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SENATE BILL 242

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO ABORTION; AMENDING THE PARTIAL-BIRTH ABORTION BAN ACT TO CHANGE THE TITLE TO THE "LATE-TERM AND PARTIAL-BIRTH ABORTION BAN ACT"; PROHIBITING LATE-TERM ABORTION; PROVIDING EXCEPTIONS UNDER WHICH LATE-TERM ABORTION MAY BE PERFORMED; PROVIDING PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE; DECLARING AN EMERGENCY.

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

SECTION 1. Section 30-5A-1 NMSA 1978 (being Laws 2000, Chapter 55, Section 1) is amended to read:

"30-5A-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 5A NMSA 1978 may be cited as the "Late-Term and Partial-Birth Abortion Ban Act"."

SECTION 2. Section 30-5A-2 NMSA 1978 (being Laws 2000, Chapter 55, Section 2) is amended to read:

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1 "30-5A-2. DEFINITIONS.--As used in the Late-Term and
2 Partial-Birth Abortion Ban 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. "fetus" means the biological offspring of human
7 parents;

8 C. "partial-birth abortion" means a procedure in
9 which any person, including a physician or other health care
10 professional, intentionally extracts an independently viable
11 fetus from the uterus into the vagina and mechanically extracts
12 the cranial contents of the fetus in order to induce death;
13 [~~and~~]

14 D. "physician" means a person licensed to practice
15 in the state as a licensed physician pursuant to the Medical
16 Practice Act or an osteopathic physician licensed pursuant to
17 Chapter 61, Article 10 NMSA 1978;

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

22 F. "viable" means the state of fetal development
23 when, in reasonable medical judgment, there is a likelihood
24 that the life of the fetus can be sustained outside the woman's
25 uterus with or without artificial support."

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1 SECTION 3. Section 30-5A-4 NMSA 1978 (being Laws 2000,
2 Chapter 55, Section 4) is amended to read:

3 "30-5A-4. CIVIL REMEDIES.--

4 A. Except as provided in Subsection B of this
5 section, the following persons may bring a civil action to
6 obtain relief pursuant to this section against a person who has
7 violated the provisions of Section [~~3 of the Partial-Birth~~
8 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978:

9 (1) the person on whom a partial-birth
10 abortion was performed;

11 (2) the biological father of the fetus that
12 was the subject of the partial-birth abortion; and

13 (3) the parents of the person on whom the
14 partial-birth abortion was performed if that person had not
15 reached the age of majority at the time of the abortion.

16 B. The persons named as having a right of action in
17 Subsection A of this section are barred from bringing a civil
18 action pursuant to this section if:

19 (1) the pregnancy of the person on whom the
20 partial-birth abortion was performed resulted from criminal
21 conduct of the person seeking to bring the action; or

22 (2) the partial-birth abortion was consented
23 to by the person seeking to bring the action.

24 C. A person authorized to bring a civil action
25 pursuant to this section may recover compensatory damages for

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1 loss caused by violation of Section [~~3 of the Partial-Birth~~
2 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978."

3 SECTION 4. Section 30-5A-5 NMSA 1978 (being Laws 2000,
4 Chapter 55, Section 5) is amended to read:

5 "30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

6 A. Except as provided in Subsections B, C, D and E
7 of this section, a person who violates Section [~~3 of the~~
8 ~~Partial-Birth Abortion Ban Act~~] 30-5A-3 NMSA 1978 is guilty of
9 a fourth degree felony and shall be sentenced pursuant to
10 Section 31-18-15 NMSA 1978.

11 B. The provisions of [~~the Partial-Birth Abortion~~
12 ~~Ban Act~~] this section shall apply only to the exact procedure
13 specified in [~~that act~~] Subsection C of Section 30-5A-2 NMSA
14 1978.

15 C. The provisions of [~~the Partial-Birth Abortion~~
16 ~~Ban Act~~] this section are not intended to criminalize any other
17 method of terminating a woman's pregnancy.

18 D. The provisions of [~~the Partial-Birth Abortion~~
19 ~~Ban Act~~] this section are not intended to subject a woman, upon
20 whom [~~the procedure specified in that act~~] an abortion is
21 performed, to criminal culpability as an accomplice, aider,
22 abettor, solicitor or conspirator.

