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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,  
FONTANA, KASUNIC, MENSCH, WARD, ALLOWAY, BROWNE, BREWSTER,  
BRUBAKER, SMUCKER, STACK, TOMLINSON, WASHINGTON, D. WHITE,  
WOZNIAK, YUDICHAK, DINNIMAN, EARLL, EICHELBERGER, FOLMER,  
GORDNER, ORIE, PIPPY, RAFFERTY AND ROBBINS, MARCH 2, 2011

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REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 2, 2011

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AN ACT

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

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

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

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

15 "Abortion facility." A facility:

16 (1) which is not subject to licensure under act of July  
17 19, 1979 (P.L.130, No.48), known as the Health Care

1 Facilities Act; and

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

4 "Certificate." A certificate of compliance under section  
5 3(c).

6 "Certificate holder." An abortion facility which holds a  
7 certificate.

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

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

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

25 (b) Procedure.--

26 (1) An abortion facility must submit an application for  
27 approval 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) Certificate.--

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

7 (i) Name.

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

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

12 (iv) Name and signature of the inspector and the  
13 date the inspection took place.

14 (2) A certificate of compliance is nontransferable.

15 (3) The abortion facility shall prominently display the  
16 certificate where it is visible to patients.

17 (d) Recertification.--Before expiration of the term under  
18 subsection (c)(1)(iii), an abortion facility must apply for  
19 recertification in accordance with subsection (c).

20 Section 4. Inspections.

21 (a) Authority.--

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

24 (i) holds a certificate; or

25 (ii) is seeking approval, registration and  
26 certification.

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

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

30 (ii) Individuals employed by or under contract with

1 the abortion facility. This subparagraph includes the  
2 opportunity to interview the individuals.

3 (b) Timing.--

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

6 (2) A renewal inspection shall be conducted for  
7 recertification under section 3(d).

8 (3) The department shall annually conduct at least one  
9 unannounced inspection of each abortion facility holding a  
10 certificate.

11 (4) Within 72 hours of a report of a serious event, the  
12 department shall conduct an inspection.

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

15 (i) ensuring compliance; or

16 (ii) investigating a complaint.

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

21 Section 5. Violations.

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

24 (1) Violation of a regulation promulgated under this  
25 act.

26 (2) Transferring a certificate.

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

30 (4) Gross incompetence, negligence or misconduct in

1 operation of the abortion facility.

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

4 (b) Notice.--If the department observes a violation under  
5 subsection (a), the department shall give written notice  
6 specifying the violation.

7 (c) Effect.--

8 (1) The department may deny certification or  
9 recertification until correction of the violation under  
10 subsection (a).

11 (2) If the department determines that a violation under  
12 subsection (a) places patients in immediate danger, the  
13 department shall immediately revoke certification.

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

17 (4) The department may assess an administrative penalty  
18 against a certificate holder. This paragraph is subject to 2  
19 Pa.C.S. Chs. 5. Subch. A (relating to practice and procedure  
20 of Commonwealth agencies) and 7 Subch. A (relating to  
21 judicial review of Commonwealth agency action).

22 Section 6. Operation without certificate.

23 (a) Prohibition.--A person may not operate an abortion  
24 facility without a certificate. Each day of operation  
25 constitutes a separate offense.

26 (b) Penalty.--A person that violates subsection (a) commits  
27 a summary offense and shall, upon conviction, be sentenced to  
28 pay a fine of \$250.

29 Section 7. Complaints.

30 (a) Procedure.--The department shall promulgate regulations

1 for a formal complaint process for a person to report a  
2 violation of this act or a regulation promulgated under this  
3 act. The process shall include:

4 (1) A toll-free telephone number for lodging verbal  
5 complaints.

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

9 (3) An intake system and protocols for dealing with  
10 individuals making complaints directly to department  
11 employees or through the postal system.

12 (4) A complaint tracking system.

13 (b) Treatment.--A complainant shall receive all of the  
14 following:

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

16 (2) Written acknowledgment regarding the receipt of the  
17 complaint.

18 (3) Written notification of the final outcome of  
19 investigation of the complaint.

#### 20 Section 8. Reports.

21 The department shall establish regular and formal mechanisms  
22 for making reports about the administration of this act to the  
23 Department of State. Complaints pertaining to any licensed  
24 professional under the jurisdiction of the Bureau of  
25 Professional and Occupational Appeals shall be reported as soon  
26 as possible to the appropriate licensing board but no less than  
27 24 hours after receipt.

#### 28 Section 9. Confidentiality.

29 Information regarding complainant and patient identity  
30 received by the department shall be kept confidential and shall

1 not be subject to the act of February 14, 2008 (P.L.6, No.3),  
2 known as the Right-to-Know Law.

3 Section 10. Regulations.

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

9 Section 11. Existing abortion facilities.

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

12 (1) Abortion facilities in existence on the effective  
13 date of this section are able to receive a certificate if  
14 warranted. When a certification process is in effect, the  
15 department shall transmit notice of this fact to the  
16 Legislative Reference Bureau for publication in the  
17 Pennsylvania Bulletin.

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

21 Section 12. Construction.

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

25 Section 30. Effective date.

26 This act shall take effect as follows:

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

29 (i) Section 2.

30 (ii) Section 10.

1 (iii) Section 11.

2 (iv) This section.

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

5 (3) The remainder of this act shall take effect in 60  
6 days.