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HOUSE BILL 221

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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and Rod Montoya

AN ACT

RELATING TO ABORTION; ENACTING THE PARENTAL NOTIFICATION OF
ABORTION ACT; REQUIRING NOTIFICATION OF A PARENT OR GUARDIAN
WHEN AN ABORTION IS TO BE PERFORMED ON A MINOR; CREATING
EXCEPTIONS TO NOTIFICATION; REQUIRING REPORTING; ESTABLISHING
PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE; DECLARING
AN EMERGENCY.

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

SECTION 1. A new section of Chapter 30, Article 5 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this
act may be cited as the "Parental Notification of Abortion
Act"."

SECTION 2. A new section of Chapter 30, Article 5 NMSA
1978 is enacted to read:

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1 "[NEW MATERIAL] DEFINITIONS.--As used in the Parental
2 Notification of Abortion Act:

3 A. "abortion" means the intentional termination of
4 the pregnancy of a female by a person who knows the female is
5 pregnant;

6 B. "department" means the children, youth and
7 families department;

8 C. "emancipated minor" means a minor who is
9 emancipated pursuant to the provisions of the Emancipation of
10 Minors Act;

11 D. "fetus" means the biological offspring of human
12 parents;

13 E. "physician" means a person licensed to practice
14 in the state of New Mexico as a physician pursuant to the
15 Medical Practice Act or an osteopathic physician pursuant to
16 the Osteopathic Medicine Act;

17 F. "pregnancy" means the implantation of a
18 developing embryo in the uterus; and

19 G. "reasonable medical judgment" means a medical
20 judgment that would be made by a reasonably prudent physician,
21 knowledgeable about the case and the treatment possibilities
22 with respect to the medical conditions involved."

23 **SECTION 3.** A new section of Chapter 30, Article 5 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] ABORTION--NOTIFICATION REQUIRED FOR

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1 MINORS.--

2 A. Except as otherwise provided in the Parental
3 Notification of Abortion Act, a physician may only perform an
4 abortion at the request of a non-emancipated minor after
5 providing notice of the planned abortion procedure to one
6 parent or guardian at least forty-eight hours prior to the
7 procedure.

8 B. Notice shall be delivered in a sealed envelope
9 addressed to a named parent or guardian by a courier or similar
10 service that requires acknowledgment of delivery by signature
11 of the named parent or guardian at that person's usual place of
12 residence or business. The cost of providing notice shall be
13 borne by the physician or abortion facility. If two delivery
14 attempts are made and delivery is unsuccessful, or if delivery
15 is refused, notification required pursuant to the section shall
16 be waived. Alternatively, the parent or guardian of a non-
17 emancipated minor seeking an abortion may sign an
18 acknowledgment at the facility at which the abortion is to be
19 performed acknowledging that the minor is seeking an abortion.
20 Nothing in this section shall be construed to require consent
21 of the minor's parent or guardian in order for the abortion to
22 be performed.

23 C. The physician shall keep records of such
24 notification for a period set by the vital records and health
25 statistics bureau of the department of health.

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1 D. Notification required pursuant to this section
2 shall be waived if a physician certifies in the pregnant
3 female's medical record that, in the physician's reasonable
4 medical judgment, the abortion is necessary to preserve the
5 life or physical health of the pregnant female and there is
6 insufficient time to provide the required notice."

7 SECTION 4. A new section of Chapter 30, Article 5 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] EXCEPTION FOR SEXUAL ABUSE, RAPE OR
10 INCEST.--

11 A. Not later than October 1, 2017, the New Mexico
12 medical board shall promulgate a series of questions and
13 consultation procedures calculated to allow medical personnel
14 at a facility performing or inducing abortions to determine if
15 a minor who is seeking an abortion has a pregnancy that is the
16 result of sexual abuse, rape or incest. These questions and
17 consultation procedures shall be approved by the department.
18 No medical tests shall be required as part of these patient
19 questions or consultation procedures.

20 B. The medical staff, intake employees and
21 physicians at each facility seeking to perform abortions in
22 this state shall be required to receive no less than eight
23 hours of training per year concerning administration of the
24 questions and consultation procedures described in Subsection A
25 of this section. The cost of the training shall be borne by

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1 the abortion facility.

