

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, D. WHITE, WOZNIAK, YUDICHAK, DINNIMAN, EARLL, EICHELBERGER, FOLMER, GORDNER, ORIE, PIPPY, RAFFERTY AND ROBBINS, MARCH 2, 2011

AS AMENDED ON THIRD CONSIDERATION, JUNE 8, 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~~
17 ~~citizens of this Commonwealth from bodily injury and death.~~

1 ~~(3) Warrantless administrative inspections of abortion~~
2 ~~facilities operating in this Commonwealth are a necessary~~
3 ~~part of this comprehensive regulatory scheme.~~

4 (1) A PHILADELPHIA COUNTY INVESTIGATING GRAND JURY ←
5 REPORT HAS REVEALED SYSTEMIC DEFICIENCIES IN THE MANNER IN
6 WHICH THE COMMONWEALTH HAS REGULATED ABORTION FACILITIES
7 OPERATING IN THIS COMMONWEALTH.

8 (2) THESE SYSTEMIC DEFICIENCIES HAVE LED TO HORRIFIC
9 INSTANCES OF BODILY INJURY AND DEATH.

10 (3) THE GENERAL PUBLIC HAS A SUBSTANTIAL INTEREST IN THE
11 COMPREHENSIVE REGULATION OF ABORTION FACILITIES OPERATING IN
12 THIS COMMONWEALTH.

13 (4) COMPREHENSIVE REGULATION OF ABORTION FACILITIES
14 REASONABLY SERVES THE COMMONWEALTH'S SUBSTANTIAL INTERESTS IN
15 PROTECTING THE HEALTH, SAFETY AND WELFARE OF THE GENERAL
16 PUBLIC.

17 (5) REGULATION OF ABORTION FACILITIES THAT PERFORM
18 OUTPATIENT SURGICAL PROCEDURES AS AMBULATORY SURGICAL
19 FACILITIES IS NECESSARY TO CURE THE SYSTEMIC DEFICIENCIES
20 PRESENT IN THE CURRENT REGULATORY SCHEME.

21 (6) USE OF OUTPATIENT SURGICAL PROCEDURES IN ABORTION
22 FACILITIES IS MORE LIKELY TO OCCUR AFTER NINE WEEKS
23 GESTATIONAL AGE.

24 (7) PROPER LICENSING AND A SYSTEM OF RANDOM
25 ADMINISTRATIVE INSPECTIONS OF ABORTION FACILITIES OPERATING
26 IN THIS COMMONWEALTH ARE ALSO A NECESSARY PART OF ANY
27 COMPREHENSIVE REGULATORY SCHEME.

28 (b) Declaration of policy.--It is hereby declared to be the
29 intention of the General Assembly to protect the HEALTH, safety ←
30 and ~~general welfare of the citizens of this Commonwealth by~~ ←

1 ~~closely regulating abortion facilities operating in this~~
2 ~~Commonwealth~~ WELFARE OF THE GENERAL PUBLIC THROUGH THE
3 COMPREHENSIVE REGULATION OF ABORTION FACILITIES OPERATING IN
4 THIS COMMONWEALTH.

5 Section 2. Definitions.

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

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

11 "Abortion facility." A facility:

12 (1) which is not subject to licensure under act of July
13 19, 1979 (P.L.130, No.48), known as the Health Care
14 Facilities Act; and

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

17 "Complainant." An individual who contacts the department for
18 the purpose of making a complaint.

19 "Complaint." A communication received by the department,
20 which describes conduct in violation of this act or any other
21 statute or regulations pertaining to abortions or abortion
22 facilities.

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

24 "Inspection." An examination by the department, including
25 interviews with the office staff, clients and individuals
26 providing abortions or assisting in providing abortions, and a
27 review of documents pertinent to initial and continued
28 compliance for the purpose of operating an abortion facility.

29 "Serious event." As defined in section 302 of the act of
30 March 20, 2002 (P.L.154, No.13), known as the Medical Care

1 Availability and Reduction of Error (Mcare) Act.

2 Section 3. Licensure.

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

5 (b) Procedure.--

6 (1) An abortion facility must submit an application for
7 licensure to the department on a form prescribed by the
8 department.

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

12 (c) License.--

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

16 (i) Name.

17 (ii) Compliance with statutory and regulatory
18 requirements.

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

21 (iv) The date the inspection took place.

22 (2) A license is nontransferable.

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

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

28 Section 4. Inspections.

29 (a) Authority.--

30 (1) An inspector of the department may, with

1 identification, enter and inspect an abortion facility which:

2 (i) holds a license; or

3 (ii) is seeking licensure.

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

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

7 (ii) Individuals employed by or under contract with
8 the abortion facility. This subparagraph includes the
9 opportunity to interview the individuals.

10 (b) Timing.--

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

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

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

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

20 (i) ensuring compliance; or

21 (ii) investigating a complaint.

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

26 (D) PRIVACY.--THE DEPARTMENT SHALL CONDUCT ITS INSPECTION IN
27 SUCH A WAY SO AS NOT TO DELAY, DISRUPT OR INTERFERE WITH PATIENT
28 CARE OR JEOPARDIZE PATIENT SAFETY AND PRIVACY.

