

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 732 Session of 2011

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

SENATOR VANCE, PUBLIC HEALTH AND WELFARE, AS AMENDED, MAY 4, 2011

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 1.1. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY. ←

10 (A) LEGISLATIVE FINDINGS.--IT IS HEREBY DETERMINED AND
11 DECLARED AS A MATTER OF LEGISLATIVE FINDING THAT:

12 (1) THE CITIZENS OF THIS COMMONWEALTH HAVE A SUBSTANTIAL
13 INTEREST IN REGULATING ABORTION FACILITIES OPERATING IN THIS
14 COMMONWEALTH.

15 (2) REGULATION OF ABORTION FACILITIES REASONABLY SERVES
16 THE COMMONWEALTH'S SUBSTANTIAL INTERESTS IN PROTECTING THE

1 CITIZENS OF THIS COMMONWEALTH FROM BODILY INJURY AND DEATH.

2 (3) WARRANTLESS ADMINISTRATIVE INSPECTIONS OF ABORTION
3 FACILITIES OPERATING IN THIS COMMONWEALTH ARE A NECESSARY
4 PART OF THIS COMPREHENSIVE REGULATORY SCHEME.

5 (B) DECLARATION OF POLICY.--IT IS HEREBY DECLARED TO BE THE
6 INTENTION OF THE GENERAL ASSEMBLY TO PROTECT THE SAFETY AND
7 GENERAL WELFARE OF THE CITIZENS OF THIS COMMONWEALTH BY CLOSELY
8 REGULATING ABORTION FACILITIES OPERATING IN THIS COMMONWEALTH.

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
18 Facilities Act; and

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

21 ~~"Certificate." A certificate of compliance under section~~ ←
22 ~~3(e).~~

23 ~~"Certificate holder." An abortion facility which holds a~~
24 ~~certificate.~~

25 "Complainant." An individual who contacts the department for
26 the purpose of making a complaint.

27 "Complaint." A communication received by the department,
28 which describes conduct in violation of this act or any other
29 statute OR REGULATIONS pertaining to abortions or abortion ←
30 facilities.

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

2 "Inspection." An examination by the department, including
3 interviews with the office staff, clients and individuals
4 providing abortions or assisting in providing abortions, and a
5 review of documents pertinent to initial and continued
6 compliance for the purpose of operating an abortion facility.

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

10 Section 3. ~~Approval and certificate~~ LICENSURE. ←

11 (a) ~~Approval~~ LICENSE required.--An abortion facility must be ←
12 ~~approved~~ LICENSED by the department. ←

13 (b) Procedure.--

14 (1) An abortion facility must submit an application for
15 ~~approval~~ LICENSURE to the department on a form prescribed by ←
16 the department.

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

20 (c) ~~Certificate~~ LICENSE.-- ←

21 (1) If the department determines that the abortion
22 facility is able to comply with this act, the department
23 shall ~~register the abortion facility and issue a certificate~~ ←
24 ISSUE A LICENSE indicating all of the following: ←

25 (i) Name.

26 (ii) Compliance with statutory and regulatory
27 requirements.

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

30 (iv) ~~Name and signature of the inspector and the~~ THE ←

1 date the inspection took place.

2 (2) A ~~certificate of compliance~~ LICENSE is ←
3 nontransferable.

4 (3) The abortion facility shall prominently display the
5 ~~certificate~~ LICENSE where it is visible to patients. ←

6 (d) ~~Recertification~~ RENEWAL.--Before expiration of the term ←
7 under subsection (c) (1) (iii), an abortion facility must apply
8 for ~~recertification~~ RENEWAL in accordance with subsection (c). ←

9 Section 4. Inspections.

10 (a) Authority.--

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

13 (i) holds a ~~certificate~~ LICENSE; or ←

14 (ii) is seeking ~~approval, registration and~~ ←
15 ~~certification~~ LICENSURE. ←

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

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

19 (ii) Individuals employed by or under contract with
20 the abortion facility. This subparagraph includes the
21 opportunity to interview the individuals.

22 (b) Timing.--

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

25 (2) ~~A renewal~~ AN inspection shall be conducted for ←
26 ~~recertification~~ LICENSE RENEWAL under section 3(d). ←

27 (3) The department ~~shall annually conduct at least one~~ ←
28 ~~unannounced inspection of each abortion facility holding a~~
29 ~~certificate~~ MAY CONDUCT RANDOM INSPECTIONS AT EACH ABORTION ←
30 FACILITY.

1 ~~(4) Within 72 hours of a report of a serious event, the~~ ←
2 ~~department shall conduct an inspection.~~

3 ~~(5)~~ (4) The department may conduct other inspections, ←
4 announced or unannounced, for the purpose of:

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

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

11 Section 5. Violations.

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

14 (1) Violation of a regulation promulgated under this act
15 OR ANY OTHER STATUTE OR REGULATION PERTAINING TO ABORTIONS OR ←
16 ABORTION FACILITIES.

17 (2) Transferring a ~~certificate~~ LICENSE. ←

18 (3) Obtaining or attempting to obtain a ~~certificate~~ ←
19 LICENSE in violation of this act. This paragraph includes ←
20 fraud or deceit in the application process.

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

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

25 (6) FAILURE TO PERMIT INSPECTORS TO ENTER THE FACILITY ←
26 OR TO PROVIDE ACCESS TO REQUESTED RECORDS.

