

LFC Requester:	Ruby Ann Esquibel
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 1/24/13
Bill No: HB 177--305

Sponsor: Rep. Baldonado **Reviewing** Attorney General's Office
Short PARENTAL NOTIFICATION **Person Writing** Phillip Baca
Title: RIGHTS ACT **Phone:** 827-6000 **Email** pbaca@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 177 enacts a new criminal law—the Parental Notification Rights Act—to require parental or guardian notification at least 48 hours before an abortion is performed on an unemancipated minor.

The only exception to the notification requirement is when “the abortion is necessary to protect the unemancipated pregnant minor's health from danger” and there is insufficient time to provide the required notice.

The bill contains a judicial bypass procedure which allows a court to direct that notification is not required upon a finding that the minor or incompetent woman is mature enough to make the decision, or that an abortion is in the patient’s best interests. This bypass procedure must be confidential and expedited.

The bill also repeals the current prohibition against abortions.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are no fiscal implications for this agency.

SIGNIFICANT LEGAL ISSUES

In 1973, the United States Supreme Court determined that statutes regulating abortions must allow, based on medical judgment, abortions not only when a woman’s life is at risk, but also when her health is at risk. Roe v. Wade, 410 U.S. 113 (1973); reaffirmed in the context of parental consent and notification acts in Planned Parenthood v. Casey, 505 U.S. 833, 880 (1992); see too Ayotte v. Planned Parenthood of New England, 546 U.S. 320, 126 S.Ct. 961 at 967, reaffirming that States cannot restrict access to abortions that are “necessary, in appropriate medical judgment, for preservation of the life or health” of the female patient.

This bill complies with federal court decisions by allowing an exception when “the abortion is necessary to protect the unemancipated pregnant minor's health from danger” and there is insufficient time to provide the required notice. However, the bill falls short in those cases where there is sufficient time to provide notice and the pregnant minor's health is in danger. Under this circumstance, the pregnant minor would have a constitutional right to an abortion without parental notification.

And while the bill otherwise complies with federal court decisions on parental notification, it is unclear how state courts would rule under the NM state constitution.

The New Mexico state constitution has been interpreted by the N. M. Supreme Court to afford even greater protections than the federal constitution. Our Supreme Court so held in New Mexico Right to Choose/NARAL v. Johnson, 126 N.M. 788 (1998), when it ruled that the Medicaid regulation restricting state funding of abortions for Medicaid-eligible women violated the Equal Rights Amendment of our state constitution.

Although our New Mexico courts have not been faced with analyzing the issues that arise in parental notice or consent statutes, courts in other states have. In 2000, the New Jersey Supreme Court found that the State's interest in enforcing its parental notification statute, which is substantially similar to this bill, failed to override the substantial intrusion it imposed on a young woman's fundamental right to abortion and was unconstitutional under the equal protection guarantee contained in its state constitution (because it imposed no corresponding limitation on a minor who seeks medical and surgical care otherwise related to her pregnancy). Planned Parenthood of Central New Jersey v. Farmer, 762 A.2d 620 (2000).

Other jurisdictions have recognized that a minor's right to privacy is fundamental, and because it is implicated in parental consent statutes, the state must be able to satisfy a strict scrutiny review by demonstrating a compelling state interest that imposes the least restrictive means available. Consent statutes containing provisions similar to SB 230 have not withstood judicial scrutiny of this nature. See In re T.W., 551 So. 2d 1186, 1195, 1196 (Fla. 1989); see too American Pediatrics v. Lungren, 940 P.2d 797 (1997) (declaring California's consent with judicial bypass statute unconstitutional solely on privacy grounds). See also, State v. Planned Parenthood of Alaska, 35 P.3d 30 (2001), where the Alaska Supreme Court directed the lower court to conduct an evidentiary hearing to determine whether, under the Alaska Constitution's guarantee of privacy, the state has a compelling interest in enforcing its parental consent statute, and, if so, whether that statute contains the least restrictive means necessary to promote such an interest.

Thus, this bill, if enacted, may be found unconstitutional under not only the right to privacy, equal protection, and due process clauses of the N. M. Constitution, but also under the separate equal rights guarantees contained in the New Mexico Constitution. But again, there are no controlling state court decisions involving parental notice.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

There are no performance implications for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

There are no administrative implications for this agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

N/A

TECHNICAL ISSUES OR DRAFTING ERROR

There are no technical issues or drafting errors.

OTHER SUBSTANTIVE LEGAL ISSUES

There are no other substantive legal issues.

ALTERNATIVES TO ENACTING THIS BILL

There are no recommended alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

There are no recommended amendments.