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SECOND REPRINT

S.B. 179

SENATE BILL NO. 179—SENATORS CANCELA, RATTI, SCHEIBLE;
BROOKS, CANNIZZARO, DONDERO LOOP, D. HARRIS,
OHRENSCHALL, PARKS, SPEARMAN AND WOODHOUSE

FEBRUARY 18, 2019

JOINT SPONSORS: ASSEMBLYMEN SPIEGEL, BILBRAY-AXELROD,
PETERS, NGUYEN; ASSEFA, CARRILLO, DURAN, FUMO,
GORELOW, JAUREGUI, MARTINEZ, MCCURDY, MILLER,
MUNK, THOMPSON AND WATTS

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to abortions.
(BDR 40-567)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to abortions; revising provisions relating to
informed consent to an abortion; repealing criminal
penalties on certain actions relating to the termination of a
pregnancy; repealing the prohibition on the excusal of a
person on certain grounds from testifying as a witness in
a prosecution relating to the termination of a pregnancy;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law in NRS 442.250 regulates the medical conditions under which abortions may be performed in this State. Because NRS 442.250 was submitted to and approved by a referendum of the voters at the 1990 general election, Section 1 of Article 19 of the Nevada Constitution dictates that the provisions of NRS 442.250 may not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. In addition to the provisions of NRS 442.250, Nevada's abortion laws also contain certain requirements for informed consent to an abortion. (NRS 442.253) Because the requirements concerning informed consent were not part of the referendum in 1990, they may be amended or repealed by the Legislature without being approved by the direct vote of the people.



* S B 1 7 9 R 2 *

This bill revises the requirements in existing law relating to informed consent. This bill conforms with Section 1 of Article 19 of the Nevada Constitution because this bill does not amend, annul, repeal, set aside, suspend or in any way make inoperative the provisions of NRS 442.250. Instead, this bill serves a different governmental purpose than the provisions of NRS 442.250 and revises laws that are separate and complete by themselves and are not amendatory of the provisions of NRS 442.250. (*Matthews v. State ex rel. Nev. Tax Comm'n*, 83 Nev. 266, 267-69 (1967))

Existing law requires a physician to certify in writing that a woman gave her informed written consent before performing an abortion in this State. Existing law additionally requires a physician to certify in writing the pregnant woman's marital status and age before performing an abortion. (NRS 442.252) Existing law further requires that an attending physician or a person meeting the qualifications adopted by the Division of Public and Behavioral Health of the Department of Health and Human Services: (1) take certain action to notify a pregnant woman that she is pregnant; (2) inform a pregnant woman of the number of weeks which have elapsed from the probable time of conception; and (3) explain the physical and emotional implications of having the abortion. (NRS 442.253)

Sections 1 and 2 of this bill revise the requirements for informed consent for an abortion. **Section 1** removes the requirement that a physician certify a pregnant woman's marital status and age before performing an abortion. **Section 1** also removes the requirement that a physician certify in writing that a woman gave her informed written consent. **Section 2** requires an attending physician or person meeting the qualifications adopted by the Division to: (1) provide orally the explanation required in existing law to a pregnant woman that she is pregnant and a copy of her pregnancy test is available; and (2) orally inform her of the estimated gestational age. **Section 2** additionally requires an attending physician or a person meeting the qualifications adopted by the Division to explain orally to a pregnant woman in an accurate and thorough manner: (1) the procedure to be used and the proper procedures for her care after the abortion; (2) the discomforts and risks that may accompany or follow the performance of a procedure; and (3) if an interpreter is available to assist the woman because the woman does not understand the language used on a form indicating consent or the language used by the persons providing her with information concerning the procedure, that an interpreter is available to provide the explanation. **Section 2** also requires an attending physician or a person meeting the qualifications adopted by the Division to: (1) offer to answer any questions the woman has concerning the procedure; and (2) provide the woman with a copy of a form indicating consent. **Section 2** provides that informed consent shall be deemed to have been given by a woman seeking an abortion when: (1) the form indicating consent has been signed and dated by certain persons; and (2) if the form indicating consent is not written in a language understood by the pregnant woman, the person who explains certain information to the pregnant woman certifies that the information has been presented in such a manner as to be understood by the woman.

Existing law criminalizes certain actions relating to the termination of a pregnancy and prohibits a person from being excused from testifying as a witness in any prosecution relating to the termination of a pregnancy on the grounds that the testimony would tend to incriminate the person. (NRS 201.120, 201.130, 201.140) **Section 6** repeals these provisions.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 442.252 is hereby amended to read as follows:
442.252 No physician may perform an abortion in this state unless, before the physician performs it, he or she ~~{certifies in writing that}~~ *obtains* the ~~{woman gave her}~~ informed ~~{written}~~ consent ~~{, freely and without coercion. The physician shall further certify in writing the pregnant woman's marital status and age based upon proof of age offered by her.}~~ *of the woman seeking the abortion pursuant to NRS 442.253.*

Sec. 2. NRS 442.253 is hereby amended to read as follows:
442.253 1. The attending physician or a person meeting the qualifications established by regulations adopted by the Division shall ~~{accurately and in a}~~ :

(a) In an accurate and thorough manner which is reasonably likely to be understood by the pregnant woman {:

~~—(a)}, orally:~~

(1) Explain that, in his or her professional judgment, she is pregnant and a copy of her pregnancy test is available to her.

