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SENATE BILL 399

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

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO ACCESS TO HEALTH SERVICES AND MEETINGS; ENACTING
THE FREEDOM OF ACCESS ACT; PROHIBITING INTERFERENCE WITH ACCESS
TO REPRODUCTIVE HEALTH SERVICES AND MEETINGS; PROVIDING FOR
CIVIL DAMAGES AND PENALTIES; PROVIDING FOR INJUNCTIVE RELIEF;
PROVIDING FOR PROTECTION OF THE SAFETY AND PRIVACY OF CERTAIN
PERSONS; PROVIDING CRIMINAL PENALTIES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Freedom of Access Act".

SECTION 2. DEFINITIONS.--As used in the Freedom of Access
Act:

A. "interfere" means to restrict a person's freedom
of movement;

B. "intimidate" means to place a person in

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1 reasonable apprehension of bodily harm to the person or to
2 another;

3 C. "reproductive health services" means services
4 relating to the human reproductive system or relating to
5 pregnancy or the termination of a pregnancy, provided in a
6 hospital, clinic, physician's office or other facility, and may
7 include medical, surgical, counseling or referral services;

8 D. "reproductive health services facility" means a
9 hospital, clinic, physician's office or other facility,
10 including the building or structure in which the facility is
11 located, that provides or seeks to provide reproductive health
12 services;

13 E. "reproductive health services provider" means a
14 person that is or has been involved in:

15 (1) providing or seeking to provide any
16 services in a reproductive health services facility; or

17 (2) owning, operating or seeking to own or
18 operate a reproductive health services facility;

19 F. "reproductive justice site" means:

20 (1) a place where a meeting or presentation
21 regarding abortion policies or practices is taking place;

22 (2) an organization that counsels for or
23 against abortion; and

24 (3) an organization that, as a major activity,
25 engages in lobbying, publicizing or organizing either for or

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1 against abortion; and

2 G. "violent act" means an action that has as an
3 element the use, attempted use or threatened use of force
4 against the person or property of another.

5 SECTION 3. UNLAWFUL INJURY, INTIMIDATION OR
6 INTERFERENCE.--

7 A. It is unlawful to intentionally injure,
8 intimidate or interfere with a person entering, exiting or
9 using a reproductive health services facility or a reproductive
10 justice site in order to prevent that person from entering,
11 exiting or using a reproductive health services facility or a
12 reproductive justice site.

13 B. It is unlawful to intentionally damage or
14 destroy the property of a reproductive health services facility
15 or a reproductive justice site.

16 SECTION 4. CRIMINAL PENALTIES.--

17 A. A first violation of Section 3 of the Freedom of
18 Access Act is a misdemeanor, punishable by imprisonment for a
19 period of not more than one year and a fine not to exceed
20 fifteen thousand dollars (\$15,000).

21 B. A second or subsequent violation of Section 3 of
22 the Freedom of Access Act is a misdemeanor, punishable by
23 imprisonment for a period of not more than one year and a fine
24 not to exceed twenty-five thousand dollars (\$25,000).

25 SECTION 5. CIVIL ACTIONS--INJUNCTIVE RELIEF.--

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1 A. In addition to the criminal penalties, a court
2 may enjoin conduct prohibited in Section 3 of the Freedom of
3 Access Act if there is credible evidence that a person is
4 likely to violate Section 3 of that act. A person who is
5 threatened with loss or injury by reason of a violation
6 described in Section 3 of the Freedom of Access Act may bring
7 an action for injunctive relief in a court of competent
8 jurisdiction for any threatened loss, damage or injury.

9 B. A person aggrieved by a violation of Section 3
10 of the Freedom of Access Act may bring a civil action for
11 compensatory or punitive damages, litigation costs and
12 reasonable attorney fees. As an alternative to actual damages,
13 a plaintiff may elect to recover an award of statutory damages
14 in the amount of one thousand dollars (\$1,000) for each
15 violation of the Freedom of Access Act that is not a violent
16 act and five thousand dollars (\$5,000) for each violent act
17 committed in violation of the Freedom of Access Act.

18 C. If there is credible evidence that a person is
19 likely to violate Section 3 of the Freedom of Access Act, the
20 attorney general, a district attorney or city attorney may
21 bring a civil action to enjoin the violation.

22 D. If a person violates Section 3 of the Freedom of
23 Access Act, the attorney general, a district attorney or a city
24 attorney may bring a civil action to:

25 (1) recover compensatory damages on behalf of

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1 persons aggrieved by the violation; or

2 (2) recover a civil penalty against each
3 person who has committed a violation, which shall not exceed:

4 (a) two thousand dollars (\$2,000) for a
5 first violation that is not a violent act;

6 (b) five thousand dollars (\$5,000) for a
7 subsequent violation that is not a violent act;

8 (c) fifteen thousand dollars (\$15,000)
9 for a first violation that is a violent act; or

10 (d) twenty-five thousand dollars
11 (\$25,000) for a subsequent violation that is a violent act.

12 SECTION 6. SAFETY AND PRIVACY OF CERTAIN PERSONS.--

13 A. A court shall take all action reasonably
14 required, including injunction, to safeguard the safety or
15 privacy of a person who appears before the court in a civil or
16 criminal proceeding relating to the Freedom of Access Act.

17 B. In its discretion, a court may permit a person
18 who appears before the court in a civil proceeding relating to
19 the Freedom of Access Act to use a pseudonym when reasonably
20 required to safeguard the safety or privacy of that person.