2 C. Both the intake employee and the attending
3 physician shall be responsible for trying to determine if the
4 minor child's pregnancy is the result of sexual abuse, rape or
5 incest. If either the intake employee or the attending
6 physician has reasonable grounds to believe that the minor's
7 pregnancy is due to sexual abuse, rape or incest, the
8 department shall be immediately notified.

9 D. If the abortion facility, through its intake
10 employee or attending physician, states in the minor child's
11 medical record reasonable grounds for believing that the minor
12 child's pregnancy was the result of sexual abuse, rape or
13 incest, and further certifies that it has made a referral of
14 neglect or abuse to the department, then the abortion may be
15 performed without the notice required pursuant to Section 3 of
16 the Parental Notification of Abortion Act."

17 SECTION 5. A new section of Chapter 30, Article 5 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] JUDICIAL EXCEPTION TO NOTICE
20 REQUIREMENT.--

21 A. Notice shall not be required under Section 3 of
22 the Parental Notification of Abortion Act if a minor files a
23 petition in any district court for an order granting a waiver
24 of notice and participates in the proceedings on the minor's
25 own behalf. The court may appoint a guardian ad litem for the

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1 minor.

2 B. The court shall make every effort to hold a
3 hearing within forty-eight hours. The proceedings shall be
4 confidential, ensure the anonymity of the minor and shall be
5 sealed.

6 C. The petition shall be granted if the court finds
7 that:

8 (1) the minor is sufficiently mature and well
9 enough informed to decide intelligently whether to have an
10 abortion; or

11 (2) notification under Section 3 of the
12 Parental Notification of Abortion Act would not be in the best
13 interests of the minor. For the purpose of this paragraph,
14 there shall be a presumption that notification is not in the
15 best interest of the minor if the minor asserts that the
16 pregnancy was the result of sexual abuse, rape or incest. No
17 medical tests shall be required by the court.

18 D. The court shall issue written findings of fact
19 and conclusions of law supporting its decision and shall order
20 that a confidential record of the evidence and the judge's
21 findings and conclusion be maintained.

22 E. The petition shall be deemed granted if the
23 court does not issue a decision within forty-eight hours of the
24 filing of the petition and an extension is not requested by the
25 petitioner.

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1 F. The petitioner shall have a direct appeal of the
2 decision of the district court to the New Mexico court of
3 appeals, and the appeal shall be expedited.

4 G. Filing fees in this procedure shall be waived."

5 SECTION 6. A new section of Chapter 30, Article 5 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] REPORTING REQUIREMENTS.--The vital records
8 and health statistics bureau of the department of health shall
9 establish annual reporting requirements for physicians who
10 perform abortions and shall make the reports available for
11 statistical analysis and for verification of compliance with
12 the requirements by May 1 of each year for abortions performed
13 in the preceding year. Any personal identifying information in
14 the report shall be redacted by the physician prior to making
15 the reports available to the vital records and health
16 statistics bureau. Each physician shall report the following
17 data:

18 A. the number of females who requested the
19 physician to perform an abortion in the prior calendar year;

20 B. the number of actual abortions performed by the
21 physician in the prior calendar year;

22 C. the number of times the physician provided
23 notice as required under Section 3 of the Parental Notification
24 of Abortion Act;

25 D. the number of times that notice otherwise

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1 required under Section 3 of the Parental Notification of
2 Abortion Act was waived by judicial order or any other
3 exception and the manner in which the physician received proof
4 of the waiver; and

5 E. the number of times an abortion was performed in
6 which the fetus was viable and the reason for the abortion
7 cited by the performing physician is sexual abuse, rape or
8 incest. For the purpose of this subsection, "viable" means the
9 stage of human development when the fetus is potentially able
10 to live outside of the uterus with or without the aid of
11 artificial life support systems."

12 SECTION 7. A new section of Chapter 30, Article 5 NMSA
13 1978 is enacted to read:

14 "[NEW MATERIAL] PENALTIES.--

15 A. A physician found to have knowingly and
16 willfully failed to comply with Section 3 or 6 of the Parental
17 Notification of Abortion Act, or who commits perjury or
18 falsifies any record in relation to the reporting requirements
19 of that act, shall:

20 (1) be subject to a civil penalty of not less
21 than five thousand dollars (\$5,000) for each violation; and

22 (2) have the physician's license to practice
23 medicine revoked or suspended for no less than one year.