~~{(b)} (2) Inform her of the {number of weeks which have elapsed from the probable time of conception.~~

~~—(c)} estimated gestational age;~~

(3) Explain {the physical and emotional implications of having the abortion.

~~—(d) Describe the medical} :~~

(I) The procedure to be used {, its consequences} and the proper procedures for her care after the abortion.

(II) The discomforts and risks that may accompany or follow the procedure.

(III) If an interpreter is available to assist the woman because the woman does not understand the language used on a form indicating consent or the language used by the attending physician or person meeting the qualifications established by regulations adopted by the Division, that an interpreter is available to provide the explanation.

(b) Offer to answer any questions the woman has concerning the procedure.

(c) Provide the woman with a copy of a form indicating consent.

2. ~~{The attending physician shall verify that all material facts and information, which in the professional judgment of the physician are necessary to allow the woman to give her informed consent, have been provided to her and that her consent is informed.} The form indicating consent provided pursuant to~~



subsection 1 must clearly describe the nature and consequences of the procedure to be used.

~~3. If the woman does not understand English, the form indicating consent must be written in a language understood by her, or the attending physician shall certify on the form that the information required to be given has been presented in such a manner as to be understandable by her. If an interpreter is used, the interpreter must be named and reference to this use must be made on the form for~~ *Informed consent [] shall be deemed to have been given by a woman seeking an abortion for the purposes of NRS 442.252 when:*

(a) The form indicating consent provided pursuant to paragraph (c) of subsection 1 has been signed and dated by:

(1) The woman;

(2) The interpreter, if an interpreter is used;

(3) The attending physician who will perform the procedure; and

(4) The person meeting the qualifications established by regulations adopted by the Division if such a person performs the duties prescribed in subsection 1; and

(b) If the form indicating consent is not written in a language understood by the woman, the person who performs the duties prescribed in subsection 1 has certified on the form that the information described in subsection 1 has been presented in such a manner as to be understood by the woman.

Sec. 3. NRS 442.256 is hereby amended to read as follows:

442.256 A physician who performs an abortion shall maintain a record of it for at least 5 years after it is performed. The record must contain:

1. The ~~written~~ *form indicating* consent ~~[of the woman;]~~ *completed in compliance with subsection 3 of NRS 442.253.*

2. A statement of the information which was provided to the woman pursuant to NRS 442.253. ~~[; and]~~

3. A description of efforts to give any notice required by NRS 442.255.

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 41A.110 is hereby amended to read as follows:

41A.110 ~~[A]~~ *Except as otherwise provided in subsection 3 of NRS 442.253,* a physician licensed to practice medicine under the provisions of chapter 630 or 633 of NRS, or a dentist licensed to practice dentistry under the provisions of chapter 631 of NRS, has conclusively obtained the consent of a patient for a medical, surgical or dental procedure, as appropriate, if the physician or dentist has done the following:



1 1. Explained to the patient in general terms, without specific
2 details, the procedure to be undertaken;

3 2. Explained to the patient alternative methods of treatment, if
4 any, and their general nature;

5 3. Explained to the patient that there may be risks, together
6 with the general nature and extent of the risks involved, without
7 enumerating such risks; and

8 4. Obtained the signature of the patient to a statement
9 containing an explanation of the procedure, alternative methods of
10 treatment and risks involved, as provided in this section.

11 **Sec. 6.** NRS 201.120, 201.130 and 201.140 are hereby
12 repealed.

13 **Sec. 7.** This act becomes effective on July 1, 2019.

TEXT OF REPEALED SECTIONS

201.120 Abortion: Definition; penalty. A person who:

1. Prescribes, supplies or administers to a woman, whether pregnant or not, or advises or causes her to take any medicine, drug or substance; or

2. Uses or causes to be used, any instrument or other means, ➤ to terminate a pregnancy, unless done pursuant to the provisions of NRS 442.250, or by a woman upon herself upon the advice of a physician acting pursuant to the provisions of NRS 442.250, is guilty of abortion which is a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

201.130 Selling drugs to produce miscarriage; penalty. Every person who shall manufacture, sell or give away any instrument, drug, medicine or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor.

201.140 Evidence. In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that the testimony would tend to incriminate him or her, but such testimony shall not be used against the person testifying in any criminal prosecution except for perjury in giving such testimony.

