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**HOUSE BILL 477**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Judy Vanderstar Russell**

**AN ACT**

**RELATING TO ABORTION; ENACTING THE INFORMED CHOICE ACT;  
REQUIRING INFORMED CONSENT AS A PREREQUISITE TO ABORTION;  
PROVIDING PENALTIES.**

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

**Section 1. SHORT TITLE. --This act may be cited as the  
"Informed Choice Act".**

**Section 2. DEFINITIONS. --As used in the Informed Choice  
Act:**

**A. "abortion" means the use or prescription of an  
instrument, medicine, drug or any other substance or device  
intentionally to terminate the pregnancy of a female known to  
be pregnant with an intention other than to increase the  
probability of a live birth, to preserve the life or health of  
the child after live birth or to remove a dead fetus;**

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1           B. "attempt to perform an abortion" means an act,  
2 or an omission of a statutorily required act, that, under the  
3 circumstances as the actor believes them to be, constitutes a  
4 substantial step in a course of conduct planned to culminate  
5 in the performance of an abortion;

6           C. "medical emergency" means any condition that,  
7 on the basis of the physician's good faith clinical judgment,  
8 so complicates the medical condition of a pregnant female as  
9 to necessitate the immediate abortion of her pregnancy to  
10 avert her death or for which a delay will create serious risk  
11 of substantial and irreversible impairment of a major bodily  
12 function;

13           D. "physician" means a physician or osteopathic  
14 physician licensed in New Mexico; and

15           E. "probable gestational age of the unborn child"  
16 means what, in the judgment of the physician, will with  
17 reasonable probability be the gestational age of the unborn  
18 child at the time the abortion is planned to be performed.

19           Section 3. INFORMED CONSENT.--No abortion shall be  
20 performed in New Mexico except with the voluntary and informed  
21 consent of the female upon whom the abortion is to be  
22 performed. Except in the case of a medical emergency, consent  
23 to an abortion is voluntary and informed only if:

24           A. the female is told the following, by telephone  
25 or in person, by the physician who is to perform the abortion

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1 or by referring physician, at least twenty-four hours before  
2 the abortion:

3 (1) the name of the physician who will  
4 perform the abortion;

5 (2) the particular medical risks associated  
6 with the particular abortion procedure to be employed,  
7 including, when medically accurate, the risks of infection,  
8 hemorrhage, breast cancer, danger to subsequent pregnancies  
9 and infertility;

10 (3) the probable gestational age of the  
11 unborn child at the time the abortion is to be performed; and

12 (4) the medical risks associated with  
13 carrying her child to term.

14 The information required by this subsection may be  
15 provided by telephone without conducting a physical  
16 examination or test of the patient, in which case the  
17 information required to be provided may be based on facts  
18 supplied to the physician by the female and whatever other  
19 relevant information is reasonably available to the physician.  
20 It may not be provided by a tape recording, but shall be  
21 provided during a consultation in which the physician is able  
22 to ask questions of the female and the female is able to ask  
23 questions of the physician. If a physical examination, tests  
24 or the availability of other information to the physician  
25 subsequently indicates, in the medical judgment of the

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1 physician, revision of the information previously supplied to  
2 the patient, that revised information may be communicated to  
3 the patient at any time prior to the performance of the  
4 abortion. Nothing in this section may be construed to  
5 preclude provision of required information in a language  
6 understood by the patient through a translator;

7 B. the female is informed, by telephone or in  
8 person, by the physician who is to perform the abortion, by a  
9 referring physician or by an agent of either physician at  
10 least twenty-four hours before the abortion that:

11 (1) medical assistance benefits may be  
12 available for prenatal care, childbirth and neonatal care;

13 (2) the father is liable to assist in the  
14 support of her child, even in instances in which the father  
15 has offered to pay for the abortion; and

16 (3) she has the right to review the printed  
17 materials described in Section 4 of the Informed Choice Act.

18 The physician or the physician's agent shall orally  
19 inform the female that the materials have been provided by the  
20 state and that they describe the unborn child and list  
21 agencies that offer alternatives to abortion. If the female  
22 chooses to view the materials, they shall either be given to  
23 her at least twenty-four hours before the abortion or mailed  
24 to her at least seventy-two hours before the abortion by  
25 certified mail, restricted delivery to addressee, which means

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1 the postal employee can only deliver the mail to the  
2 addressee.

3 The information required by this subsection may be  
4 provided by a tape recording if provision is made to record or  
5 otherwise register specifically whether the female does or  
6 does not choose to review the printed materials;

7 C. the female certifies in writing, prior to the  
8 abortion, that the information described in Subsections A and  
9 B of this section has been furnished to her and that she has  
10 been informed of her opportunity to review the information  
11 referred to in Paragraph (3) of Subsection B of this section;  
12 and

13 D. prior to the performance of the abortion, the  
14 physician who is to perform the abortion or the physician's  
15 agent receives a copy of the written certification prescribed  
16 by Subsection C of this section.