24 B. The New Mexico medical board shall enforce the
25 provisions of this section with respect to any violation by a

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1 physician licensed pursuant to the Medical Practice Act, and
2 the board of osteopathic medicine shall enforce the provisions
3 of this section with respect to any violation by a physician
4 licensed pursuant to the Osteopathic Medicine Act."

5 SECTION 8. Section 30-5-1 NMSA 1978 (being Laws 1969,
6 Chapter 67, Section 1) is amended to read:

7 "30-5-1. DEFINITIONS.--As used in [~~this~~] Chapter 30,
8 Article 5 NMSA 1978:

9 A. "abortion" means the intentional termination of
10 the pregnancy of a female by a person who knows the female is
11 pregnant;

12 B. "physician" means a person licensed to practice
13 in the state of New Mexico as a physician pursuant to the
14 Medical Practice Act or an osteopathic physician pursuant to
15 the Osteopathic Medicine Act; and

16 [~~A.~~] C. "pregnancy" means the implantation of [an]
17 a developing embryo in the uterus.

18 [~~B. "accredited hospital" means one licensed by the~~
19 ~~health and social services department;~~

20 [~~G. "justified medical termination" means the~~
21 ~~intentional ending of the pregnancy of a woman at the request~~
22 ~~of said woman or if said woman is under the age of eighteen~~
23 ~~years, then at the request of said woman and her then living~~
24 ~~parent or guardian, by a physician licensed by the state of New~~
25 ~~Mexico using acceptable medical procedures in an accredited~~

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1 ~~hospital upon written certification by the members of a special~~
2 ~~hospital board that:~~

3 ~~(1) the continuation of the pregnancy, in~~
4 ~~their opinion, is likely to result in the death of the woman or~~
5 ~~the grave impairment of the physical or mental health of the~~
6 ~~woman; or~~

7 ~~(2) the child probably will have a grave~~
8 ~~physical or mental defect; or~~

9 ~~(3) the pregnancy resulted from rape, as~~
10 ~~defined in Sections 40A-9-2 through 40A-9-4 NMSA 1953. Under~~
11 ~~this paragraph, to justify a medical termination of the~~
12 ~~pregnancy, the woman must present to the special hospital board~~
13 ~~an affidavit that she has been raped and that the rape has been~~
14 ~~or will be reported to an appropriated law enforcement~~
15 ~~official; or~~

16 ~~(4) the pregnancy resulted from incest.~~

17 ~~D. "special hospital board" means a committee of two~~
18 ~~licensed physicians or their appointed alternates who are~~
19 ~~members of the medical staff at the accredited hospital where~~
20 ~~the proposed justified medical termination would be performed,~~
21 ~~and who meet for the purpose of determining the question of~~
22 ~~medical justification in an individual case, and maintain a~~
23 ~~written record of the proceedings and deliberations of such~~
24 ~~board.]"~~

25 SECTION 9. Section 30-5-2 NMSA 1978 (being Laws 1969,

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1 Chapter 67, Section 2) is amended to read:
2 "30-5-2. ABORTION--PERSONS AND INSTITUTIONS EXEMPT.--
3 [~~This article does not require~~] A hospital or any medical
4 facility shall not be required to admit any patient for the
5 purposes of performing an abortion [~~nor is any hospital~~
6 ~~required to create a special hospital board~~]. A person who is
7 a member of, or associated with, the staff of a hospital or any
8 medical facility; any person under the direction of a
9 physician; or any employee of a hospital or any medical
10 facility in which [a justified medical termination has been
11 ~~authorized and~~] an abortion will be performed who objects to
12 the [~~justified medical termination~~] abortion on moral or
13 religious grounds shall not be required to participate in
14 medical procedures, [~~which~~] including the dispensing of
15 medication, that will result in the termination of pregnancy.
16 [~~and~~] The refusal of [~~any such~~] the person to participate shall
17 not form the basis of any disciplinary or other recriminatory
18 action against [~~such~~] the person."

19 SECTION 10. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
20 1969, Chapter 67, Section 3) is repealed.

21 SECTION 11. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.