

## 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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GORDNER, ORIE, PIPPY, RAFFERTY AND ROBBINS, MARCH 2, 2011

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SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 9,  
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 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 "Complainant." An individual who contacts the department for  
22 the purpose of making a complaint.

23 "Complaint." A communication received by the department,  
24 which describes conduct in violation of this act or any other  
25 statute or regulations pertaining to abortions or abortion  
26 facilities.

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

28 "Inspection." An examination by the department, including  
29 interviews with the office staff, clients and individuals  
30 providing abortions or assisting in providing abortions, and a

1 review of documents pertinent to initial and continued  
2 compliance for the purpose of operating an abortion facility.

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

6 Section 3. Licensure.

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

9 (b) Procedure.--

10 (1) An abortion facility must submit an application for  
11 licensure to the department on a form prescribed by the  
12 department.

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

16 (c) License.--

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

20 (i) Name.

21 (ii) Compliance with statutory and regulatory  
22 requirements.

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

25 (iv) The date the inspection took place.

26 (2) A license is nontransferable.

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

29 (d) Renewal.--Before expiration of the term under subsection  
30 (c) (1) (iii), an abortion facility must apply for renewal in

1 accordance with subsection (c).

2 Section 4. Inspections.

3 (a) Authority.--

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

- 6 (i) holds a license; or
- 7 (ii) is seeking licensure.

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

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

14 (b) Timing.--

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

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

19 (3) The department ~~may conduct random inspections at~~ ←  
20 ~~each abortion facility.~~ SHALL ANNUALLY CONDUCT AT LEAST ONE ←  
21 UNANNOUNCED INSPECTION OF EACH ABORTION FACILITY. SUCH  
22 INSPECTION MAY SATISFY THE REQUIREMENTS OF PARAGRAPH (2).

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

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

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

1 Section 5. Violations.

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

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

7 (2) Transferring a license.

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

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

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

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

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

20 (c) Effect.--

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

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

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

30 (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 \$250.

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

1 complaint.

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

4 Section 8. Reports.

5 (a) Serious event reports.--

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

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

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

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

24 (b) Communication with Department of State.--The department  
25 shall establish regular and formal mechanisms for making reports  
26 to the Department of State. Complaints pertaining to any  
27 licensed professional under the jurisdiction of the Bureau of  
28 Professional and Occupational Affairs shall be reported as soon  
29 as possible to the appropriate licensing board but no less than  
30 72 hours after receipt.

1 Section 9. Confidentiality.

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

6 Section 10. Regulations.

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

12 Section 11. Existing abortion facilities.

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

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

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

24 Section 12. Construction.

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

28 Section 30. Effective date.

29 This act shall take effect as follows:

30 (1) The following provisions shall take effect



1 immediately:

2 (i) Section 2.

3 (ii) Section 10.

4 (iii) Section 11.

5 (iv) This section.

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

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