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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 732 Session of  
2011

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INTRODUCED BY VANCE, SCARNATI, PILEGGI, BAKER, ERICKSON,  
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ORIE, PIPPY, RAFFERTY AND ROBBINS, MARCH 2, 2011

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AS AMENDED ON THIRD CONSIDERATION, JUNE 13, 2011

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AN ACT

1 Regulating certain facilities which perform abortions; imposing  
2 powers and duties on the Department of Health, THE  
3 LEGISLATIVE BUDGET AND FINANCE COMMITTEE and the Legislative  
4 Reference Bureau; and imposing penalties. ←

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Department of  
9 Health Abortion Facility Oversight Act.

10 Section 1.1. Legislative findings and declaration of policy.

11 (a) Legislative findings.--It is hereby determined and  
12 declared as a matter of legislative finding that:

13 (1) A Philadelphia County investigating grand jury  
14 report has revealed systemic deficiencies in the manner in  
15 which the Commonwealth has regulated abortion facilities  
16 operating in this Commonwealth.

17 (2) These systemic deficiencies have led to horrific

1 instances of bodily injury and death.

2 (3) The general public has a substantial interest in the  
3 comprehensive regulation of abortion facilities operating in  
4 this Commonwealth.

5 (4) Comprehensive regulation of abortion facilities  
6 reasonably serves the Commonwealth's substantial interests in  
7 protecting the health, safety and welfare of the general  
8 public.

9 (5) Regulation of abortion facilities that perform  
10 outpatient surgical procedures as ambulatory surgical  
11 facilities is necessary to cure the systemic deficiencies  
12 present in the current regulatory scheme.

13 (6) Use of outpatient surgical procedures in abortion  
14 facilities is more likely to occur after nine weeks  
15 gestational age.

16 (7) Proper licensing and a system of random  
17 administrative inspections of abortion facilities operating  
18 in this Commonwealth are also a necessary part of any  
19 comprehensive regulatory scheme.

20 (b) Declaration of policy.--It is hereby declared to be the  
21 intention of the General Assembly to protect the health, safety  
22 and welfare of the general public through the comprehensive  
23 regulation of abortion facilities operating in this  
24 Commonwealth.

25 Section 2. Definitions.

26 The following words and phrases when used in this act shall  
27 have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 "Abortion." As defined in 18 Pa.C.S. § 3203 (relating to  
30 definitions).

1 "Abortion facility." A facility:

2 (1) which is not subject to licensure under act of July  
3 19, 1979 (P.L.130, No.48), known as the Health Care  
4 Facilities Act; and

5 (2) in which abortions are performed on an elective  
6 basis.

7 "Complainant." An individual who contacts the department for  
8 the purpose of making a complaint.

9 "Complaint." A communication received by the department,  
10 which describes conduct in violation of this act or any other  
11 statute or regulations pertaining to abortions or abortion  
12 facilities.

13 "Department." The Department of Health of the Commonwealth.

14 "Inspection." An examination by the department, including  
15 interviews with the office staff, clients and individuals  
16 providing abortions or assisting in providing abortions, and a  
17 review of documents pertinent to initial and continued  
18 compliance for the purpose of operating an abortion facility.

19 "Serious event." As defined in section 302 of the act of  
20 March 20, 2002 (P.L.154, No.13), known as the Medical Care  
21 Availability and Reduction of Error (Mcare) Act.

22 Section 3. Licensure.

23 (a) License required.--An abortion facility must be licensed  
24 by the department.

25 (b) Procedure.--

26 (1) An abortion facility must submit an application for  
27 licensure to the department on a form prescribed by the  
28 department.

29 (2) Upon receipt of an application under paragraph (1),  
30 the department shall inspect the abortion facility to

1 determine the ability to comply with this act.

2 (c) License.--

3 (1) If the department determines that the abortion  
4 facility is able to comply with this act, the department  
5 shall issue a license indicating all of the following:

6 (i) Name.

7 (ii) Compliance with statutory and regulatory  
8 requirements.

9 (iii) Term. The term shall be for a period of not  
10 more than one year.

11 (iv) The date the inspection took place.

12 (2) A license is nontransferable.

13 (3) The abortion facility shall prominently display the  
14 license where it is visible to patients.

15 (d) Renewal.--Before expiration of the term under subsection  
16 (c)(1)(iii), an abortion facility must apply for renewal in  
17 accordance with subsection (c).

18 Section 4. Inspections.

19 (a) Authority.--

20 (1) An inspector of the department may, with  
21 identification, enter and inspect an abortion facility which:

22 (i) holds a license; or

23 (ii) is seeking licensure.

24 (2) In an inspection, the department shall have free and  
25 full access to all of the following:

26 (i) Premises and records of the abortion facility.

