

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 775

Short Title: Regulate Abortion Facilities. (Public)

Sponsors: Senators Brock; and Daniel.

Referred to: Health Care.

April 20, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH LICENSURE REQUIREMENTS AND A LICENSING FEE FOR
3 ABORTION FACILITIES AND TO ESTABLISH PENALTIES FOR ABORTION
4 FACILITIES THAT VIOLATE LICENSING REQUIREMENTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 6 of Chapter 131E of the General Statutes is amended by
7 adding a new Part to read:

8 "Part 6A. Abortion Facility Licensure Act.

9 "§ 131E-154.20. Title; purpose.

10 (a) This Part shall be known as the Abortion Facility Licensure Act.

11 (b) The purpose of this Part is to establish licensing requirements for abortion facilities.

12 "§ 131E-154.21. Definitions.

13 The following definitions apply in this Part:

14 (1) "Abortion" means the use or prescription of any instrument, medicine, drug,
15 or other substance or device to terminate the pregnancy of a woman known
16 to be pregnant with an intention other than (i) to increase the probability of a
17 live birth, (ii) to preserve the life or health of the child after live birth, or (iii)
18 to remove a dead unborn child who died as the result of natural causes in
19 utero, accidental trauma, or a criminal assault on the pregnant woman or her
20 unborn child, and which causes the premature termination of the pregnancy.

21 (2) "Abortion facility" or "facility" means any building structure in which a
22 medical or surgical procedure is utilized to cause an abortion, regardless if
23 the facility is devoted primarily to this purpose, provided the facility
24 performs at least 100 abortions per calendar year. The term does not include
25 any facility that provides beds or other accommodations for the overnight
26 stay of patients. The term includes abortion clinics certified under rules
27 adopted pursuant to G.S. 14-45.1.

28 (3) "Applicant" includes the members of a firm, partnership, or association
29 applying for licensure, the officers or directors of a corporation applying for
30 licensure, or any person designated to manage or supervise a facility
31 applying for licensure.

32 (4) "Person" means any individual, firm, partnership, corporation, company,
33 association, or joint stock association, or the legal successor thereof.

34 (5) "Secretary" means the Secretary of the North Carolina Department of Health
35 and Human Services.



1 (6) "Major alteration" means any alteration or remodeling change that affects
2 the structural integrity of the building, changes its functional operation, or
3 affects the safety of the public and those who use the facility.

4 **"§ 131E-154.22. Licensure requirements.**

5 (a) No person shall establish, operate, or maintain an abortion facility without first
6 applying for a license to the Department and submitting the required information on application
7 forms provided by the Department. The applicant shall also submit an application fee of seven
8 hundred fifty dollars (\$750.00) at the time the application form is submitted to the Department.

9 (b) Upon receipt of an application for a license under this section, the Secretary may
10 deny the application for any of the following reasons:

11 (1) The applicant has been convicted of a felony or of two or more
12 misdemeanors involving moral turpitude, as shown by (i) a certified copy of
13 the record of the court conviction, (ii) in the case of an applicant convicted
14 of a misdemeanor by a court not of record, as shown by other evidence, if
15 the Secretary determines, after investigation, that the applicant has not been
16 sufficiently rehabilitated to warrant the public trust, or (iii) other satisfactory
17 evidence about the moral character of the applicant.

18 (2) The licensure status or record of the applicant in any other state where the
19 applicant has done business in a similar capacity indicates that granting a
20 license to the applicant would be detrimental to the interests of the public.

21 (3) The applicant has insufficient financial or other resources to operate and
22 conduct the facility in accordance with the requirements of this Part and the
23 rules adopted under this Part.

24 (c) The Secretary shall not issue a license to an applicant under this section unless the
25 Secretary finds that the applicant is in compliance with this Part and any rules adopted under
26 this Part, and that the facility for which the applicant is seeking licensure meets all of the
27 following criteria:

28 (1) Is under the medical supervision of one or more physicians.

