

AMENDMENTS TO SENATE BILL NO. 732

Sponsor: REPRESENTATIVE FRANKEL

Printer's No. 1443

1 Amend Bill, page 1, lines 5 through 15, by striking out all
2 of said lines and inserting

3 Regulating certain facilities which perform abortions; imposing
4 powers and duties on the Department of Health and the
5 Legislative Reference Bureau; and imposing penalties.

6 Amend Bill, page 11, lines 16 through 30; pages 12 through
7 14, lines 1 through 30; page 15, lines 1 through 17, by striking
8 out all of said lines on said pages and inserting

9 Section 1. Short title.

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

12 Section 1.1. Legislative findings and declaration of policy.

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

15 (1) The citizens of this Commonwealth have a substantial
16 interest in regulating abortion facilities operating in this
17 Commonwealth.

18 (2) Regulation of abortion facilities reasonably serves
19 the Commonwealth's substantial interests in protecting the
20 citizens of this Commonwealth from bodily injury and death.

21 (3) Warrantless administrative inspections of abortion
22 facilities operating in this Commonwealth are a necessary
23 part of this comprehensive regulatory scheme.

24 (b) Declaration of policy.--It is hereby declared to be the
25 intention of the General Assembly to protect the safety and
26 general welfare of the citizens of this Commonwealth by closely
27 regulating abortion facilities operating in this Commonwealth.

28 Section 2. Definitions.

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

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

34 "Abortion facility." A facility:

35 (1) which is not subject to licensure under act of July

1 19, 1979 (P.L.130, No.48), known as the Health Care
2 Facilities Act; and
3 (2) in which abortions are performed on an elective
4 basis.

5 "Complainant." An individual who contacts the department for
6 the purpose of making a complaint.

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

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

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

17 "Serious event." As defined in section 302 of the act of
18 March 20, 2002 (P.L.154, No.13), known as the Medical Care
19 Availability and Reduction of Error (Mcare) Act.
20 Section 3. Licensure.

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

23 (b) Procedure.--

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

27 (2) Upon receipt of an application under paragraph (1),
28 the department shall inspect the abortion facility to
29 determine the ability to comply with this act.

30 (c) License.--

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

34 (i) Name.

35 (ii) Compliance with statutory and regulatory
36 requirements.

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

39 (iv) The date the inspection took place.

40 (2) A license is nontransferable.

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

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

46 Section 4. Inspections.

47 (a) Authority.--

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

50 (i) holds a license; or

51 (ii) is seeking licensure.

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

- (i) Premises and records of the abortion facility.
- (ii) Individuals employed by or under contract with the abortion facility. This subparagraph includes the opportunity to interview the individuals.

(b) Timing.--

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

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

(3) The department may conduct random inspections at each abortion facility.

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

- (i) ensuring compliance; or
- (ii) investigating a complaint.

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

Section 5. Violations.

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

(1) Violation of a regulation promulgated under this act or any other statute or regulation pertaining to abortions or abortion facilities.

(2) Transferring a license.

(3) Obtaining or attempting to obtain a license in violation of this act. This paragraph includes fraud or deceit in the application process.

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

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

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

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

(c) Effect.--

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

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

(3) Except as set forth in paragraph (1) or (2), within 12 days of notice under subsection (b), the abortion facility shall prepare a plan of correction.

(4) The department may assess an administrative penalty

1 against a license holder. This paragraph is subject to 2
2 Pa.C.S. Chs. 5. Subch. A (relating to practice and procedure
3 of Commonwealth agencies) and 7 Subch. A (relating to
4 judicial review of Commonwealth agency action).

5 Section 6. Operation without a license.

6 (a) Prohibition.--An abortion facility may not operate
7 without a license. Each day of operation constitutes a separate
8 offense.

9 (b) Penalty.--A person that violates subsection (a) commits
10 a summary offense and shall, upon conviction, be sentenced to
11 pay a fine of \$500.

12 Section 7. Complaints.

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

18 (1) A toll-free telephone number for lodging verbal
19 complaints.

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

23 (3) An intake system and protocols for dealing with
24 individuals making complaints directly to department
25 employees or through the postal system.

26 (4) A complaint tracking system.

27 (b) Treatment.--A complainant shall receive all of the
28 following:

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

30 (2) Written acknowledgment regarding the receipt of the
31 complaint.

32 (3) Written notification of the final outcome of
33 investigation of the complaint upon request.

34 Section 8. Reports.

35 (a) Serious event reports.--

36 (1) Notwithstanding any other provision to the contrary,
37 all abortion facilities as defined in this act shall report
38 the occurrence of a serious event to the department and the
39 Patient Safety Authority within 24 hours of the abortion
40 facility's confirmation of the serious event.

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

43 (3) Failure to report a serious event may be the basis
44 for the revocation of licensure under this act. In addition
45 to any penalty which may be imposed under 18 Pa.C.S. Ch. 32
46 (relating to abortion), an abortion facility which fails to
47 report a serious event in accordance with this act may be
48 subject to an administrative penalty of \$800 per day imposed
49 by the department.

50 (4) Reporting under paragraph (1) shall be in accordance
51 with section 313 of the act of March 20, 2002 (P.L.154,

No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

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

Section 9. Confidentiality.

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

Section 10. Regulations.

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

Section 11. Existing abortion facilities.

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

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

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

Section 12. Construction.

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

Section 30. Effective date.

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Section 2.

(ii) Section 10.

(iii) Section 11.

(iv) This section.

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

(3) The remainder of this act shall take effect in 180 days.