27 (ii) Individuals employed by or under contract with  
28 the abortion facility. This subparagraph includes the  
29 opportunity to interview the individuals.

30 (b) Timing.--

1 (1) An initial inspection shall be conducted under  
2 section 3(b)(2).

3 (2) An inspection shall be conducted for license renewal  
4 under section 3(d).

5 (3) The department shall annually conduct at least one  
6 unannounced inspection of each abortion facility. Such  
7 inspection may satisfy the requirements of paragraph (2).

8 (4) The department may conduct other inspections,  
9 announced or unannounced, for the purpose of:

10 (i) ensuring compliance; or

11 (ii) investigating a complaint.

12 (c) Reports.--Inspection reports and plans of correction  
13 under section 5(c)(3) shall be posted on the department's  
14 publicly accessible Internet website and shall be searchable by  
15 the public.

16 (d) Privacy.--The department shall conduct its inspection in  
17 such a way so as not to delay, disrupt or interfere with patient  
18 care or jeopardize patient safety and privacy.

19 Section 5. Violations.

20 (a) Illegal actions.--The following are violations of this  
21 act:

22 (1) Violation of a regulation promulgated under this act  
23 or any other statute or regulation pertaining to abortions or  
24 abortion facilities or, in the case of abortion facilities  
25 performing abortions after nine weeks gestational age, the  
26 regulations applicable to ambulatory surgical facilities  
27 promulgated under the act of July 19, 1979 (P.L.130, No.48),  
28 known as the Health Care Facilities Act.

29 (2) Transferring a license.

30 (3) Obtaining or attempting to obtain a license in

1 violation of this act. This paragraph includes fraud or  
2 deceit in the application process.

3 (4) Gross incompetence, negligence or misconduct in  
4 operation of the abortion facility.

5 (5) Mistreating or abusing patients cared for in the  
6 abortion facility.

7 (6) Failure to permit inspectors to enter the facility  
8 or to provide access to requested records.

9 (b) Notice.--If the department discovers a violation under  
10 subsection (a), the department shall give written notice to the  
11 abortion facility specifying the violation.

12 (c) Effect.--

13 (1) The department may deny licensure or renewal until  
14 correction of the violation under subsection (a).

15 (2) If the department determines that a violation under  
16 subsection (a) immediately compromises the health and safety  
17 of the patient, the department shall immediately revoke the  
18 license.

19 (3) Except as set forth in paragraph (1) or (2), within  
20 ten days of notice under subsection (b), the abortion  
21 facility shall prepare a plan of correction.

22 (4) The department may assess an administrative penalty  
23 against a license holder. This paragraph is subject to 2  
24 Pa.C.S. Chs. 5. Subch. A (relating to practice and procedure  
25 of Commonwealth agencies) and 7 Subch. A (relating to  
26 judicial review of Commonwealth agency action).  
27 Section 6. Operation without a license.

28 (a) Prohibition.--An abortion facility may not operate  
29 without a license. Each day of operation constitutes a separate  
30 offense.

1 (b) Penalty.--A person that violates subsection (a) commits  
2 a misdemeanor of the third degree and shall, upon conviction, be  
3 sentenced to pay a fine of up to \$2,000, or to imprisonment for  
4 not more than six months, or both, for the first violation. On  
5 the second and each subsequent conviction, he or she shall be  
6 sentenced to pay a fine of not less than \$5,000 nor more than  
7 \$20,000, or to imprisonment for not less than six months nor  
8 more than one year, or both.

9 Section 7. Complaints.

10 (a) Procedure.--The department shall promulgate regulations  
11 for a formal complaint process for a person to report a  
12 violation of this act or any other statute or regulation  
13 pertaining to abortions or abortion facilities. The process  
14 shall include:

15 (1) A toll-free telephone number for lodging verbal  
16 complaints.

17 (2) A form, easily accessible on the department's  
18 Internet website, to allow for electronic submission of  
19 written complaints.

20 (3) An intake system and protocols for dealing with  
21 individuals making complaints directly to department  
22 employees or through the postal system.

23 (4) A complaint tracking system.

24 (b) Treatment.--A complainant shall receive all of the  
25 following:

26 (1) Notification of the option to remain anonymous.

27 (2) Written acknowledgment regarding the receipt of the  
28 complaint.

29 (3) Written notification of the final outcome of  
30 investigation of the complaint.

1 Section 8. Reports.

2 (a) Serious event reports.--

3 (1) Notwithstanding any other provision to the contrary,  
4 all abortion facilities as defined in this act shall report  
5 the occurrence of a serious event to the department and the  
6 Patient Safety Authority within 24 hours of the abortion  
7 facility's confirmation of the serious event.