29 (2) Only allows physicians to perform surgical procedures at the facility who
30 have privileges to perform surgical procedures and admit patients at a
31 hospital located within a 15-mile radius of the facility.

32 (3) Maintains adequate medical records for each patient.

33 (d) A person licensed or seeking a license under this Part shall permit the Department
34 access to premises and information required to determine whether the person is in compliance
35 with licensing rules of the Commission. The Department may, either before or after the
36 issuance of a license, request the cooperation of the State Fire Marshal in reviewing a facility
37 for compliance or noncompliance with the minimum standards specified in this Part and any
38 rules adopted under this Part. The State Fire Marshal shall state with particularity its findings
39 with respect to any review conducted pursuant to this section at the request of the Department.

40 (e) The Department shall periodically review persons licensed pursuant to this Part to
41 determine compliance with Commission rules and whether licensure shall continue.

42 (f) Unless suspended or revoked, all of the following apply to a license issued by the
43 Department under this section:

44 (1) The terms of an initial license is 24 months from the date of issuance under
45 rules adopted by the Commission.

46 (2) Upon expiration of the initial 24-month term, a license is renewable annually
47 upon approval by the Department and upon payment of a fee of three
48 hundred dollars (\$300.00).

49 (3) A license applies only to the premises and persons named in the application
50 and is not transferable or assignable.

1 (g) A licensee shall post the license on the licensed premises in a conspicuous place. In
2 addition, the licensee shall ensure that a placard or registry of all physicians on staff in the
3 facility is centrally located and available for inspection by any interested person.

4 (h) The Secretary may issue a provisional license to any facility that does not
5 substantially comply with the provisions of this Part and the rules adopted under this Part upon
6 a finding by the Secretary that (i) the facility will undertake changes and corrections which,
7 when completed, will render the facility in substantial compliance with the provisions of this
8 Part and any rules adopted under this Part and (ii) the health and safety of any patient served by
9 the facility will be protected during the period for which the provisional license is issued. The
10 Secretary shall advise the licensee of the conditions under which the provisional license is
11 issued, including the manner in which the facility fails to comply with this Part and any rules
12 adopted under this Part and the time within which the licensee is obligated to make the changes
13 and corrections necessary to be deemed in substantial compliance with this Part and any rules
14 adopted under this Part.

15 (i) Notwithstanding any other provision of this Part, any corporation operating an
16 abortion facility devoted primarily to providing facilities for abortion is required to have a
17 physician licensed to practice medicine under Chapter 90 of the General Statutes, who is
18 actively engaged in the practice of medicine at the facility, as an officer or director of the
19 corporation.

20 **"§ 131E-154.23. Denial, suspension, or revocation of license.**

21 (a) After notice and opportunity for hearing to the applicant or licensee, the Department
22 may deny, suspend, or revoke a license to establish, operate, or maintain an abortion facility in
23 any case in which the applicant or licensee has substantially failed to comply with the
24 provisions of this Part or any rules adopted under this Part. The Secretary shall notify an
25 applicant or licensee of a decision to deny, suspend, or revoke a license issued under this Part
26 by registered mail or by personal service setting forth the particular reasons for the proposed
27 action and fixing a date, not less than 15 days from the date of the mailing or service, at which
28 time the applicant or licensee shall be given an opportunity for a hearing.

29 (b) A licensee whose license has been suspended or revoked shall post a copy of the
30 notice in a conspicuous place adjacent to the license required to be displayed under
31 G.S. 131E-154.22(g) until the Department renders a final agency decision.

32 (c) At the end of each fiscal quarter the Department shall prepare and publish a report
33 regarding the status or final disposition of its actions against applicants or licensees that have
34 been served with notice regarding a contemplated denial, refusal to renew, or revocation of a
35 license by the Department. The report shall identify the facility and the applicant or licensee
36 subject to the contemplated action and summarize the facts and charges that constitute the
37 grounds for the Department's decision. The report shall be submitted to the Governor and to the
38 General Assembly and shall be made available to the general public free of charge. Copies of
39 the report shall be available for distribution through local health departments and regional and
40 sub-regional offices of the Department.