17 Section 4. PRINTED INFORMATION. --

18 A. Within ninety days after the effective date of  
19 the Informed Choice Act, the department of health shall  
20 publish, in English and in each language that is the primary  
21 language of two percent or more of the state's population, the  
22 following printed materials in such a way as to ensure that  
23 the information is easily comprehensible:

24 (1) geographically indexed information on  
25 public and private agencies and services available to assist a

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1 female through pregnancy, upon childbirth and while the child  
2 is dependent, including adoption agencies, which shall include  
3 a comprehensive list of the agencies available, a description  
4 of the services they offer and a description of the manner,  
5 including telephone numbers, in which they might be contacted  
6 or, at the option of the department of health, printed  
7 materials, including a toll-free twenty-four-hour-a-day  
8 telephone number that may be called to obtain orally such a  
9 list and description of agencies in the locality of the caller  
10 and of the services they offer; and

11 (2) materials designed to inform the female  
12 of the probable anatomical and physiological characteristics  
13 of the unborn child at two-week gestational increments from  
14 the time when a female can be known to be pregnant to full  
15 term, including relevant information on the possibility of the  
16 unborn child's survival and pictures or drawings representing  
17 the development of unborn children at two-week gestational  
18 increments, provided that such pictures or drawings must  
19 contain the dimensions of the fetus and must be realistic and  
20 objective, nonjudgmental and designed to convey only accurate  
21 scientific information about the unborn child at the various  
22 gestational ages. The material shall also contain objective  
23 information describing the methods of abortion procedures  
24 commonly employed, the medical risks commonly associated with  
25 each such procedure, the possible detrimental psychological

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1 effects of abortion and the medical risks commonly associated  
2 with carrying a child to term.

3 B. The materials referred to in Subsection A of  
4 this section shall be printed in a typeface large enough to be  
5 clearly legible.

6 C. The materials required under this section shall  
7 be available at no cost from the department of health upon  
8 request and in appropriate number to any person, facility or  
9 hospital.

10 Section 5. PROCEDURE IN CASE OF MEDICAL EMERGENCY. -- When  
11 a medical emergency compels the performance of an abortion,  
12 the physician shall inform the female, prior to the abortion  
13 if possible, of the medical indications supporting the  
14 physician's judgment that an abortion is necessary to avert  
15 her death or that a twenty-four-hour delay will create serious  
16 risk of substantial and irreversible impairment of a major  
17 bodily function.

18 Section 6. REPORTING REQUIREMENTS. --

19 A. Within ninety days after the effective date of  
20 the Informed Choice Act, the department of health shall  
21 prepare a reporting form for physicians containing a reprint  
22 of the Informed Choice Act and listing:

23 (1) the number of females to whom the  
24 physician provided the information described in Subsection A  
25 of Section 3 of the Informed Choice Act; of that number, the

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1 number provided by telephone and the number provided in  
2 person; and of each of those numbers, the number provided in  
3 the capacity of a referring physician and the number provided  
4 in the capacity of a physician who is to perform the abortion;

5 (2) the number of females to whom the  
6 physician or an agent of the physician provided the  
7 information described in Subsection B of Section 3 of the  
8 Informed Choice Act; of that number, the number provided by  
9 telephone and the number provided in person; of each of those  
10 numbers, the number provided in the capacity of a referring  
11 physician and the number provided in the capacity of a  
12 physician who is to perform the abortion; and of each of those  
13 numbers, the number provided by the physician and the number  
14 provided by an agent of the physician;

15 (3) the number of females who availed  
16 themselves of the opportunity to obtain a copy of the printed  
17 information described in Section 4 of the Informed Choice Act  
18 and the number who did not; and of each of those numbers, the  
19 number who, to the best of the reporting physician's  
20 information and belief, went on to obtain the abortion; and

21 (4) the number of abortions performed by the  
22 physician in which information otherwise required to be  
23 provided at least twenty-four hours before the abortion was  
24 not so provided because an immediate abortion was necessary to  
25 avert the female's death and the number of abortions in which



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1 such information was not so provided because a delay would  
2 create serious risk of substantial and irreversible impairment  
3 of a major bodily function.

4 B. The department of health shall ensure that  
5 copies of the reporting forms described in Subsection A of  
6 this section are provided:

7 (1) within one hundred twenty days after the  
8 effective date of the Informed Choice Act, to all physicians  
9 licensed to practice in New Mexico;

10 (2) to each physician who subsequently  
11 becomes newly licensed to practice in New Mexico, at the same  
12 time as official notification to the physician that the  
13 physician is so licensed; and

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

18 C. By February 28 of each year following a  
19 calendar year in any part of which the Informed Choice Act was  
20 in effect, each physician who provided, or whose agent  
21 provided, information to one or more females in accordance  
22 with Section 3 of the Informed Choice Act during the previous  
23 calendar year shall submit to the department of health a copy  
24 of the reporting form described in Subsection A of this  
25 section, with the requested data entered accurately and

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1 completely.

