

HOUSE BILL 256

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO HEALTH CARE; AUTHORIZING MEDICAL SERVICES THAT MAY
BE PROVIDED; ESTABLISHING PARAMETERS FOR REGULATION; REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Freedom of Choice Act".

Section 2. PURPOSE.--The purposes of the Freedom of
Choice Act are to ensure that:

A. the state respect the equal and fundamental
right of privacy of each individual to make personal
reproductive decisions;

B. every individual may choose, unimpeded by state
action, inaction, influence or regulation, to:

(1) use or refuse to use contraceptives; and

1 H. "viability" means the point in a pregnancy when,
2 in the judgment of the treating physician on the particular
3 facts of the case before that physician, there is a reasonable
4 likelihood of the sustained survival of the conceptus outside
5 the uterus.

6 Section 4. PROVISION OF MEDICAL SERVICES.--

7 A. The state shall not deny or interfere with a
8 person's right to obtain and use contraceptives.

9 B. The state shall not deny or interfere with a
10 female's choice to have an abortion prior to viability of the
11 conceptus.

12 C. The state shall not deny or interfere with a
13 female's choice to have an abortion at any time during a
14 pregnancy if in her physician's clinical judgment it is
15 necessary to protect her life or health; except as provided by
16 Section 30-5A-3 NMSA 1978.

17 D. The state shall not discriminate against the
18 exercise of the provisions set forth in the Freedom of Choice
19 Act or in the regulation or provision of benefits, facilities,
20 services or information.

21 E. A physician or other health care provider may
22 terminate or assist in terminating a pregnancy as permitted by
23 the Freedom of Choice Act and the laws of the state governing
24 physicians and health care providers.

25 Section 5. STATE REGULATION OF MEDICAL SERVICES.--

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Section 30-5-1 — Definitions.

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30-5-1. Definitions.

As used in this article [[30-5-1 NMSA 1978](#)];

- A. "pregnancy" means the implantation of an embryo in the uterus;
- B. "accredited hospital" means one licensed by the health and social services department [public health division of the department of health];
- C. "justified medical termination" means the intentional ending of the pregnancy of a woman at the request of said woman or if said woman is under the age of eighteen years, then at the request of said woman and her then living parent or guardian, by a physician licensed by the state of New Mexico using acceptable medical procedures in an accredited hospital upon written certification by the members of a special hospital board that:
- (1) the continuation of the pregnancy, in their opinion, is likely to result in the death of the woman or the grave impairment of the physical or mental health of the woman; or
 - (2) the child probably will have a grave physical or mental defect; or
 - (3) the pregnancy resulted from rape, as defined in Sections 40A-9-2 through 40A-9-4 NMSA 1953. Under this paragraph, to justify a medical termination of the pregnancy, the woman must present to the special hospital board an affidavit that she has been raped and that the rape has been or will be reported to an appropriate law enforcement official; or
 - (4) the pregnancy resulted from incest;
- D. "special hospital board" means a committee of two licensed physicians or their appointed alternates who are members of the medical staff at the accredited hospital where the proposed justified medical termination would be performed, and who meet for the purpose of determining the question of medical justification in an individual case, and maintain a written record of the proceedings and deliberations of such board.

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Section 30-5-3 — Criminal abortion.

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30-5-3. Criminal abortion.

Criminal abortion consists of administering to any pregnant woman any medicine, drug or other substance, or using any method or means whereby an untimely termination of her pregnancy is produced, or attempted to be produced, with the intent to destroy the fetus, and the termination is not a justified medical termination.

Whoever commits criminal abortion is guilty of a fourth degree felony. Whoever commits criminal abortion which results in the death of the woman is guilty of a second degree felony.

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