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HOUSE BILL 710

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GLORIA VAUGHN

AN ACT

RELATING TO ABORTIONS; PROVIDING FOR NOTIFICATION OF PARENTS OR
GUARDIANS; PROVIDING EXCEPTIONS; PRESCRIBING CRIMINAL AND CIVIL
PENALTIES.

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 termination of a pregnancy
with knowledge that the termination will, with reasonable
likelihood, cause the death of the fetus;

B. "fetus" means a human organism from fertilization
until birth;

C. "guardian" means a person who has qualified to

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1 provide for the care, custody or control of the person of a
2 minor or incapacitated person pursuant to testamentary or court
3 appointment;

4 D. "incapacitated person" means a female who
5 demonstrates over time either partial or complete functional
6 impairment by reason of mental illness, mental deficiency,
7 physical illness or disability, chronic use of drugs, chronic
8 intoxication or other cause, except minority, to the extent that
9 the person is unable to manage her personal affairs; and

10 E. "parent" means the biological or adoptive parent
11 of a pregnant unemancipated minor or incapacitated person.

12 Section 3. ABORTION NOTIFICATION. --

13 A. No abortion shall be performed on an
14 unemancipated minor or incapacitated person until at least
15 forty-eight hours after written notice of the pending abortion
16 has been given by the physician to the parent or guardian in the
17 manner specified in the Parental Notification Act.

18 B. The notice of abortion shall be addressed to the
19 parent or guardian at his usual place of abode and:

20 (1) delivered personally to the parent or
21 guardian by the physician or his agent; or

22 (2) made by certified mail to the parent or
23 guardian, return receipt requested, with restricted delivery
24 only to addressee. Delivery shall be deemed to have occurred at
25 12:00 noon three days after the notice was mailed.

1 Section 4. NOTIFICATION LIMITATIONS. --

2 A. Notice is not required pursuant to Section 3 of
3 the Parental Notification Act if:

4 (1) the attending physician certifies in the
5 unemancipated minor's or incapacitated person's medical record
6 that the abortion is necessary to prevent death and there is
7 insufficient time to provide the required notice;

8 (2) the parent or guardian certifies in writing
9 that he has knowledge of the intended abortion; or

10 (3) the unemancipated minor or incapacitated
11 person chooses not to consent to the notification and a district
12 court judge determines that an unnotified abortion would be in
13 the best interests of the unemancipated minor or incapacitated
14 person, as provided in Subsection B of this section, or that she
15 is mature and capable of giving informed consent to the proposed
16 abortion.

17 B. If the unemancipated minor or incapacitated
18 person chooses not to consent to the notification of her parent
19 or guardian, she may petition the district court for an order
20 for an unnotified abortion. The unemancipated minor or
21 incapacitated person may participate in proceedings in the court
22 on her own behalf, and the court may appoint a guardian ad litem
23 for her. Proceedings pursuant to this subsection shall be
24 confidential and shall be given precedence over other pending
25 matters so that the court may reach a decision without delay so

1 as to serve the best interests of the unemancipated minor or
2 incapacitated person. A judge who conducts proceedings pursuant
3 to this subsection shall make written factual findings and legal
4 conclusions supporting his decision. An expedited confidential
5 appeal shall be available to the unemancipated minor or
6 incapacitated person for whom the court denies an order
7 authorizing an unnotified abortion. An order authorizing an
8 unnotified abortion shall not be subject to appeal. No filing
9 fees shall be required of the unemancipated minor or
10 incapacitated person at either the trial or appellate level.
11 For the purposes of the Parental Notification Act, access to the
12 district court and the appellate courts shall be afforded to an
13 unemancipated minor or incapacitated person twenty-four hours a
14 day, seven days a week.

15 Section 5. REPORTING REQUIREMENTS--CIVIL PENALTY.--

16 A. The vital statistics bureau of the public health
17 division of the department of health shall prepare a reporting
18 form for physicians. The form shall include:

19 (1) the total number of notices provided by the
20 physician and the number of notices provided in person and by
21 mail;

22 (2) the number of abortions that occurred after
23 notice was given to parents and guardians, to the best of the
24 reporting physician's information;

25 (3) the number of unemancipated minors and

1 incapacitated persons upon whom the physician performed an
2 abortion without providing notice and, of that number:

3 (a) the number of unemancipated minors;

4 (b) the number of incapacitated persons;

5 and

6 (c) the number of each for whom each of
7 the conditions specified in Subsection A of Section 4 of the
8 Parental Notification Act was applicable; and

9 (4) the number of abortions performed by the
10 physician pursuant to court order.

11 B. The bureau shall ensure that copies of the
12 reporting forms and the Parental Notification Act are provided
13 to all physicians licensed to practice in New Mexico.

14 C. Annually, on or before February 28, every
15 physician who performed an abortion on an unemancipated minor or
16 incapacitated person in the previous year shall file the
17 completed and accurate report with the bureau.

18 D. A physician who fails to submit a report or fails
19 to submit a complete and accurate report may be liable for a
20 civil penalty of up to five hundred dollars (\$500). The bureau
21 may ask the court to require the physician to comply with the
22 requirements of this section within a period stated by the court
23 or be subject to sanctions for civil contempt.

24 Section 6. PUBLIC STATISTICS.--

25 A. The vital statistics bureau of the public health

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1 division of the department of health shall issue a public report
2 providing statistics for the previous calendar year compiled
3 from the reports provided pursuant to Section 5 of the Parental
4 Notification Act. The report shall also include the statistics
5 for all previous years for which a public statistical report was
6 required to be issued, adjusted to reflect additional
7 information from late or corrected reports.

8 B. The bureau may consolidate the report form or the
9 report required by the Parental Notification Act with other
10 forms and reports issued by the bureau to achieve administrative
11 convenience or fiscal savings or to reduce the burden of
12 reporting requirements; provided the reports are sent to all
13 physicians in the state at least once each year and the report
14 described in Subsection A of this section is issued at least
15 once each year.

16 C. The bureau shall take care to ensure that none of
17 the information included in the public reports could reasonably
18 lead to the identification of a person who has had an abortion.

19 Section 7. ABORTION WITHOUT NOTIFICATION-- CRIMINAL AND
20 CIVIL PENALTIES. --

21 A. A person who performs an abortion in knowing and
22 reckless violation of the Parental Notification Act is guilty of
23 a misdemeanor and shall be punished by a fine of not more than
24 one thousand dollars (\$1,000) or by imprisonment for a definite
25 term less than one year or both.

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B. A person who was wrongfully denied notification may bring a civil action against the physician who performed the abortion without notification. A person shall not be held liable pursuant to this subsection if he establishes by written evidence that he relied on information provided by the unemancipated minor or incapacitated person that was sufficient to convince a careful and prudent person that it was bona fide and true or that he attempted with reasonable diligence to deliver notice but was unable to do so.

Section 8. SEVERABILITY. -- If any part or application of the Parental Notification Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 9. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 710

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
BUSINESS AND INDUSTRY COMMITTEE.

Respectfully submitted,

Gary King, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Trujillo

Excused: Heaton, King, Rios, Vigil

Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 11, 1997

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

HOUSE BILL 710

**has had it under consideration and reports same WITHOUT
RECOMMENDATION, and thence referred to the JUDICIARY
COMMITTEE.**

Respectfully submitted,

Fred Luna, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 2 Against

Yes: 10

No: Getty, Olguin

Excused: Corley

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 710

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 4 Against

Yes: 5

No: M P. Garcia, King, Pederson, Stewart

Excused: Alwin, Foy, Rios, Sanchez

Absent: None

M \H0710

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