27 (b) Notice.--If the department ~~observes~~ DISCOVERS a ←
28 violation under subsection (a), the department shall give
29 written notice TO THE ABORTION FACILITY specifying the ←
30 violation.

1 (c) Effect.--

2 (1) The department may deny ~~certification~~ LICENSURE or ←
3 ~~recertification~~ RENEWAL until correction of the violation ←
4 under subsection (a).

5 (2) If the department determines that a violation under
6 subsection (a) ~~places patients in immediate danger~~ ←
7 IMMEDIATELY COMPROMISES THE HEALTH AND SAFETY OF THE PATIENT, ←
8 the department shall immediately revoke ~~certification~~ THE ←
9 LICENSE.

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

13 (4) The department may assess an administrative penalty
14 against a ~~certificate~~ LICENSE holder. This paragraph is ←
15 subject to 2 Pa.C.S. Chs. 5. Subch. A (relating to practice
16 and procedure of Commonwealth agencies) and 7 Subch. A
17 (relating to judicial review of Commonwealth agency action).
18 Section 6. Operation without ~~certificate~~ A LICENSE. ←

19 (a) Prohibition.--~~A person may not operate an abortion~~ ←
20 ~~facility without a certificate~~ AN ABORTION FACILITY MAY NOT ←
21 OPERATE WITHOUT A LICENSE. Each day of operation constitutes a
22 separate offense.

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

26 Section 7. Complaints.

27 (a) Procedure.--The department shall promulgate regulations
28 for a formal complaint process for a person to report a
29 violation of this act ~~or a regulation promulgated under this act~~ ←
30 OR ANY OTHER STATUTE OR REGULATION PERTAINING TO ABORTIONS OR ←

1 ABORTION FACILITIES. The process shall include:

2 (1) A toll-free telephone number for lodging verbal
3 complaints.

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

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

10 (4) A complaint tracking system.

11 (b) Treatment.--A complainant shall receive all of the
12 following:

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

14 (2) Written acknowledgment regarding the receipt of the
15 complaint.

16 (3) Written notification of the final outcome of
17 investigation of the complaint.

18 Section 8. Reports.

19 (A) SERIOUS EVENT REPORTS.--



20 (1) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY,
21 ALL ABORTION FACILITIES AS DEFINED IN THIS ACT SHALL REPORT
22 THE OCCURRENCE OF A SERIOUS EVENT TO THE DEPARTMENT AND THE
23 PATIENT SAFETY AUTHORITY WITHIN 24 HOURS OF THE ABORTION
24 FACILITY'S CONFIRMATION OF THE SERIOUS EVENT.

25 (2) WITHIN 72 HOURS OF A REPORT OF A SERIOUS EVENT, THE
26 DEPARTMENT SHALL INITIATE AN INSPECTION.

27 (3) FAILURE TO REPORT A SERIOUS EVENT MAY BE THE BASIS
28 FOR THE REVOCATION OF LICENSURE UNDER THIS ACT. IN ADDITION
29 TO ANY PENALTY WHICH MAY BE IMPOSED UNDER 18 PA.C.S. CH. 32
30 (RELATING TO ABORTION), AN ABORTION FACILITY WHICH FAILS TO

1 REPORT A SERIOUS EVENT IN ACCORDANCE WITH THIS ACT MAY BE
2 SUBJECT TO AN ADMINISTRATIVE PENALTY OF \$1,000 PER DAY
3 IMPOSED BY THE DEPARTMENT.

4 (4) REPORTING UNDER PARAGRAPH (1) SHALL BE IN ACCORDANCE
5 WITH SECTION 313 OF THE ACT OF MARCH 20, 2002 (P.L.154,
6 NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY AND REDUCTION
7 OF ERROR (MCARE) ACT.

8 ~~The~~ (B) COMMUNICATION WITH DEPARTMENT OF STATE.--THE ←
9 department shall establish regular and formal mechanisms for
10 making reports ~~about the administration of this act~~ to the ←
11 Department of State. Complaints pertaining to any licensed
12 professional under the jurisdiction of the Bureau of
13 Professional and Occupational ~~Appeals~~ AFFAIRS shall be reported ←
14 as soon as possible to the appropriate licensing board but no
15 less than ~~24~~ 72 hours after receipt. ←

16 Section 9. Confidentiality.

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

21 Section 10. Regulations.

22 The department shall promulgate regulations to ~~administer~~ ←
23 IMPLEMENT this act. Existing regulations of the department ←
24 applicable to abortion facilities not clearly inconsistent with
25 the provisions of this act shall remain in effect until amended
26 by the department under this section.

27 Section 11. Existing abortion facilities.

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

30 (1) Abortion facilities in existence on the effective

1 date of this section are able to receive a ~~certificate~~ ←
2 LICENSE if warranted. When a ~~certification~~ LICENSURE process ←
3 is in effect, the department shall transmit notice of this
4 fact to the Legislative Reference Bureau for publication in
5 the Pennsylvania Bulletin.

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

9 Section 12. Construction.

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

13 Section 30. Effective date.

14 This act shall take effect as follows:

15 (1) The following provisions shall take effect
16 immediately:

17 (i) Section 2.

18 (ii) Section 10.

19 (iii) Section 11.

20 (iv) This section.

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

23 (3) The remainder of this act shall take effect in 60
24 days.