical disorder, illness or  
7 injury, including a condition caused by or arising from the  
8 pregnancy; and

9 B. no other medical procedure would suffice for the  
10 purpose of saving her life or preventing great bodily harm to  
11 her."

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

14 "30-5A-4. CIVIL REMEDIES.--

15 A. Except as provided in Subsection B of this  
16 section, the following persons may bring a civil action to  
17 obtain relief pursuant to this section against a person who has  
18 violated the provisions of Section [~~3 of the Partial-Birth~~  
19 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978:

20 (1) the person on whom a late-term abortion or  
21 partial-birth abortion was performed;

22 (2) the biological father of the fetus that  
23 was the subject of the late-term abortion or partial-birth  
24 abortion; and

25 (3) the parents of the person on whom the

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1 late-term abortion or partial-birth abortion was performed if  
2 that person had not reached the age of majority at the time of  
3 the abortion.

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

7 (1) the pregnancy of the person on whom the  
8 late-term abortion or partial-birth abortion was performed  
9 resulted from criminal conduct of the person seeking to bring  
10 the action; or

11 (2) the late-term abortion or partial-birth  
12 abortion was consented to by the person seeking to bring the  
13 action.

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

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

20 "30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

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

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1           B. The provisions of the Late-Term Abortion and  
2 Partial-Birth Abortion Ban Act shall apply only to the exact  
3 [~~procedure~~] procedures specified in that act.

4           C. The provisions of the Late-Term Abortion and  
5 Partial-Birth Abortion Ban Act are not intended to criminalize  
6 any other method of terminating a woman's pregnancy.

7           D. The provisions of the Late-Term Abortion and  
8 Partial-Birth Abortion Ban Act are not intended to subject a  
9 woman, upon whom [~~the~~] a procedure specified in that act is  
10 performed, to criminal culpability as an accomplice, aider,  
11 abettor, solicitor or conspirator.

12           E. The provisions of the Late-Term Abortion and  
13 Partial-Birth Abortion Ban Act are not intended to subject any  
14 person to criminal culpability pursuant to laws governing  
15 attempt, solicitation or conspiracy to commit a crime."

16           SECTION 6. [NEW MATERIAL] ABORTION--DETERMINATION OF  
17 VIABILITY--PENALTY.--

18           A. Before performing an abortion, a physician shall  
19 determine, to a reasonable degree of certainty, whether the  
20 fetus is viable.

21           B. A physician is guilty of a fourth degree felony  
22 if the physician fails to ascertain the viability of a fetus to  
23 a reasonable degree of certainty and the physician aborts the  
24 fetus.

25           C. As used in this section, "viable" means able to

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1 survive outside the womb indefinitely by natural or artificial  
2 life-support systems.

3 SECTION 7. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws  
4 1969, Chapter 67, Section 3) is repealed.

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