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SENATE BILL 361

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

INTRODUCED BY

Gregory A. Baca

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; DEFINING
"MINOR" AS A FEMALE FIFTEEN YEARS OF AGE OR YOUNGER; CREATING
EXCEPTIONS TO NOTIFICATION; REQUIRING REPORTING; ESTABLISHING
PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE.

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. "fetus" means the biological offspring of human
9 parents;

10 D. "minor" means a female fifteen years of age or
11 younger;

12 E. "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;

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

18 G. "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."

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

24 "[NEW MATERIAL] ABORTION--NOTIFICATION REQUIRED FOR
25 MINORS.--

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

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

20 C. The physician shall keep records of such
21 notification for a period set by the vital records and health
22 statistics bureau of the department of health.

23 D. Notification required pursuant to this section
24 shall be waived if a physician certifies in the minor's medical
25 record that, in the physician's reasonable medical judgment,

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1 the abortion is necessary to preserve the minor's life or
2 physical health."

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

5 "[NEW MATERIAL] EXCEPTION FOR SEXUAL ABUSE, RAPE OR
6 INCEST.--

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

16 B. Both the intake employee and the attending
17 physician shall be responsible for trying to determine if the
18 minor's pregnancy is the result of sexual abuse, rape or
19 incest. If either the intake employee or the attending
20 physician has reasonable grounds to believe that the minor's
21 pregnancy is due to sexual abuse, rape or incest, the
22 department shall be immediately notified.

23 C. If the abortion facility, through its intake
24 employee or attending physician, states in the minor's medical
25 record reasonable grounds for believing that the minor's

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1 pregnancy was the result of sexual abuse, rape or incest, and
2 further certifies that it has made a referral of neglect or
3 abuse to the department, then the abortion may be performed
4 without the notice required pursuant to Section 3 of the
5 Parental Notification of Abortion Act."

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

8 "[NEW MATERIAL] JUDICIAL EXCEPTION TO NOTICE
9 REQUIREMENT.--

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

16 B. The court shall make every effort to hold a
17 hearing within ten days. The proceedings shall be
18 confidential, ensure the anonymity of the minor and shall be
19 sealed.

20 C. The petition shall be granted if the court finds
21 that:

22 (1) the minor is sufficiently mature and well
23 enough informed to decide intelligently whether to have an
24 abortion; or

25 (2) notification under Section 3 of the

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1 Parental Notification of Abortion Act would not be in the best
2 interests of the minor. For the purpose of this paragraph,
3 there shall be a presumption that notification is not in the
4 best interest of the minor if the minor asserts that the
5 pregnancy was the result of sexual abuse, rape or incest. No
6 medical tests shall be required by the court.

7 D. The court shall issue written findings of fact
8 and conclusions of law supporting its decision and shall order
9 that a confidential record of the evidence and the judge's
10 findings and conclusion be maintained.

11 E. The petition shall be deemed granted if the
12 court does not issue a decision within forty-eight hours of the
13 filing of the petition and an extension is not requested by the
14 petitioner.

15 F. The petitioner shall have a direct appeal of the
16 decision of the district court to the court of appeals, and the
17 appeal shall be expedited.

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

19 SECTION 6. A new section of Chapter 30, Article 5 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] REPORTING REQUIREMENTS.--The vital records
22 and health statistics bureau of the department of health shall
23 establish annual reporting requirements for physicians who
24 perform abortions pursuant to the Parental Notification of
25 Abortion Act and shall make the reports available for

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1 statistical analysis and for verification of compliance with
2 the requirements by May 1 of each year for abortions performed
3 in the preceding year. Any personal identifying information in
4 the report shall be redacted by the physician prior to making
5 the reports available to the vital records and health
6 statistics bureau. Each physician shall report the following
7 data:

8 A. the number of times the physician provided
9 notice as required under Section 3 of the Parental Notification
10 of Abortion Act; and

11 B. the number of times that notice otherwise
12 required under Section 3 of the Parental Notification of
13 Abortion Act was waived by judicial order or any other
14 exception and the manner in which the physician received proof
15 of the waiver."

16 SECTION 7. A new section of Chapter 30, Article 5 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] PENALTIES.--

19 A. A physician found to have knowingly and
20 willfully failed to comply with Section 3 or 6 of the Parental
21 Notification of Abortion Act, or who commits perjury or
22 falsifies any record in relation to the reporting requirements
23 of that act, shall be subject to a civil penalty of not less
24 than five thousand dollars (\$5,000) for each violation.

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 medicine shall enforce the provisions
4 of this section with respect to any violation by a physician
5 licensed pursuant to the Osteopathic Medicine Act."

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

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

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

13 B. "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; and

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

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

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

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1 ~~Mexico using acceptable medical procedures in an accredited~~
2 ~~hospital upon written certification by the members of a special~~
3 ~~hospital board that:~~

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

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

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

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

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

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SECTION 9. REPEAL.--Section 30-5-2 and 30-5-3 NMSA 1978
(being Laws 1969, Chapter 67, Sections 2 and 3) are repealed.

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

SECTION 11. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2017.