23 E. The provisions of [~~the Partial-Birth Abortion~~
24 ~~Ban Act~~] this section are not intended to subject any person to
25 criminal culpability pursuant to laws governing attempt,

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1 solicitation or conspiracy to commit a crime."

2 SECTION 5. A new section of the Late-Term and Partial-
3 Birth Abortion Ban Act, Section 30-5A-6 NMSA 1978, is enacted
4 to read:

5 "30-5A-6. [NEW MATERIAL] PROHIBITION OF LATE-TERM
6 ABORTION.--

7 A. Late-term abortion consists of knowingly and
8 willfully administering to any pregnant woman any medicine,
9 drug or other substance, or using any method or means whereby
10 an untimely termination of her pregnancy is produced, or
11 attempted to be produced, with the intent to destroy a viable
12 fetus of twenty or more weeks gestational age.

13 B. Only a physician may perform an abortion. If
14 the physician determines that the fetus is twenty or more weeks
15 gestational age and viable, the physician shall not perform or
16 induce a late-term abortion unless:

17 (1) the physician has determined that, in the
18 physician's reasonable medical judgement, the late-term
19 abortion is necessary to preserve the life or physical health
20 of the pregnant woman; provided, however, that the physician
21 shall take all reasonable steps to preserve the life and health
22 of the fetus; or

23 (2) the pregnant woman asserts that the
24 pregnancy resulted from sexual abuse, rape or incest.

25 C. Before a physician performs an abortion on a

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1 woman that the physician has reason to believe is carrying a
2 fetus of twenty or more weeks gestational age, the physician
3 shall first determine, in a manner consistent with accepted
4 obstetrical and neonatal practices and standards, if the fetus
5 is viable. The physician shall use and exercise that degree of
6 care, skill and proficiency commonly exercised by the
7 ordinarily skillful, careful and prudent physician engaged in
8 similar practice under the same or similar conditions. In
9 making this determination of viability, the physician shall
10 perform or cause to be performed such medical examinations and
11 tests as are necessary to make a finding of the gestational
12 age, weight and lung maturity of the fetus and shall enter such
13 findings and determination of viability in the medical record
14 of the woman."

15 SECTION 6. A new section of the Late-Term and Partial-
16 Birth Abortion Ban Act, Section 30-5A-7 NMSA 1978, is enacted
17 to read:

18 "30-5A-7. [NEW MATERIAL] CIVIL PENALTY.--

19 A. A physician found to have knowingly and
20 willfully violated Section 30-5A-6 NMSA 1978 shall:

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

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

25 B. The New Mexico medical board shall enforce the

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1 provisions of this section with respect to any violation by a
2 physician licensed pursuant to the Medical Practice Act, and
3 the board of osteopathic medical examiners shall enforce the
4 provisions of this section with respect to any violation by a
5 physician licensed pursuant to Chapter 61, Article 10 NMSA
6 1978."

7 SECTION 7. Section 30-5-1 NMSA 1978 (being Laws 1969,
8 Chapter 67, Section 1) is amended to read:

9 "30-5-1. DEFINITIONS.--As used in [~~this~~] Chapter 30,
10 Article 5 NMSA 1978:

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

14 B. "physician" means a person licensed to practice
15 in the state of New Mexico as a physician pursuant to the
16 Medical Practice Act or an osteopathic physician pursuant to
17 Chapter 61, Article 10 NMSA 1978; and

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

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

22 [~~G. "justified medical termination" means the~~
23 ~~intentional ending of the pregnancy of a woman at the request~~
24 ~~of said woman or if said woman is under the age of eighteen~~
25 ~~years, then at the request of said woman and her then living~~

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1 ~~parent or guardian, by a physician licensed by the state of New~~
2 ~~Mexico using acceptable medical procedures in an accredited~~
3 ~~hospital upon written certification by the members of a special~~
4 ~~hospital board that:~~

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

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

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

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

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

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1 board.]"

2 SECTION 8. Section 30-5-2 NMSA 1978 (being Laws 1969,
3 Chapter 67, Section 2) is amended to read:

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

21 SECTION 9. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
22 1969, Chapter 67, Section 3) is repealed.

23 SECTION 10. SEVERABILITY.--If any part or application of
24 the Late-Term and Partial-Birth Abortion Ban Act is held
25 invalid, the remainder or its application to other situations

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1 or persons shall not be affected.

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

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