

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 775

Introduced by Assembly Member Chiu

February 25, 2015

An act to ~~amend Section 123375~~ add Article 2.7 (commencing with Section 123470) to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 775, as amended, Chiu. ~~Public health: maternal health. Reproductive FACT Act.~~

Existing law, the Reproductive Privacy Act, provides that every individual possesses a fundamental right of privacy with respect to reproductive decisions. Existing law provides that the state shall not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, as defined, or when necessary to protect her life or health. Existing law specifies the circumstances under which the performance of an abortion is deemed unauthorized.

This bill would enact the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act, which would require a licensed covered facility, as defined, to disseminate a notice to all clients, as specified, stating, among other things, that every pregnant woman has the right to decide whether to have a child or to obtain abortion care. The bill would also require an unlicensed covered facility, as defined, to disseminate a notice to all clients, as specified, stating, among other things, that the facility is not licensed as a medical facility by the State of California.

The bill would authorize the Attorney General, city attorney, or county counsel to bring an action to impose a specified civil penalty against covered facilities that fail to comply with these requirements. The bill would also require the Attorney General to post on the Department of Justice’s Internet Web site a list of the covered facilities upon which a civil penalty has been imposed.

~~Existing law, with exceptions, prohibits a person from selling, offering for sale, giving away, distributing, or otherwise furnishing materials intended to determine the presence of pregnancy, unless that person has obtained a certificate of acceptability from the State Department of Public Health declaring that the materials have been approved as to efficacy and safety by the department.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares that:*
- 2 *(a) Individuals possess a fundamental right of privacy with*
- 3 *respect to personal reproductive decisions under the California*
- 4 *Constitution and the Reproductive Privacy Act.*
- 5 *(b) All California residents, regardless of income, should have*
- 6 *access to reproductive health services. The state provides insurance*
- 7 *coverage of reproductive health care and counseling to eligible,*
- 8 *low-income residents. Some of these programs have been recently*
- 9 *established or expanded as a result of the federal Patient*
- 10 *Protection and Affordable Care Act.*
- 11 *(c) More than 700,000 California women become pregnant*
- 12 *every year. Approximately half of these pregnancies are*
- 13 *unintended. Thousands of women do not know the legal options*
- 14 *they have or funding resources available to them for prenatal care,*
- 15 *abortion, or delivery when they learn they are pregnant.*
- 16 *(d) Because California’s Medi-Cal program finances over 50*
- 17 *percent of in-state hospital births, California has a vested interest*
- 18 *in ensuring that women are knowledgeable about their options*
- 19 *and access to prenatal care as early as possible. Women who*
- 20 *receive prenatal care later in pregnancy are at higher risk for*
- 21 *having a preterm or low-birth weight infant and having an infant*

1 *requiring care in an intensive care unit. Infants born at low-birth*
2 *weight are at increased risk for life-long and disabling health*
3 *conditions. Their hospital costs are also substantially higher than*
4 *for normal birth weight infants. Infants who are born premature*
5 *are at increased risk for death and life-long disabling conditions,*
6 *including hearing and vision loss, respiratory problems, mental*
7 *retardation, and cerebral palsy.*

8 *(e) California’s public policy supporting reproductive health*
9 *is undermined if residents do not know their rights and the*
10 *programs available to exercise their reproductive options. Because*
11 *pregnancy decisions are time sensitive, and care early in pregnancy*
12 *is important, California must supplement its own efforts to advise*
13 *residents of its reproductive health programs with information at*
14 *the community clinics where the majority of residents who are*
15 *eligible for these public programs obtain pregnancy testing and*
16 *information.*

17 *(f) The most effective way to ensure that residents make and*
18 *implement timely reproductive decisions is for licensed health care*
19 *facilities primarily engaged in pregnancy care to advise every*
20 *client on site of legal reproductive options and resources available*
21 *in California. Unlicensed facilities that advertise and provide*
22 *pregnancy testing and care must advise clients, at the time they*
23 *are seeking or obtaining care, that these facilities are not licensed*
24 *to provide medical care.*

25 *SEC. 2. The purpose of this act is to ensure that California*
26 *residents make their personal reproductive health care decisions*
27 *knowing their rights and the health care services available to them.*

28 *SEC. 3. Article 2.7 (commencing with Section 123470) is added*
29 *to Chapter 2 of Part 2 of Division 106 of the Health and Safety*
30 *Code, to read:*

31

32 *Article 2.7. Reproductive FACT Act*

33

34 *123470. This article shall be known and may be cited as the*
35 *Reproductive FACT (Freedom, Accountability, Comprehensive*
36 *Care, and Transparency) Act or Reproductive FACT Act.*

37 *123471. (a) For purposes of this article, subject to subdivision*
38 *(c), “licensed covered facility” means a facility licensed under*
39 *Section 1204 or a satellite clinic operating under a primary care*
40 *clinic pursuant to subdivision (h) of Section 1206, whose primary*

1 *purpose is providing pregnancy-related services, and that satisfies*
 2 *two or more of the following:*

3 (1) *The facility offers obstetric ultrasounds, obstetric sonograms,*
 4 *or prenatal care to pregnant women.*

5 (2) *The facility offers pregnancy testing or pregnancy diagnosis.*

6 (3) *The facility advertises or solicits patrons with offers to*
 7 *provide prenatal sonography, pregnancy tests, or pregnancy*
 8 *options counseling.*

9 (4) *The facility has staff or volunteers who collect health*
 10 *information from clients.*

11 (b) *For purposes of this article, subject to subdivision (c),*
 12 *“unlicensed covered facility” is a facility that is not licensed by*
 13 *the State of California and does not have a licensed medical*
 14 *provider on staff or under contract who provides or directly*
 15 *supervises the provision of all of the services, whose primary*
 16 *purpose is providing pregnancy-related services, and that satisfies*
 17 *two or more of the following:*