29 Section 5. Violations.

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

1 act:

2 (1) Violation of a regulation promulgated under this act
3 or any other statute or regulation pertaining to abortions or
4 abortion facilities OR, IN THE CASE OF ABORTION FACILITIES ←
5 PERFORMING ABORTIONS AFTER NINE WEEKS GESTATIONAL AGE, THE
6 REGULATIONS APPLICABLE TO AMBULATORY SURGICAL FACILITIES
7 PROMULGATED UNDER THE ACT OF JULY 19, 1979 (P.L.130, NO.48),
8 KNOWN AS THE HEALTH CARE FACILITIES ACT.

9 (2) Transferring a license.

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

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

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

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

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

22 (c) Effect.--

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

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

29 (3) Except as set forth in paragraph (1) or (2), within
30 ten days of notice under subsection (b), the abortion

1 facility shall prepare a plan of correction.

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

7 Section 6. Operation without a license.

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

11 (b) Penalty.--A person that violates subsection (a) commits
12 a ~~summary offense~~ MISDEMEANOR OF THE THIRD DEGREE and shall, ←
13 upon conviction, be sentenced to pay a fine of ~~\$250~~ UP TO ←
14 \$2,000, OR TO IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR
15 BOTH, FOR THE FIRST VIOLATION. ON THE SECOND AND EACH SUBSEQUENT
16 CONVICTION, HE OR SHE SHALL BE SENTENCED TO PAY A FINE OF NOT
17 LESS THAN \$5,000 NOR MORE THAN \$20,000, OR TO IMPRISONMENT FOR
18 NOT LESS THAN SIX MONTHS NOR MORE THAN ONE YEAR, OR BOTH.

19 Section 7. Complaints.

20 (a) Procedure.--The department shall promulgate regulations
21 for a formal complaint process for a person to report a
22 violation of this act or any other statute or regulation
23 pertaining to abortions or abortion facilities. The process
24 shall include:

25 (1) A toll-free telephone number for lodging verbal
26 complaints.

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

30 (3) An intake system and protocols for dealing with

1 individuals making complaints directly to department
2 employees or through the postal system.

3 (4) A complaint tracking system.

4 (b) Treatment.--A complainant shall receive all of the
5 following:

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

7 (2) Written acknowledgment regarding the receipt of the
8 complaint.

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

11 Section 8. Reports.

12 (a) Serious event reports.--

13 (1) Notwithstanding any other provision to the contrary,
14 all abortion facilities as defined in this act shall report
15 the occurrence of a serious event to the department and the
16 Patient Safety Authority within 24 hours of the abortion
17 facility's confirmation of the serious event.

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

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

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

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

8 Section 9. Confidentiality.

9 ~~Information regarding complainant and patient identity~~ THE ←
10 FOLLOWING SHALL APPLY:

11 (1) INFORMATION REGARDING COMPLAINANT AND PATIENT
12 IDENTITY received by the department shall be kept
13 confidential and shall not be subject to the act of February
14 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

15 (2) THE DEPARTMENT SHALL AT ALL TIMES RESPECT THE ←
16 PRIVACY OF PATIENTS AND PATIENT RECORDS WHICH SHALL BE
17 SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND
18 ACCOUNTABILITY ACT (HIPAA) OF 1996 (PUBLIC LAW 104-191, 110
19 STAT. 1936).

20 Section 10. Regulations.

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

26 Section 11. Existing abortion facilities.

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

29 (1) Abortion facilities in existence on the effective
30 date of this section are able to receive a license if

1 warranted. When a licensure process is in effect, the
2 department shall transmit notice of this fact to the
3 Legislative Reference Bureau for publication in the
4 Pennsylvania Bulletin.

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

8 SECTION 12. SETTING OF FEES AND DISPOSITION OF FEES. ←

9 (A) SETTING OF FEES.--ALL FEES MAY BE FIXED BY THE
10 DEPARTMENT BY REGULATION AND SHALL BE SUBJECT TO THE ACT OF JUNE
11 25, 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY REVIEW ACT.
12 IF THE REVENUES RAISED BY THE FEES IMPOSED UNDER THIS ACT ARE
13 NOT SUFFICIENT TO MEET EXPENDITURES OVER A TWO-YEAR PERIOD, THE
14 DEPARTMENT MAY INCREASE THOSE FEES BY REGULATION SO THAT THE
15 PROJECTED REVENUES WILL MEET OR EXCEED PROJECTED EXPENDITURES.

16 (B) LICENSURE FEE ACCOUNT.--THE LICENSURE FEE ACCOUNT IS
17 HEREBY ESTABLISHED AS A RESTRICTED ACCOUNT IN THE GENERAL FUND.
18 ALL FEES SHALL BE DEPOSITED IN THE LICENSURE FEE ACCOUNT. MONEYS
19 IN THE ACCOUNT ARE HEREBY APPROPRIATED TO THE DEPARTMENT FOR USE
20 IN THE PERFORMANCE OF ITS DUTIES UNDER THIS ACT.

21 Section ~~12~~ 13. 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) SECTION 5(A) (1) SHALL TAKE EFFECT IN 180 DAYS. ←

6 ~~(3)~~ (4) The remainder of this act shall take effect in ←
7 60 days.