

AMENDED IN ASSEMBLY APRIL 8, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 775

Introduced by Assembly Member Members Chiu and Burke
(Coauthors: Assembly Members Rendon and Wood)

February 25, 2015

An act to 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. 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.~~ *California has public programs that provide immediate free or low-cost access to comprehensive family planning services, prenatal care, and abortion, for eligible women.* 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.

Vote: majority. Appropriation: no. Fiscal committee: 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 Protection~~
10 ~~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 and~~
19 ~~access to prenatal care as early as possible. Women who receive~~
20 ~~prenatal care later in pregnancy are at higher risk for having a~~
21 ~~preterm or low-birth weight infant and having an infant requiring~~
22 ~~care in an intensive care unit. Infants born at low-birth weight are~~
23 ~~at increased risk for life-long and disabling health conditions. Their~~
24 ~~hospital costs are also substantially higher than for normal birth~~
25 ~~weight infants. Infants who are born premature are at increased~~
26 ~~risk for death and life-long disabling conditions, including hearing~~

1 and vision loss, respiratory problems, mental retardation, and
2 cerebral palsy.

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

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

20 *(a) All California women, regardless of income, should have*
21 *access to reproductive health services. The state provides insurance*
22 *coverage of reproductive health care and counseling to eligible,*
23 *low-income women. Some of these programs have been recently*
24 *established or expanded as a result of the federal Patient*
25 *Protection and Affordable Care Act.*

26 *(b) Millions of California women are in need of publicly funded*
27 *family planning services, contraception services and education,*
28 *abortion services, and prenatal care and delivery. In 2012, more*
29 *than 2.6 million California women were in need of publicly funded*
30 *family planning services. More than 700,000 California women*
31 *become pregnant every year and one-half of these pregnancies*
32 *are unintended. In 2010, 64.3 percent of unplanned births in*
33 *California were publicly funded. Yet, at the moment they learn*
34 *that they are pregnant, thousands of women remain unaware of*
35 *the public programs available to provide them with contraception,*
36 *health education and counseling, family planning, prenatal care,*
37 *abortion, or delivery.*

38 *(c) Because pregnancy decisions are time sensitive, and care*
39 *early in pregnancy is important, California must supplement its*
40 *own efforts to advise women of its reproductive health programs.*

1 *In California, low-income women can receive immediate access*
 2 *to free or low-cost comprehensive family planning services and*
 3 *pregnancy-related care through the Medi-Cal and the Family*
 4 *PACT programs. However, only Medi-Cal providers who are*
 5 *enrolled in the Family PACT program are authorized to enroll*
 6 *patients immediately at their health centers.*

7 *(d) The most effective way to ensure that women quickly obtain*
 8 *the information and services they need to make and implement*
 9 *timely reproductive decisions is to require licensed health care*
 10 *facilities that are unable to immediately enroll patients into the*
 11 *Family PACT or Presumptive Eligibility for Pregnant Women*
 12 *Medi-Cal programs to advise each patient at the time of her visit*
 13 *of the various publicly funded family planning and*
 14 *pregnancy-related resources available in California, and the*
 15 *manner in which to directly and efficiently access those resources.*

16 *(e) It is also vital that pregnant women in California know when*
 17 *they are getting medical care from licensed professionals.*
 18 *Unlicensed facilities that advertise and provide pregnancy testing*
 19 *and care must advise clients, at the time they are seeking or*
 20 *obtaining care, that these facilities are not licensed to provide*
 21 *medical care.*

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

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

28

29

Article 2.7. Reproductive FACT Act

30

31 123470. This article shall be known and may be cited as the
 32 Reproductive FACT (Freedom, Accountability, Comprehensive
 33 Care, and Transparency) Act or Reproductive FACT Act.

34 123471. (a) For purposes of this ~~article~~, *subject to article,*
 35 *and except as provided in* subdivision (c), “licensed covered
 36 facility” means a facility licensed under Section 1204 or ~~a satellite~~
 37 *an intermittent* clinic operating under a primary care clinic pursuant
 38 to subdivision (h) of Section 1206, whose primary purpose is
 39 providing *family planning or* pregnancy-related services, and that
 40 satisfies two or more of the following:

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

3 ~~(2)~~

4 (2) *The facility provides, or offers counseling about,*
5 *contraception or contraceptive methods.*

6 (3) The facility offers pregnancy testing or pregnancy diagnosis.