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

13 E. By June 30 of each year, the department of  
14 health shall issue a public report providing statistics for  
15 the previous calendar year compiled from all of the reports  
16 covering that year submitted in accordance with this section  
17 for each of the items listed in Subsection A of this section.  
18 Each such report shall also provide the statistics for all  
19 previous calendar years, adjusted to reflect any additional  
20 information from late or corrected reports. The department  
21 shall take care to ensure that none of the information  
22 included in the public reports could reasonably lead to the  
23 identification of a physician submitting a report in  
24 accordance with this section or of an individual provided  
25 information in accordance with Subsection A or B of Section 3

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1 of the Informed Choice Act.

2 F. The department of health may by rule alter the  
3 dates established by Paragraph (3) of Subsection B, C or E of  
4 this section or consolidate the forms or reports described in  
5 this section with other forms or reports to achieve  
6 administrative convenience or fiscal savings or to reduce the  
7 burden of reporting requirements, so long as reporting forms  
8 are sent to all licensed physicians in the state at least once  
9 every year and the report described in Subsection E of this  
10 section is issued at least once every year.

11 Section 7. CRIMINAL PENALTIES. --A person who knowingly  
12 or recklessly performs or attempts to perform an abortion in  
13 violation of the Informed Choice Act is guilty of a felony. A  
14 physician who knowingly or recklessly submits a false report  
15 under Subsection C of Section 6 of the Informed Choice Act is  
16 guilty of a misdemeanor. No penalty may be assessed against  
17 the female upon whom the abortion is performed or attempted to  
18 be performed. No penalty or civil liability may be assessed  
19 for failure to comply with Paragraph (3) of Subsection B of  
20 Section 3 or that portion of Subsection C of Section 3 of the  
21 Informed Choice Act requiring a written certification that the  
22 female has been informed of her opportunity to review the  
23 information referred to in Paragraph (3) of Subsection B of  
24 Section 3 of the Informed Choice Act unless the department of  
25 health has made the printed materials available at the time

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1 the physician or the physician's agent is required to inform  
2 the female of her right to review them.

3 Section 8. CIVIL REMEDIES. --

4 A. A female upon whom an abortion has been  
5 performed without complying with the Informed Choice Act, the  
6 father of the unborn child who was the subject of such an  
7 abortion or the grandparent of such an unborn child may  
8 maintain an action against the person who performed the  
9 abortion in knowing or reckless violation of that act for  
10 actual and punitive damages. A female upon whom an abortion  
11 has been attempted without complying with that act may  
12 maintain an action against the person who attempted to perform  
13 the abortion in knowing or reckless violation of that act for  
14 actual and punitive damages.

15 B. If the department of health fails to issue the  
16 public report required by Subsection E of Section 6 of the  
17 Informed Choice Act, any group of ten or more citizens of the  
18 state may seek an injunction in a court of competent  
19 jurisdiction against the secretary of health requiring that a  
20 complete report be issued within a period stated by the court  
21 order. Failure to abide by such an injunction shall subject  
22 the secretary to sanctions for civil contempt.

23 C. If judgment is rendered in favor of the  
24 plaintiff in any action described in this section, the court  
25 shall also render judgment for a reasonable attorney fee in

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1 favor of the plaintiff against the defendant. If judgment is  
2 rendered in favor of the defendant and the court finds that  
3 the plaintiff's suit was frivolous and brought in bad faith,  
4 the court shall also render judgment for a reasonable attorney  
5 fee in favor of the defendant against the plaintiff.

6 Section 9. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. --

7 In every civil or criminal proceeding or action brought  
8 pursuant to the Informed Choice Act, the court shall rule  
9 whether the anonymity of any female upon whom an abortion has  
10 been performed or attempted shall be preserved from public  
11 disclosure if she does not give her consent to such  
12 disclosure. The court, upon motion or sua sponte, shall make  
13 such a ruling and, upon determining that her anonymity should  
14 be preserved, shall issue orders to the parties, witnesses and  
15 counsel and shall direct the sealing of the record and  
16 exclusion of individuals from courtrooms or hearing rooms to  
17 the extent necessary to safeguard her identity from public  
18 disclosure. Each order shall be accompanied by specific  
19 written findings explaining why the anonymity of the female  
20 should be preserved from public disclosure, why the order is  
21 essential to that end, how the order is narrowly tailored to  
22 serve that interest and why no reasonable less restrictive  
23 alternative exists. In the absence of written consent of the  
24 female upon whom an abortion has been performed or attempted,  
25 anyone, other than a public official, who brings an action

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1 under Subsection A of Section 8 of the Informed Choice Act  
2 shall do so under a pseudonym. This section does not require  
3 concealment of the identity of the plaintiff or of witnesses  
4 from the defendant.

5 Section 10. SEVERABILITY. --If any part or application of  
6 the Informed Choice Act is held invalid, the remainder or its  
7 application to other situations or persons shall not be  
8 affected.

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