18 (1) *The facility offers obstetric ultrasounds, obstetric sonograms,*
 19 *or prenatal care to pregnant women.*

20 (2) *The facility offers pregnancy testing or pregnancy diagnosis.*

21 (3) *The facility advertises or solicits patrons with offers to*
 22 *provide prenatal sonography, pregnancy tests, or pregnancy*
 23 *options counseling.*

24 (4) *The facility has staff or volunteers who collect health*
 25 *information from clients.*

26 (c) *A clinic directly conducted, maintained, or operated by the*
 27 *United States or any of its departments, officers, or agencies is*
 28 *not a covered facility.*

29 123472. (a) *A licensed covered facility shall disseminate the*
 30 *following notice in English and in minority languages required*
 31 *pursuant to Section 203 of the federal Voting Rights Act (52 U.S.C.*
 32 *10101 et seq.) to clients on site.*

33 (1) *The notice shall state:*

34
 35 *“You have the right to decide whether to have a child. In*
 36 *California, every pregnant woman has the right to decide whether*
 37 *to have a child or to obtain abortion care. Every resident also has*
 38 *a right to use a birth control method. California has public*
 39 *programs that provide free or low-cost prenatal care, abortion,*
 40 *and contraception for eligible women. To see whether you qualify,*

1 *call the telephone number of the county social services office for*
2 *the county in which the facility is located.”*

3

4 *(2) The information shall be disclosed in one of the following*
5 *ways:*

6 *(A) A public notice posted in a conspicuous place where*
7 *individuals wait that may be easily read by those seeking services*
8 *from the facility. The notice shall be at least 8.5 inches by 11 inches*
9 *and written in no less than 22-point type.*

10 *(B) A printed notice distributed to all clients in no less than*
11 *14-point type.*

12 *(C) A digital notice distributed to all clients that can be read*
13 *at the time of check-in or arrival, in the same point type as other*
14 *digital disclosures. A printed notice as described in subparagraph*
15 *(B) shall be available for all clients who cannot or do not wish to*
16 *receive the information in a digital format.*

17 *(3) The notice may be combined with other mandated*
18 *disclosures.*

19 *(b) An unlicensed covered facility shall disseminate the following*
20 *notice in English and in minority languages required pursuant to*
21 *Section 203 of the federal Voting Rights Act (52 U.S.C. 10101 et*
22 *seq.) to clients on site and in any print and digital advertising*
23 *materials, including Internet Web sites.*

24 *(1) The notice shall state: “This facility is not licensed as a*
25 *medical facility by the State of California and has no licensed*
26 *medical provider who provides or directly supervises the provision*
27 *of services.”*

28 *(2) The on site notice shall be a sign at least 8.5 inches by 11*
29 *inches and written in no less than 48-point type, and shall be posted*
30 *conspicuously in the entrance of the facility and at least one*
31 *additional area where clients wait to receive services.*

32 *(3) The notice in the advertising material shall be the same*
33 *point type as other information in the advertisement.*

34 *123473. (a) Covered facilities that fail to comply with the*
35 *requirements of this article are liable for a civil penalty of five*
36 *hundred dollars (\$500) for a first offense and one thousand dollars*
37 *(\$1,000) for each subsequent offense. The Attorney General, city*
38 *attorney, or county counsel may bring an action to impose a civil*
39 *penalty pursuant to this section after doing both of the following:*

1 (1) Providing the covered facility with reasonable notice of
2 noncompliance, which informs the facility that it is subject to a
3 civil penalty if it does not correct the violation within 30 days from
4 the date the notice is sent to the facility.

5 (2) Verifying that the violation was not corrected within the
6 30-day period described in paragraph (1).

7 (b) The civil penalty shall be deposited into the General Fund
8 if the action is brought by the Attorney General. If the action is
9 brought by a city attorney, the civil penalty shall be paid to the
10 treasurer of the city in which the judgment is entered. If the action
11 is brought by a county counsel, the civil penalty shall be paid to
12 the treasurer of the county in which the judgment is entered.

13 123474. The Attorney General shall post and maintain on the
14 Department of Justice’s Internet Web site a list of the covered
15 facilities upon which a penalty has been imposed for
16 noncompliance with the requirements of this article.

17 SEC. 4. The provisions of this act are severable. If any
18 provision of this act or its application is held invalid, that invalidity
19 shall not affect other provisions or applications that can be given
20 effect without the invalid provision or application.

21 SECTION 1. Section 123375 of the Health and Safety Code
22 is amended to read:

23 123375. (a) Except as otherwise provided in subdivision (b),
24 a person shall not sell, offer for sale, give away, distribute, or
25 otherwise furnish materials intended to determine the presence of
26 pregnancy, unless that person has obtained a certificate of
27 acceptability from the department declaring that the materials have
28 been approved as to efficacy and safety by the department.

29 (b) Subdivision (a) shall not apply to materials intended to
30 determine the presence of pregnancy, that are sold, offered for
31 sale, given away, distributed, or otherwise furnished to a physician
32 and surgeon licensed to practice in this state, a pharmacist licensed
33 to practice in this state, a licensed primary care clinic, a licensed
34 health facility, or a public health agency.

35 (c) Any person other than a person described in subdivision
36 (b) who intends to sell, offer for sale, give away, distribute or
37 otherwise furnish materials intended to determine the presence of
38 pregnancy shall first make application to the state department for
39 certification of the materials. The department shall also require
40 that an application for certification shall be accompanied by

- 1 ~~samples of any materials that are the subject of the application as~~
- 2 ~~the department may reasonably require.~~
- 3 ~~(d) Any violation of this section is a misdemeanor.~~