8 (2) Within 72 hours of a report of a serious event, the  
9 department shall initiate an inspection.

10 (3) Failure to report a serious event may be the basis  
11 for the revocation of licensure under this act. In addition  
12 to any penalty which may be imposed under 18 Pa.C.S. Ch. 32  
13 (relating to abortion), an abortion facility which fails to  
14 report a serious event in accordance with this act may be  
15 subject to an administrative penalty of \$1,000 per day  
16 imposed by the department.

17 (4) Reporting under paragraph (1) shall be in accordance  
18 with section 313 of the act of March 20, 2002 (P.L.154,  
19 No.13), known as the Medical Care Availability and Reduction  
20 of Error (Mcare) Act.

21 (b) Communication with Department of State.--The department  
22 shall establish regular and formal mechanisms for making reports  
23 to the Department of State. Complaints pertaining to any  
24 licensed professional under the jurisdiction of the Bureau of  
25 Professional and Occupational Affairs shall be reported as soon  
26 as possible to the appropriate licensing board but no more than  
27 72 hours after receipt.

28 Section 9. Confidentiality.

29 The following shall apply:

30 (1) Information regarding complainant and patient



1 identity received by the department shall be kept  
2 confidential and shall not be subject to the act of February  
3 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

4 (2) The department shall at all times respect the  
5 privacy of patients and patient records which shall be  
6 subject to the Health Insurance Portability and  
7 Accountability Act (HIPAA) of 1996 (Public Law 104-191, 110  
8 Stat. 1936).

9 Section 10. Regulations.

10 The department shall promulgate regulations to implement this  
11 act. Existing regulations of the department applicable to  
12 abortion facilities not clearly inconsistent with the provisions  
13 of this act shall remain in effect until amended by the  
14 department under this section.

15 Section 11. Existing abortion facilities.

16 The department shall begin a process to ensure all of the  
17 following:

18 (1) Abortion facilities in existence on the effective  
19 date of this section are able to receive a license if  
20 warranted. When a licensure process is in effect, the  
21 department shall transmit notice of this fact to the  
22 Legislative Reference Bureau for publication in the  
23 Pennsylvania Bulletin.

24 (2) Abortion facilities are in compliance with other  
25 statutes administered by the department pertaining to  
26 abortion facilities.

27 Section 12. Setting of fees and disposition of fees.

28 (a) Setting of fees.--All fees may be fixed by the  
29 department by regulation and shall be subject to the act of June  
30 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

1 If the revenues raised by the fees imposed under this act are  
2 not sufficient to meet expenditures over a two-year period, the  
3 department may increase those fees by regulation so that the  
4 projected revenues will meet or exceed projected expenditures.

5 (b) Licensure Fee Account.--The Licensure Fee Account is  
6 hereby established as a restricted account in the General Fund.  
7 All fees shall be deposited in the Licensure Fee Account. Moneys  
8 in the account are hereby appropriated to the department for use  
9 in the performance of its duties under this act.

10 SECTION 13. STUDY. ←

11 THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE SHALL STUDY THE  
12 FISCAL IMPACT OF APPLYING 28 PA. CODE PT. IV SUBPT. F (RELATING  
13 TO AMBULATORY SURGICAL FACILITIES) TO EXISTING ABORTION  
14 FACILITIES THAT CURRENTLY PERFORM ABORTIONS UNDER 28 PA. CODE  
15 PT. IV SUBPT. F. THE DEPARTMENT SHALL ASSIST THE COMMITTEE IN  
16 OBTAINING NECESSARY INFORMATION FOR THE STUDY. WITHIN 90 DAYS OF  
17 THE EFFECTIVE DATE OF THIS SECTION, THE COMMITTEE SHALL REPORT  
18 THE RESULTS OF THE STUDY TO THE PRESIDENT PRO TEMPORE OF THE  
19 SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE  
20 HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF  
21 REPRESENTATIVES.

22 Section ~~13~~ 14. Construction. ←

23 Nothing in this act shall be construed to limit the  
24 provisions of 18 Pa.C.S. Ch. 32 (relating to abortion) or limit  
25 any regulation promulgated under 18 Pa.C.S. Ch. 32.

26 Section 30. Effective date.


27 This act shall take effect as follows:

28 (1) The following provisions shall take effect  
29 immediately:

30 (i) Section 2.

1 (ii) Section 10.

2 (iii) Section 11.

3 (iv) SECTION 13. 

4 (V) This section.

5 (2) Section 6 shall take effect 60 days after  
6 publication of the notice under section 11(1).

7 (3) Section 5(a)(1) shall take effect in 180 days.

8 (4) The remainder of this act shall take effect in 60  
9 days.