41 (d) The Secretary or an individual designated in writing by the Secretary as the Hearing
42 Officer shall conduct the hearings authorized under this section. On the basis of a hearing, or
43 upon default of the applicant or licensee, the Secretary or the designated Hearing Officer shall
44 issue findings and conclusions and serve them upon the applicant or licensee by registered mail
45 or personal service.

46 (e) The Secretary or Hearing Officer may compel the attendance of witnesses and the
47 production of such books, records, and papers as it desires at a hearing authorized by this
48 section. Upon request of an applicant, a subpoena to compel the attendance of any witness or a
49 subpoena duces tecum to compel the production of any books, records, or papers shall be
50 issued by the Secretary or Hearing Officer. Subpoenas shall be directed to the sheriff of the
51 county where the witness resides or is found and shall be served and returned in the same

1 manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as
2 that allowed in the district court in cases before that court and shall be paid in the same manner
3 as other expenses of the Department. In any case of disobedience or neglect of any subpoena
4 served on any person, or the refusal of any witness to testify to any matters regarding which the
5 witness may be lawfully interrogated, the district court or superior court where such
6 disobedience, neglect, or refusal occurs, or any judge thereof, on application by the Secretary or
7 Hearing Officer, shall compel obedience or punish as for contempt.

8 (f) An applicant or licensee may challenge the Department's decision to deny, revoke,
9 or suspend a license under this section by filing a contested case under Article 3 of Chapter
10 150B of the General Statutes.

11 **"§ 131E-154.24. Statement of ownership and financial statement.**

12 (a) As a condition of the issuance or renewal of the license of any abortion facility, the
13 applicant shall file a statement of ownership. The applicant shall update the information
14 required in the statement of ownership every six months from the initial date of filing.

15 (b) The statement of ownership shall include all of the following:

16 (1) The name, address, and occupation of every person who has entered into a
17 contract to manage or operate or who owns or controls, directly or indirectly,
18 any of the shares of stock of, or any other financial interest in, the facility
19 which is the subject of the application or license, and the percentage of such
20 interest; and

21 (2) The address of any facility, wherever located, in which the applicant has any
22 financial interest, or owns or controls directly or indirectly, if the facility
23 would be subject to this Part if it were located within this State.

24 (c) Each licensee shall file an attested financial statement with the Department by July
25 1, and at times thereafter as required by rules adopted under G.S. 131E-154.27. The
26 Department may require a facility to submit an audited financial statement if the Secretary
27 determines that additional information is needed.

28 (d) No public funds shall be expended for the care or treatment of any patient in a
29 facility that has failed to file the financial statement required by this section, and no public
30 funds shall be paid to or on behalf of a facility that has failed to file the financial statement
31 required by this section.

32 **"§ 131E-154.25. Prior review and approval of construction, alterations, or additions.**

33 Before commencing new construction or major alterations or additions to an existing
34 facility subject to this Part, the owner or operator of the facility shall submit architectural
35 drawings and specifications for the proposed construction, alteration, or addition to the
36 Department for review and approval.

37 **"§ 131E-154.26. Inspections and investigations.**

38 (a) The Department shall make or cause to be made any inspections and investigations
39 it deems necessary to ensure compliance with this Part, but in no case less than four inspections
40 of any licensed facility in a fiscal year. Information received by the Department through filed
41 reports, inspections, or as otherwise authorized under this Part shall not be disclosed publicly in
42 a manner that identifies individual patients, except to another State agency for the purpose of
43 investigating professional or business practices in a licensed abortion facility. A State agency
44 that receives information pursuant to this section shall not disclose individual patient
45 information.

46 (b) Any facility licensed under this Part and any premises proposed to be conducted as a
47 facility by an applicant for a license shall be open at all reasonable times to an inspection
48 authorized in writing by the Secretary. The Department is not required to give a facility subject
49 to this Part prior notice of any inspection.

