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SENATE BILL 233

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RAMSAY L. GORHAM

AN ACT

RELATING TO ABORTION; ENACTING THE WOMAN'S RIGHT TO KNOW ACT;
REQUIRING VOLUNTARY, INFORMED CONSENT AS A PREREQUISITE TO
ABORTION; PROVIDING EXCEPTIONS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Woman's Right to Know Act".

Section 2. DEFINITIONS.--As used in the Woman's Right to
Know Act:

A. "abortion" means the use or prescription of any
instrument, medicine, drug or any other substance or device
intentionally to terminate the pregnancy of a female known to
be pregnant with an intention other than to increase the
probability of a live birth, to preserve the life or health of
the child after live birth or to remove a dead fetus;

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1 B. "attempt to perform an abortion" means an act,
2 or an omission of a statutorily required act, that, under the
3 circumstances as the actor believes them to be, constitutes a
4 substantial step in a course of conduct planned to culminate
5 in the performance of an abortion in New Mexico in violation
6 of the Woman's Right to Know Act;

7 C. "medical emergency" means any condition that,
8 on the basis of the physician's good faith clinical judgment,
9 so complicates the medical condition of a pregnant female as
10 to necessitate the immediate abortion of her pregnancy to
11 avert her death or for which a delay will create serious risk
12 of substantial and irreversible impairment of a major bodily
13 function;

14 D. "physician" means a physician or osteopathic
15 physician licensed in New Mexico; and

16 E. "probable gestational age of the unborn child"
17 means what, in the judgment of the physician, will with
18 reasonable probability be the gestational age of the unborn
19 child at the time the abortion is planned to be performed.

20 Section 3. INFORMED CONSENT.--No abortion shall be
21 performed in this state except with the voluntary and informed
22 consent of the female upon whom the abortion is to be
23 performed. Except in the case of a medical emergency, consent
24 to an abortion is voluntary and informed only if:

25 A. the female is told the following, by telephone

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1 or in person, by the physician who is to perform the abortion
2 or by referring physician, at least twenty-four hours before
3 the abortion:

4 (1) the name of the physician who will
5 perform the abortion;

6 (2) the particular medical risks associated
7 with the particular abortion procedure to be employed,
8 including, when medically accurate, the risks of infection,
9 hemorrhage, breast cancer, danger to subsequent pregnancies
10 and infertility;

11 (3) the probable gestational age of the
12 unborn child at the time the abortion is to be performed; and

13 (4) the medical risks associated with
14 carrying her child to term.

15 The information required by this subsection may be
16 provided by telephone without conducting a physical
17 examination or test of the patient, in which case the
18 information required to be provided may be based on facts
19 supplied the physician by the female and whatever other
20 relevant information is reasonably available to the physician.
21 It may not be provided by a tape recording, but shall be
22 provided during a consultation in which the physician is able
23 to ask questions of the female and the female is able to ask
24 questions of the physician. If a physical examination, tests
25 or the availability of other information to the physician

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1 subsequently indicates, in the medical judgment of the
2 physician, revision of the information previously supplied to
3 the patient, that revised information may be communicated to
4 the patient at any time prior to the performance of the
5 abortion. Nothing in this section may be construed to
6 preclude provision of required information in a language
7 understood by the patient through a translator;

8 B. the female is informed, by telephone or in
9 person, by the physician who is to perform the abortion, by a
10 referring physician or by an agent of either physician at
11 least twenty-four hours before the abortion that:

12 (1) medical assistance benefits may be
13 available for prenatal care, childbirth and neonatal care;

14 (2) the father is liable to assist in the
15 support of her child, even in instances in which the father
16 has offered to pay for the abortion; and

17 (3) she has the right to review the printed
18 materials described in Section 4 of the Woman's Right to Know
19 Act.

20 The physician or the physician's agent shall orally
21 inform the female the materials have been provided by the state
22 and that they describe the unborn child and list agencies that
23 offer alternatives to abortion. If the female chooses to view
24 the materials, they shall either be given to her at least
25 twenty-four hours before the abortion or mailed to her at

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1 least seventy-two hours before the abortion by certified mail,
2 restricted delivery to addressee, which means the postal
3 employee can only deliver the mail to the addressee.

4 The information required by this subsection may be
5 provided by a tape recording if provision is made to record or
6 otherwise register specifically whether the female does or
7 does not choose to review the printed materials;

8 C. the female certifies in writing, prior to the
9 abortion, that the information described in Subsections A and
10 B of this section has been furnished her and that she has been
11 informed of her opportunity to review the information referred
12 to in Paragraph (3) of Subsection B of this section; and

13 D. prior to the performance of the abortion, the
14 physician who is to perform the abortion or the physician's
15 agent receives a copy of the written certification prescribed
16 by Subsection C of this section.