7 ~~(3)~~

8 (4) The facility advertises or solicits patrons with offers to
9 provide prenatal sonography, pregnancy tests, or pregnancy options
10 counseling.

11 ~~(4)~~

12 (5) The facility has staff or volunteers who collect health
13 information from clients.

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

21 (1) The facility offers obstetric ultrasounds, obstetric sonograms,
22 or prenatal care to pregnant women.

23 (2) The facility offers pregnancy testing or pregnancy diagnosis.

24 (3) The facility advertises or solicits patrons with offers to
25 provide prenatal sonography, pregnancy tests, or pregnancy options
26 counseling.

27 (4) The facility has staff or volunteers who collect health
28 information from clients.

29 ~~(e)~~

30 (c) *This article shall not apply to either of the following:*

31 (1) A clinic directly conducted, maintained, or operated by the
32 United States or any of its departments, officers, or ~~agencies is not~~
33 ~~a covered facility.~~ *agencies.*

34 (2) *A licensed primary care clinic that is enrolled as a Medi-Cal*
35 *provider and a provider in the Family Planning, Access, Care,*
36 *and Treatment Program.*

37 123472. (a) A licensed covered facility shall disseminate the
38 following notice in English and in ~~minority languages~~ *the language*
39 *of the applicable minority group as required pursuant to Section*

1 203 of the federal Voting Rights Act (52 U.S.C. 10101 et seq.) to
 2 clients on site.

3 (1) The notice shall state:

4
 5 ~~“You have the right to decide whether to have a child. In~~
 6 ~~California, every pregnant woman has the right to decide whether~~
 7 ~~to have a child or to obtain abortion care. Every resident also has~~
 8 ~~a right to use a birth control method. California has public programs~~
 9 ~~that provide free or low-cost prenatal care, abortion, and~~
 10 ~~contraception for eligible women. To see whether you qualify, call~~
 11 ~~the telephone number of the county social services office for the~~
 12 ~~county in which the facility is located.”~~

13 *“California has public programs that provide immediate free*
 14 *or low-cost access to comprehensive family planning services*
 15 *(including all FDA-approved methods of contraception), prenatal*
 16 *care, and abortion for eligible women. To determine whether you*
 17 *qualify, contact the county social services office at [insert the*
 18 *telephone number].”*

19
 20 (2) The information shall be disclosed in one of the following
 21 ways:

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

26 (B) A printed notice distributed to all clients in no less than
 27 14-point type.

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

33 (3) The notice may be combined with other mandated
 34 disclosures.

35 (b) An unlicensed covered facility shall disseminate the
 36 following notice in English and in ~~minority languages~~ *the language*
 37 *of the applicable minority group as* required pursuant to Section
 38 203 of the federal Voting Rights Act (52 U.S.C. 10101 et seq.) to
 39 clients on site and in any print and digital advertising materials,
 40 including Internet Web sites.

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

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

9 (3) The notice in the advertising material shall be the same point
10 type as other information in the advertisement.

11 123473. (a) Covered facilities that fail to comply with the
12 requirements of this article are liable for a civil penalty of five
13 hundred dollars (\$500) for a first offense and one thousand dollars
14 (\$1,000) for each subsequent offense. The Attorney General, city
15 attorney, or county counsel may bring an action to impose a civil
16 penalty pursuant to this section after doing both of the following:

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

21 (2) Verifying that the violation was not corrected within the
22 30-day period described in paragraph (1).

23 (b) The civil penalty shall be deposited into the General Fund
24 if the action is brought by the Attorney General. If the action is
25 brought by a city attorney, the civil penalty shall be paid to the
26 treasurer of the city in which the judgment is entered. If the action
27 is brought by a county counsel, the civil penalty shall be paid to
28 the treasurer of the county in which the judgment is entered.

29 123474. The Attorney General shall post and maintain on the
30 Department of Justice’s Internet Web site a list of the covered
31 facilities upon which a penalty has been imposed for
32 noncompliance with the requirements of this article.

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