

1 SENATE BILL 291

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 John C. Ryan

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10 AN ACT

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

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

24 A. "abortion" means the use of any means to
25 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;

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

7 D. "unemancipated minor" means a person who has not
8 been declared an emancipated minor pursuant to the Emancipation
9 of Minors Act.

10 SECTION 3. NOTIFICATION CONCERNING ABORTION.--

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

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

21 C. In lieu of the delivery required pursuant to
22 Subsection B of this section, notice shall be made by certified
23 mail addressed to the parent or guardian at the usual place of
24 abode of the addressee with return receipt requested and
25 restricted delivery to the addressee. Time of delivery shall

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1 be deemed to occur at 12:00 noon on the next day subsequent to
2 mailing on which regular mail delivery takes place.

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

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

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

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

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

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

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

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

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

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

15 SECTION 6. PENALTY.--

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

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

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

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

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

8 A. No later than October 1, 2013, the department of
9 health shall prepare a reporting form for physicians regarding:

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

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

24 (3) the number of abortions performed by the
25 physician after receiving judicial authorization to do so

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1 without parental notification; and

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

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

10 (1) no later than October 1, 2013 to all
11 physicians licensed to practice in this state;

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

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

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

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1 to the department of health a copy of the form described in
2 Subsection A of this section with the requested data entered
3 accurately and completely.

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

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

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

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

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1 (a) the number in which the court
2 appointed a guardian ad litem;

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

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

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

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

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

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

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

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

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

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1 reporting forms are sent to all licensed physicians in the
2 state at least once every year and the report described in
3 Subsection E of this section is issued at least once every
4 year.

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

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

21 SECTION 8. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
22 1969, Chapter 67, Section 3) is repealed.

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

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1 affected.

2 SECTION 10. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2013.

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