17 Section 4. PRINTED INFORMATION. --

18 A. Within ninety days after the effective date of
19 the Woman's Right to Know Act, the department of health shall
20 cause to be published, in English and in each language that is
21 the primary language of two percent or more of the state's
22 population, the following printed materials in such a way as
23 to ensure that the information is easily comprehensible:

24 (1) geographically indexed materials designed
25 to inform the female of public and private agencies and

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1 services available to assist a female through pregnancy, upon
2 childbirth and while the child is dependent, including
3 adoption agencies, which shall include a comprehensive list of
4 the agencies available, a description of the services they
5 offer and a description of the manner, including telephone
6 numbers, in which they might be contacted or, at the option of
7 department of health, printed materials, including a toll-free
8 twenty-four-hour-a-day telephone number that may be called to
9 obtain orally, such a list and description of agencies in the
10 locality of the caller and of the services they offer; and

11 (2) materials designed to inform the female
12 of the probable anatomical and physiological characteristics
13 of the unborn child at two-week gestational increments from
14 the time when a female can be known to be pregnant to full
15 term, including any relevant information on the possibility of
16 the unborn child's survival and pictures or drawings
17 representing the development of unborn children at two-week
18 gestational increments, provided that any such pictures or
19 drawings must contain the dimensions of the fetus and must be
20 realistic and objective, nonjudgmental and designed to convey
21 only accurate scientific information about the unborn child at
22 the various gestational ages. The material shall also contain
23 objective information describing the methods of abortion
24 procedures commonly employed, the medical risks commonly
25 associated with each such procedure, the possible detrimental

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1 psychological effects of abortion and the medical risks
2 commonly associated with each such procedure and the medical
3 risks commonly associated with carrying a child to term.

4 B. The materials referred to in Subsection A of
5 this section shall be printed in a typeface large enough to be
6 clearly legible.

7 C. The materials required under this section shall
8 be available at no cost from the department of health upon
9 request and in appropriate number to any person, facility or
10 hospital.

11 Section 5. PROCEDURE IN CASE OF MEDICAL EMERGENCY. -- When
12 a medical emergency compels the performance of an abortion,
13 the physician shall inform the female, prior to the abortion
14 if possible, of the medical indications supporting the
15 physician's judgment that an abortion is necessary to avert
16 her death or that a twenty-four-hour delay will create serious
17 risk of substantial and irreversible impairment of a major
18 bodily function.

19 Section 6. REPORTING REQUIREMENTS. --

20 A. Within ninety days after the effective date of
21 the Woman's Right to Know Act, the department of health shall
22 prepare a reporting form for physicians containing a reprint
23 of the Woman's Right to Know Act and listing:

24 (1) the number of females to whom the
25 physician provided the information described in Subsection A

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1 of Section 3 of the Woman's Right to Know Act; of that number,
2 the number provided by telephone and the number provided in
3 person; and of each of those numbers, the number provided in
4 the capacity of a referring physician and the number provided
5 in the capacity of a physician who is to perform the abortion;

6 (2) the number of females to whom the
7 physician or an agent of the physician provided the
8 information described in Subsection B of Section 3 of the
9 Woman's Right to Know Act; of that number, the number provided
10 by telephone and the number provided in person; of each of
11 those numbers, the number provided in the capacity of a
12 referring physician and the number provided in the capacity of
13 a physician who is to perform the abortion; and of each of
14 those numbers, the number provided by the physician and the
15 number provided by an agent of the physician;

16 (3) the number of females who availed
17 themselves of the opportunity to obtain a copy of the printed
18 information described in Section 4 of the Woman's Right to
19 Know Act and the number who did not; and of each of those
20 numbers, the number who, to the best of the reporting
21 physician's information and belief, went on to obtain the
22 abortion; and

23 (4) the number of abortions performed by the
24 physician in which information otherwise required to be
25 provided at least twenty-four hours before the abortion was

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1 not so provided because an immediate abortion was necessary to
2 avert the female's death, and the number of abortions in which
3 such information was not so provided because a delay would
4 create serious risk of substantial and irreversible impairment
5 of a major bodily function.

6 B. The department of health shall ensure that
7 copies of the reporting forms described in Subsection A of
8 this section are provided:

9 (1) within one hundred twenty days after the
10 effective date of the Woman's Right to Know Act, to all
11 physicians licensed to practice in this state;

12 (2) to each physician who subsequently
13 becomes newly licensed to practice in this state, at the same
14 time as official notification to the physician that the
15 physician is so licensed; and

16 (3) by December 1 of each year, other than
17 the calendar year in which forms are distributed in accordance
18 with Paragraph (1) of this subsection, to all physicians
19 licensed to practice in this state.

20 C. By February 28 of each year following a
21 calendar year in any part of which the Woman's Right to Know
22 Act was in effect, each physician who provided, or whose agent
23 provided, information to one or more females in accordance
24 with Section 3 of the Woman's Right to Know Act during the
25 previous calendar year shall submit to the department of

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1 health a copy of the form described in Subsection A of this
2 section, with the requested data entered accurately and
3 completely.