50 (c) If an inspection of a facility subject to this Part discloses that the continued
51 operation of the facility constitutes an imminent and serious risk to the health or safety of the

1 patients it serves, the inspector is authorized to immediately close the facility. Upon closure,
2 the personnel employed at the facility shall cease any activity related to the patients, unless
3 continued treatment of any given patient is necessary to protect the patient's physical health or
4 life. The inspector shall serve a written order setting forth the grounds on which any action
5 under this subsection is based within 24 hours after the action is taken. Any licensee whose
6 abortion facility has been closed under this subsection may, within 10 days closure, request in
7 writing that the Secretary conduct a hearing and reinspection under the provisions of this Part.
8 If a subsequent inspection discloses that the violations of this Part or any rules adopted under
9 this Part have been abated, the Secretary shall cancel the order of closure and permit the facility
10 to resume treating patients. The remedies provided in this subsection are in addition to and not
11 exclusive of any other remedy provided by law.

12 **"§ 131E-154.27. Rules.**

13 The Commission shall adopt rules as necessary to implement the provisions of this Part,
14 including rules for all of the following:

- 15 (1) Receipt and investigation of complaints regarding any abortion facility or
16 any physician practicing in any such facility.
- 17 (2) Construction requirements, including plumbing, heating, lighting, and
18 ventilation to ensure the health, safety, comfort, and privacy of patients and
19 to safeguard the facility from fire hazards.
- 20 (3) Number and qualifications of all personnel, including administrative and
21 nursing personnel, with responsibility for any part of the care provided to the
22 patients served by the facility.
- 23 (4) Equipment essential to the health, welfare, and safety of the patients.
- 24 (5) Facilities, programs, and services to be provided in connection with the care
25 of patients served by the facility.
- 26 (6) Financial statement filings, including forms, required information, intervals
27 and dates of filing, and any other information the Commission deems
28 necessary. In developing rules for filing financial statements, the
29 Commission shall seek the advice and comments of other State and federal
30 agencies that require the submission of financial data from facilities licensed
31 under this Part and shall incorporate the information requirements of those
32 agencies into any forms it adopts or issues under this subdivision. In
33 addition, the Commission shall coordinate any rules adopted under this
34 subdivision with the requirements of those agencies so as to impose the least
35 possible burden on licensees. No other State agency may require abortion
36 facilities to submit financial data except as expressly authorized by law or as
37 necessary to meet the requirements of federal law. The Department shall
38 make information obtained under rules adopted pursuant to this subdivision
39 available, upon request, to any other State agency or legislative commission
40 to which such information is necessary for investigational purposes or to
41 execute the intent of State or federal law.
- 42 (7) Hearing procedures authorized by G.S. 131E-154.23.

43 **"§ 131E-154.28. Penalty.**

44 Any person who operates, establishes, or maintains an abortion facility without a license
45 issued pursuant to this Part is guilty of a Class 1 misdemeanor, and upon conviction shall be
46 liable for a fine of up to ten thousand dollars (\$10,000). Each day of a continuing violation after
47 conviction shall be considered a separate offense.

48 **"§ 131E-154.29. Violations declared public nuisance; abatement.**

49 Operating, establishing, or maintaining an abortion facility in violation of this Part or any
50 rules adopted under this Part constitutes a public nuisance and may be abated as provided in
51 Article 1 of Chapter 19 of the General Statutes.

1 "§ 131E-154.30. Severability.

2 If any section, term, or provision of this Part is adjudged invalid for any reason, these
3 judgments shall not affect, impair, or invalidate any other section, term, or provision of this
4 Part, but the remaining sections, terms, and provisions shall be and remain in full force and
5 effect."

6 **SECTION 2.** This act becomes effective October 1, 2011, and applies to all
7 abortion facilities seeking initial or renewal licensure on and after that date, including abortion
8 clinics currently certified under rules adopted pursuant to G.S. 14-45.1.