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HOUSE BILL 76

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Yvette Herrell and Rod Montoya and David M. Gallegos

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 AN EXCEPTION UNDER WHICH LATE-TERM ABORTION MAY BE PERFORMED; PROVIDING PENALTIES; REPEALING THE CRIMINAL ABORTION STATUTE.

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:

"30-5A-2. DEFINITIONS.--As used in the Late-Term and

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1 Partial-Birth Abortion Ban Act:

2 A. "abortion" means the intentional termination of
3 the pregnancy of a female by a person who knows the female is
4 pregnant;

5 B. "fetus" means the biological offspring of human
6 parents;

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

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

18 E. "viability" or "viable" means that stage of
19 fetal development when the life of the unborn child may be
20 continued indefinitely outside the womb by natural or
21 artificial life-support systems."

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

24 "30-5A-4. CIVIL REMEDIES.--

25 A. Except as provided in Subsection B of this

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1 section, the following persons may bring a civil action to
2 obtain relief pursuant to this section against a person who has
3 violated the provisions of Section [~~3 of the Partial-Birth~~
4 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978:

5 (1) the person on whom a partial-birth
6 abortion was performed;

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

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

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

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

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

20 C. A person authorized to bring a civil action
21 pursuant to this section may recover compensatory damages for
22 loss caused by violation of Section [~~3 of the Partial-Birth~~
23 ~~Abortion Ban Act~~] 30-5A-3 NMSA 1978."

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

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1 "30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

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

7 B. The provisions of [~~the Partial-Birth Abortion~~
8 ~~Ban Act~~] this section shall apply only to the exact procedure
9 specified in [~~that act~~] Subsection C of Section 30-5A-2 NMSA
10 1978.

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

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

19 E. The provisions of [~~the Partial-Birth Abortion~~
20 ~~Ban Act~~] this section are not intended to subject any person to
21 criminal culpability pursuant to laws governing attempt,
22 solicitation or conspiracy to commit a crime."

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

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1 "30-5A-6. [NEW MATERIAL] PROHIBITION OF LATE-TERM

2 ABORTION.--

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

9 B. Only a physician may perform an abortion.

10 C. For the purposes of this section, there shall be
11 a legal presumption that viability occurs at the twentieth week
12 of pregnancy. Before a physician performs an abortion on a
13 woman that the physician has reason to believe is carrying a
14 fetus of twenty or more weeks gestational age, the physician
15 shall first determine, in a manner consistent with accepted
16 obstetrical and neonatal practices and standards, if the fetus
17 is viable. In making this determination of viability, the
18 physician shall perform or cause to be performed such medical
19 examinations and tests as are necessary to make a finding of
20 the gestational age, weight and lung maturity of the fetus and
21 shall enter such findings and determination of viability in the
22 medical record of the woman.

23 D. If a physician determines that the fetus is
24 twenty or more weeks gestational age and viable, the physician
25 shall not perform or induce a late-term abortion unless the

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[bracketed material] = delete

1 abortion is necessary to preserve the life of a pregnant woman
2 whose life is endangered by a physical disorder, physical
3 illness or physical injury, including a life-endangering
4 physical condition caused by or arising from the pregnancy
5 itself; provided, however, that the physician shall take all
6 reasonable steps to preserve the life and health of the unborn
7 child."

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

11 "30-5A-7. [NEW MATERIAL] CIVIL PENALTY.--

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

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

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

18 B. The New Mexico medical board shall enforce the
19 provisions of this section with respect to any violation by a
20 physician licensed pursuant to the Medical Practice Act, and
21 the board of osteopathic medicine shall enforce the provisions
22 of this section with respect to any violation by a physician
23 licensed pursuant to the Osteopathic Medicine Act."

24 SECTION 7. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
25 1969, Chapter 67, Section 3) is repealed.

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