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HOUSE BILL 390

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

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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.

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; and

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

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

18 "30-5A-4. CIVIL REMEDIES.--

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

24 (1) the person on whom a partial-birth  
25 abortion was performed;

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

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

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

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

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

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

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

20 "30-5A-5. CRIMINAL PENALTY--EXCEPTION.--

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

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1           B. The provisions of [~~the Partial Birth Abortion~~  
2 ~~Ban Act~~] this section shall apply only to the exact procedure  
3 specified in [~~that act~~] Subsection C of Section 30-5A-2 NMSA  
4 1978.

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

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

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

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

20           "30-5A-6. [NEW MATERIAL] PROHIBITION OF LATE-TERM  
21 ABORTION.--

22           A. Late-term abortion consists of knowingly and  
23 willfully administering to any pregnant woman any medicine,  
24 drug or other substance, or using any method or means whereby  
25 an untimely termination of her pregnancy is produced, or

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1 attempted to be produced, with the intent to destroy a viable  
2 fetus of twenty or more weeks gestational age. Viability shall  
3 be determined pursuant to Subsection C of this section.

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

8 (1) the physician has determined that in the  
9 physician's opinion the late-term abortion is necessary to  
10 preserve the life or health of the pregnant woman; provided,  
11 however, that the physician shall take all reasonable steps to  
12 preserve the life and health of the fetus; or

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

15 C. For the purposes of this section, there shall be  
16 a legal presumption that viability occurs at the twentieth week  
17 of pregnancy. Before a physician performs an abortion on a  
18 woman that the physician has reason to believe is carrying a  
19 fetus of twenty or more weeks gestational age, the physician  
20 shall first determine, in a manner consistent with accepted  
21 obstetrical and neonatal practices and standards, if the fetus  
22 is viable. The physician shall use and exercise that degree of  
23 care, skill and proficiency commonly exercised by the  
24 ordinarily skillful, careful and prudent physician engaged in  
25 similar practice under the same or similar conditions. In

1 making this determination of viability, the physician shall  
2 perform or cause to be performed such medical examinations and  
3 tests as are necessary to make a finding of the gestational  
4 age, weight and lung maturity of the fetus and shall enter such  
5 findings and determination of viability in the medical record  
6 of the woman."

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

10 "30-5A-7. [NEW MATERIAL] CIVIL PENALTY.--

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

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

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

17 B. The New Mexico medical board shall enforce the  
18 provisions of this section with respect to any violation by a  
19 physician licensed pursuant to the Medical Practice Act, and  
20 the board of osteopathic medical examiners shall enforce the  
21 provisions of this section with respect to any violation by a  
22 physician licensed pursuant to Chapter 61, Article 10 NMSA  
23 1978."

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

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

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. "pharmacist" means a person licensed pursuant to~~  
7 ~~the provisions of the Pharmacy Act;~~

8 € B. "physician" means a person licensed to practice  
9 in the state of New Mexico as a physician pursuant to the  
10 Medical Practice Act or an osteopathic physician pursuant to  
11 Chapter 61, Article 10 NMSA 1978; and

12 ~~[A.]~~ Ɔ C. "pregnancy" means the implantation of [an]  
13 a developing embryo in the uterus.

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

16 ~~C. "justified medical termination" means the~~  
17 ~~intentional ending of the pregnancy of a woman at the request~~  
18 ~~of said woman or if said woman is under the age of eighteen~~  
19 ~~years, then at the request of said woman and her then living~~  
20 ~~parent or guardian, by a physician licensed by the state of New~~  
21 ~~Mexico using acceptable medical procedures in an accredited~~  
22 ~~hospital upon written certification by the members of a special~~  
23 ~~hospital board that:~~

24 ~~(1) the continuation of the pregnancy, in~~  
25 ~~their opinion, is likely to result in the death of the woman or~~

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1 ~~the grave impairment of the physical or mental health of the~~  
2 ~~woman; or~~

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

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

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

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

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

23 "30-5-2. ABORTION--PERSONS AND INSTITUTIONS EXEMPT.--  
24 ~~[This article does not require]~~ A hospital or medical facility  
25 shall not be required to admit any patient for the purposes of

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1 performing an abortion ~~[nor is any hospital required to create~~  
2 ~~a special hospital board]~~. A person who is a member of, or  
3 associated with, the staff of a hospital or any medical  
4 facility; any person under the direction of a physician; any  
5 ~~pharmacist or any person under the direction of a pharmacist;~~  
6 or any employee of a hospital or any medical facility in which  
7 ~~[a justified medical termination has been authorized and]~~ an  
8 abortion will be performed who objects to the ~~[justified~~  
9 ~~medical termination]~~ abortion on moral or, religious ~~or~~  
10 ~~personal conviction~~ grounds shall not be required to  
11 participate in medical procedures, ~~[which]~~ including the  
12 dispensing of medication, that will result in the termination  
13 of pregnancy. ~~[and]~~ The refusal of ~~[any such]~~ the person to  
14 participate shall not form the basis of any disciplinary or  
15 other recriminatory action against ~~[such]~~ the person."

16 **SECTION 9. REPEAL.**--Section 30-5-3 NMSA 1978 (being Laws  
17 1969, Chapter 67, Section 3) is repealed.

18 **SECTION 10. SEVERABILITY.**--If any part or application of  
19 the Late-Term and Partial-Birth Abortion Ban Act is held  
20 invalid, the remainder or its application to other situations  
21 or persons shall not be affected.

22 **SECTION 11. EFFECTIVE DATE.**--The effective date of the  
23 provisions of this act is July 1, 2015.