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.


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

SECTION 1. The Legislature finds and declares that:

(a) Individuals possess a fundamental right of privacy with respect to personal reproductive decisions under the California Constitution and the Reproductive Privacy Act.

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

(c) More than 700,000 California women become pregnant every year. Approximately half of these pregnancies are unintended. Thousands of women do not know the legal options they have or funding resources available to them for prenatal care, abortion, or delivery when they learn they are pregnant.

(d) Because California’s Medi-Cal program finances over 50 percent of in-state hospital births, California has a vested interest in ensuring that women are knowledgeable about their options and access to prenatal care as early as possible. Women who receive prenatal care later in pregnancy are at higher risk for having a preterm or low-birth weight infant and having an infant requiring care in an intensive care unit. Infants born at low-birth weight are at increased risk for life-long and disabling health conditions. Their hospital costs are also substantially higher than for normal birth weight infants. Infants who are born premature are at increased risk for death and life-long disabling conditions, including hearing
and vision loss, respiratory problems, mental retardation, and cerebral palsy.

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

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

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

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

(c) Because pregnancy decisions are time sensitive, and care early in pregnancy is important, California must supplement its own efforts to advise women of its reproductive health programs.
In California, low-income women can receive immediate access to free or low-cost comprehensive family planning services and pregnancy-related care through the Medi-Cal and the Family PACT programs. However, only Medi-Cal providers who are enrolled in the Family PACT program are authorized to enroll patients immediately at their health centers. (d) The most effective way to ensure that women quickly obtain the information and services they need to make and implement timely reproductive decisions is to require licensed health care facilities that are unable to immediately enroll patients into the Family PACT or Presumptive Eligibility for Pregnant Women Medi-Cal programs to advise each patient at the time of her visit of the various publicly funded family planning and pregnancy-related resources available in California, and the manner in which to directly and efficiently access those resources. (e) It is also vital that pregnant women in California know when they are getting medical care from licensed professionals. Unlicensed facilities that advertise and provide pregnancy testing and care must advise clients, at the time they are seeking or obtaining care, that these facilities are not licensed to provide medical care.

SEC. 2. The purpose of this act is to ensure that California residents make their personal reproductive health care decisions knowing their rights and the health care services available to them. SEC. 3. Article 2.7 (commencing with Section 123470) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 2.7. Reproductive FACT Act

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

123471. (a) For purposes of this article, subject to article, and except as provided in subdivision (c), “licensed covered facility” means a facility licensed under Section 1204 or a satellite an intermittent clinic operating under a primary care clinic pursuant to subdivision (h) of Section 1206, whose primary purpose is providing family planning or pregnancy-related services, and that satisfies two or more of the following:
(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The notice shall state:

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

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

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

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

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

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

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

(b) An unlicensed covered facility shall disseminate the
following notice in English and in minority languages the language
of the applicable minority group as required pursuant to Section
203 of the federal Voting Rights Act (52 U.S.C. 10101 et seq.) to
clients on site and in any print and digital advertising materials,
including Internet Web sites.
(1) The notice shall state: “This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services.”

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

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

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

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

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

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

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

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