4 D. Reports that are not submitted more than a
5 grace period of thirty days following the due date shall be
6 subject to a late fee of five hundred dollars (\$500) for each
7 additional thirty-day period or portion of a thirty-day period
8 they are overdue. Any physician required to report in
9 accordance with this section who has not submitted a report,
10 or has submitted only an incomplete report, more than one year
11 following the due date, may, in an action brought by the
12 department of health, be directed by a court of competent
13 jurisdiction to submit a complete report within a period
14 stated by court order or be subject to sanctions for civil
15 contempt.

16 E. By June 30 of each year the department of
17 health shall issue a public report providing statistics for
18 the previous calendar year compiled from all of the reports
19 covering that year submitted in accordance with this section
20 for each of the items listed in Subsection A of this section.
21 Each such report shall also provide the statistics for all
22 previous calendar years, adjusted to reflect any additional
23 information from late or corrected reports. The department
24 shall take care to ensure that none of the information
25 included in the public reports could reasonably lead to the

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1 identification of any individual provided information in
2 accordance with Subsection A, B or C of Section 3 of the
3 Woman's Right to Know Act.

4 F. The department of health may by rule alter the
5 dates established by Paragraph (3) of Subsection B or
6 Subsection C or E of this section or consolidate the forms or
7 reports described in this section with other forms or reports
8 to achieve administrative convenience or fiscal savings or to
9 reduce the burden of reporting requirements, so long as
10 reporting forms are sent to all licensed physicians in the
11 state at least once every year and the report described in
12 Subsection E of this section is issued at least once every
13 year.

14 Section 7. CRIMINAL PENALTIES. -- Any person who knowingly
15 or recklessly performs or attempts to perform an abortion in
16 violation of the Woman's Right to Know Act is guilty of a
17 felony. Any physician who knowingly or recklessly submits a
18 false report under Subsection C of Section 6 of the Woman's
19 Right to Know Act is guilty of a misdemeanor. No penalty may
20 be assessed against the female upon whom the abortion is
21 performed or attempted to be performed. No penalty or civil
22 liability may be assessed for failure to comply with Paragraph
23 (3) of Subsection B of Section 3 or that portion of Subsection
24 C of Section 3 of the Woman's Right to Know Act requiring a
25 written certification that the female has been informed of her

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1 opportunity to review the information referred to in Paragraph
2 (3) of Subsection B of Section 3 of the Woman's Right to Know
3 Act unless the department of health has made the printed
4 materials available at the time the physician or the
5 physician's agent is required to inform the female of her
6 right to review them.

7 Section 8. CIVIL REMEDIES. --

8 A. Any person upon whom an abortion has been
9 performed without complying with the Woman's Right to Know
10 Act, the father of the unborn child who was the subject of
11 such an abortion or the grandparent of such an unborn child
12 may maintain an action against the person who performed the
13 abortion in knowing or reckless violation of that act for
14 actual and punitive damages. Any person upon whom an abortion
15 has been attempted without complying with that act may
16 maintain an action against the person who attempted to perform
17 the abortion in knowing or reckless violation of that act for
18 actual and punitive damages.

19 B. If the department of health fails to issue the
20 public report required by Subsection E of Section 6 of the
21 Woman's Right to Know Act, any group of ten or more citizens
22 of the state may seek an injunction in a court of competent
23 jurisdiction against the secretary of health requiring that a
24 complete report be issued within a period stated by the court
25 order. Failure to abide by such an injunction shall subject

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1 the secretary to sanctions for civil contempt.

2 C. 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 a reasonable attorney fee 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 a reasonable attorney
9 fee in favor of the defendant against the plaintiff.

10 Section 9. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. --

11 In every civil or criminal proceeding or action brought
12 pursuant to the Woman's Right to Know Act, the court shall
13 rule whether the anonymity of any female upon whom an abortion
14 has been performed or attempted shall be preserved from public
15 disclosure if she does not give her consent to such
16 disclosure. The court, upon motion or sua sponte, shall make
17 such a ruling and, upon determining that her anonymity should
18 be preserved, shall issue orders to the parties, witnesses and
19 counsel and shall direct the sealing of the record and
20 exclusion of individuals from courtrooms or hearing rooms to
21 the extent necessary to safeguard her identify from public
22 disclosure. Each order shall be accompanied by specific
23 written findings explaining why the anonymity of the female
24 should be preserved from public disclosure, why the order is
25 essential to that end, how the order is narrowly tailored to

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1 serve that interest and why no reasonable less restrictive
2 alternative exists. In the absence of written consent of the
3 female upon whom an abortion has been performed or attempted,
4 anyone, other than a public official, who brings an action
5 under Subsection A of Section 8 of the Woman's Right to Know
6 Act shall do so under a pseudonym. This section does not
7 require concealment of the identity of the plaintiff or of
8 witnesses from the defendant.

9 Section 10. SEVERABILITY. --If any part or application of
10 the Woman's Right to Know Act is held invalid, the remainder
11 of its application to other situations or persons shall not be
12 affected.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
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6 January 31, 1998
7

8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 233
13

14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 35, and thence referred to
16 the PUBLIC AFFAIRS COMMITTEE.
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19 Respectfully submitted,
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Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

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