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SENATE BILL 32

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Ramsay L. Gorham

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 given 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.--

25 A. Performance of an abortion in knowing or

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1 reckless violation of the Parental Notification Act shall be a
2 misdemeanor and the offender shall be sentenced pursuant to
3 Section 31-19-1 NMSA 1978.

4 B. Performance of an abortion in knowing or
5 reckless violation of the Parental Notification Act shall be
6 grounds for a civil action by a person wrongfully denied
7 notification.

8 C. A person shall not be held liable pursuant to
9 this section if he establishes by written evidence that he
10 relied upon evidence sufficient to convince a careful and
11 prudent person that the representations of the pregnant female
12 regarding information necessary to comply with this section
13 are bona fide and true, or if the person has attempted with
14 reasonable diligence to deliver notice, but has been unable to
15 do so.

16 Section 6. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
17 FEES.--

18 A. No later than October 1, 2002, the department
19 of health shall prepare a reporting form for physicians
20 regarding:

21 (1) the number of parents to whom the
22 physician or an agent of the physician provided the notice
23 described in Section 3 of the Parental Notification Act; of
24 that number, the number provided personally, the number
25 provided by mail, and of each of those numbers, the number of

1 females who, to the best of the reporting physician's
2 information and belief, went on to obtain the abortion;

3 (2) the number of females upon whom the
4 physician performed an abortion without providing to the
5 parent of the female the notice described in Section 3 of the
6 Parental Notification Act; of that number, the number who were
7 emancipated minors, and the numbers from whom each of the
8 subsections of Section 4 of the Parental Notification Act were
9 applicable;

10 (3) the number of abortions performed upon a
11 female by the physician after receiving judicial authorization
12 to do so without parental notification; and

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

17 B. The department of health shall ensure that
18 copies of the reporting forms described in Subsection A of
19 this section, together with a reprint of the Parental
20 Notification Act, are provided:

21 (1) no later than October 1, 2002, to all
22 physicians licensed to practice in this state;

23 (2) to each physician who subsequently
24 becomes newly licensed to practice in this state, at the same
25 time as official notification to that physician that the

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1 physician is so licensed; and

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

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

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

1 jurisdiction to submit a complete report within a period
2 stated by court order or be subject to sanctions for civil
3 contempt.

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

6 (1) statistics for the previous calendar year
7 compiled from all of the reports covering that year submitted
8 in accordance with this section for each of the items listed
9 in Subsection A of this section;

10 (2) statistics that shall be provided to the
11 department by the administrative office of the courts setting
12 forth the total number of petitions or motions filed pursuant
13 to Section 4 of the Parental Notification Act and of that
14 number:

15 (a) the number in which the court
16 appointed a guardian ad litem;

17 (b) the number in which the court
18 appointed counsel;

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

21 (d) the number in which the judge
22 denied an order;

23 (e) the number of denials from which an
24 appeal was filed;

25 (f) the number of appeals that resulted

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1 in the denials being affirmed; and

2 (g) the number of appeals that resulted
3 in reversals of denials;

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

8 (4) no information that could reasonably lead
9 to the identification of any individual female or of any
10 female for whom a guardian or conservator has been appointed.

11 F. The department of health may by rule alter the
12 dates established in this section or consolidate the forms or
13 reports to achieve administrative convenience or fiscal
14 savings or to reduce the burden of reporting requirements, so
15 long as reporting forms are sent to all licensed physicians in
16 the state at least once every year and the report described in
17 Subsection E of this section is issued at least once every
18 year.

19 G. If the department of health fails to issue the
20 public report required by Subsection E of this section, any
21 group of ten or more citizens of this state may seek an
22 injunction in a court of competent jurisdiction against the
23 secretary of health requiring that a complete report be issued
24 within a period stated by court order. Failure to abide by
25 such an injunction shall subject the secretary of health to

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1 sanctions for civil contempt.

2 H. If judgment is rendered in favor of the
3 plaintiff in any action described in this section, the court
4 shall also render judgment for reasonable attorney fees in
5 favor of the plaintiff against the defendant. If judgment is
6 rendered in favor of the defendant and the court finds that
7 the plaintiff's suit was frivolous and brought in bad faith,
8 the court shall also render judgment for reasonable attorney
9 fees in favor of the defendant against the plaintiff.

10 Section 7. SEVERABILITY. -- If any part or application of
11 the Parental Notification Act is held invalid, the remainder
12 or its application to other situations or persons shall not be
13 affected.

14 Section 8. EFFECTIVE DATE. -- The effective date of the
15 provisions of this act is July 1, 2002.