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SENATE BILL 298

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

INTRODUCED BY

Leonard Lee Rawson

AN ACT

**RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION ACT;
ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN
ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PRESCRIBING
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 use of any means to
terminate the pregnancy of a female known to be pregnant, with
knowledge that the termination will, with reasonable
likelihood, cause the death of the fetus;**

B. "fetus" means an individual human organism from

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1 fertilization until birth; and

2 C. "parent" means one parent of the pregnant
3 female or a guardian or conservator of the pregnant female.

4 Section 3. NOTIFICATION CONCERNING ABORTION. --

5 A. An abortion shall not be performed upon an
6 unemancipated minor or upon a female for whom a guardian or
7 conservator has been appointed because of a finding of
8 incompetency, until at least forty-eight hours after written
9 notice of the pending operation has been delivered in the
10 manner specified in Sections 3, 4 and 5 of the Parental
11 Notification Act.

12 B. The notice shall be addressed to the parent at
13 the usual place of abode of the parent and delivered
14 personally to the parent by the physician or an agent.

15 C. In lieu of the delivery required pursuant to
16 Subsection B of this section, notice shall be made by
17 certified mail addressed to the parent at the usual place of
18 abode of the parent with return receipt requested and
19 restricted delivery to the addressee, which means a postal
20 employee can only deliver the mail to the authorized
21 addressee. Time of delivery shall be deemed to occur at
22 twelve o'clock noon on the next day on which regular mail
23 delivery takes place, subsequent to mailing.

24 Section 4. LIMITATIONS. --

25 A. A notice shall not be required pursuant to the

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1 provisions of the Parental Notification Act if:

2 (1) the attending physician certifies in the
3 pregnant female's medical record that the abortion is
4 necessary to prevent the pregnant female's death and there is
5 insufficient time to provide the required notice;

6 (2) the person who is entitled to notice
7 certifies in writing that he has been notified; or

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

23 B. A pregnant female may participate in
24 proceedings in the court on her own behalf, and the court may
25 appoint a guardian ad litem for her. The court shall,

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1 however, advise her that she has a right to court appointed
2 counsel, and shall, upon her request, provide her with
3 counsel.

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

14 D. An expedited confidential appeal shall be
15 available to a pregnant female for whom the court denies an
16 order authorizing an abortion without notification. An order
17 authorizing an abortion without notification shall not be
18 subject to appeal. Filing fees shall not be required of a
19 pregnant female at either the trial or the appellate level.
20 Access to the trial court for the purposes of a petition or
21 motion, and access to the appellate courts for purposes of
22 making an appeal from denial of the same, shall be afforded to
23 a pregnant female twenty-four hours a day, seven days a week.

24 Section 5. PENALTY.--Performance of an abortion in
25 knowing or reckless violation of the Parental Notification Act

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1 shall be a misdemeanor and the offender shall be sentenced
2 pursuant to Section 31-19-1 NMSA 1978. Performance of an
3 abortion in knowing or reckless violation of the Parental
4 Notification Act shall also be grounds for a civil action by a
5 person wrongfully denied notification. A person shall not be
6 held liable pursuant to this section if the person establishes
7 by written evidence that the person relied upon evidence
8 sufficient to convince a careful and prudent person that the
9 representations of the pregnant female regarding information
10 necessary to comply with this section are bona fide and true,
11 or if the person has attempted with reasonable diligence to
12 deliver notice, but has been unable to do so.

13 Section 6. REPORTING REQUIREMENTS. --

14 A. No later than October 1, 2001, the department
15 of health shall prepare a reporting form for physicians
16 regarding:

17 (1) the number of parents to whom the
18 physician or an agent of the physician provided the notice
19 described in Section 3 of the Parental Notification Act; of
20 that number, the number provided personally, the number
21 provided by mail, and of each of those numbers, the number of
22 females who, to the best of the reporting physician's
23 information and belief, went on to obtain the abortion;

24 (2) the number of females upon whom the
25 physician performed an abortion without providing to the

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1 parent of the female the notice described in Section 3 of the
2 Parental Notification Act; of that number, the number who were
3 emancipated minors, and the numbers from whom each of the
4 subsections of Section 4 of the Parental Notification Act were
5 applicable;

6 (3) the number of abortions performed upon a
7 female by the physician after receiving judicial authorization
8 to do so without parental notifications; and

9 (4) the same information described in
10 Paragraphs (1) through (3) of this subsection with respect to
11 females for whom a guardian or conservator has been appointed
12 because of a finding of incompetency.

13 B. The department of health shall ensure that
14 copies of the reporting forms described in Subsection A of
15 this section, together with a reprint of the Parental
16 Notification Act, are provided:

17 (1) no later than October 1, 2001, to all
18 physicians licensed to practice in this state;

19 (2) to each physician who subsequently
20 becomes newly licensed to practice in this state, at the same
21 time as official notification to that physician that the
22 physician is so licensed; and

23 (3) by December 1 of every year, other than
24 the calendar year in which forms are distributed in accordance
25 with Paragraph (1) of this subsection, to all physicians

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1 licensed to practice in this state.

2 C. By February 28 of each year following a
3 calendar year in any part of which the Parental Notification
4 Act was in effect, each physician who provided, or whose agent
5 provided, the notice described in Section 3 of that act and
6 any physician who knowingly performed an abortion upon a
7 female or upon a female for whom a guardian or conservator had
8 been appointed due to a finding of incompetency during the
9 previous calendar year shall submit to the department of
10 health a copy of the form described in Subsection A of this
11 section, with the requested data entered accurately and
12 completely.

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

25 E. By June 30 of each year, the department of

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1 health shall issue a public report providing statistics for
2 the previous calendar year compiled from all of the reports
3 covering that year submitted in accordance with this section
4 for each of the items listed in Subsection A of this section.
5 The report shall also include statistics that shall be
6 provided to the department by the administrative office of the
7 courts setting forth the total number of petitions or motions
8 filed pursuant to Section 4 of the Parental Notification Act
9 and of that number: the number in which the court appointed a
10 guardian ad litem, the number in which the court appointed
11 counsel, the number in which the judge issued an order
12 authorizing an abortion without notification, the number in
13 which the judge denied an order, and of the last, the number
14 of denials from which an appeal was filed, the number of
15 appeals that resulted in the denials being affirmed and the
16 number of appeals that resulted in reversals of denials. Each
17 report shall also provide the statistics for all previous
18 calendar years for which such a public statistical report was
19 required to be issued, adjusted to reflect any additional
20 information from late or corrected reports. The department of
21 health shall take care to ensure that none of the information
22 included in the public reports could reasonable lead to the
23 identification of any individual female, or of any female for
24 whom a guardian or conservator has been appointed.

25 F. The department of health may by rule alter the

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1 dates established in this section or consolidate the forms or
2 reports to achieve administrative convenience or fiscal
3 savings or to reduce the burden of reporting requirements, so
4 long as reporting forms are sent to all licensed physicians in
5 the state at least once every year and the report described in
6 Subsection E of this section is issued at least once every
7 year.

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

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

25 Section 7. SEVERABILITY.--If any part or application of

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1 the Parental Notification Act is held invalid, the remainder
2 or its application to other situations or persons shall not be
3 affected.

4 Section 8. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 2001.

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