



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4028

Introduced 3/30/2023, by Rep. William E Hauter

SYNOPSIS AS INTRODUCED:

New Act

Creates the Women's Health Protection Act. Requires all abortion clinics to be licensed by the Department of Public Health. Sets forth provisions relating to application procedures, license issuance, license denial, suspension, revocation, or refusal, administrative decisions, and the adoption of rules. Requires the Department to establish policies and procedures for conducting preclicensure and relicensure inspections of abortion clinics. Provides that the Director of the Department shall adopt rules relating to an abortion clinic's physical facilities, supply and equipment standards, and personnel. Provides for civil penalties, including a \$5,000 business offense fine for operating an abortion clinic without a license, a \$5,000 business offense fine for intentionally violating the Act, and a \$1,000 business offense fine for a first violation of the Act and \$5,000 for a subsequent violation. Allows both the Office of the Attorney General and the Office of the State's Attorney for the county in which the violation occurred to initiate a legal action to enforce collection of civil penalties or fines. Allows the Director to apply to any court of competent jurisdiction for an order enjoining any acts or practices which constitute or will constitute a violation of the Act. Provides that nothing in the Act makes lawful an abortion that is currently unlawful. Defines terms. States legislative findings and purposes. Effective one year after becoming law.

LRB103 31493 LNS 59365 b

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Women's Health Protection Act.

6 Section 5. Legislative findings and purposes.

7 (a) The General Assembly finds that:

8 (1) Most abortions in this State are performed in
9 clinics devoted primarily to providing abortions and
10 family planning services. Most women who seek abortions at
11 these facilities lack any physician-patient relationship
12 with the physician who performs the abortion either before
13 or after the procedure. The women ordinarily do not return
14 to the facility for post-surgical care. In most instances,
15 the woman's only actual contact with the abortion provider
16 occurs simultaneously with the abortion procedure, with
17 little opportunity to ask questions about the procedure,
18 potential complications, and proper follow-up care.

19 (2) The medical, emotional, and psychological
20 consequences of an abortion are serious and can be
21 lasting.

22 (3) Abortion can lead to both short-term and long-term
23 medical complications. Potential complications from

1 abortion include, among others, bleeding, hemorrhage,
2 infection, uterine perforation, uterine scarring, blood
3 clots, cervical tears, incomplete abortion (retained
4 tissue), failure to actually terminate the pregnancy, free
5 fluid in the abdomen, acute abdomen, organ damage, missed
6 ectopic pregnancies, cardiac arrest, sepsis, respiratory
7 arrest, reactions to anesthesia and other drugs, and even
8 death.

9 (4) The risks for second-trimester abortions are
10 greater than for first-trimester abortions. The risk of
11 hemorrhage, in particular, is greater, and the resultant
12 complications may require a hysterectomy, other reparative
13 surgery, or a blood transfusion.

14 (5) The State has legitimate interests from the outset
15 of pregnancy in protecting the health of women.

16 (6) More specifically, the State has a legitimate
17 concern with the health of women who undergo abortions.

18 (b) Based on the findings in subsection (a), the purposes
19 of this Act are to:

20 (1) regulate abortion clinics consistent with standard
21 health and safety procedures of the Department of Public
22 Health; and

23 (2) provide for the protection of public health
24 through the development, establishment, and enforcement of
25 medically appropriate standards of care and safety in
26 abortion clinics.

1 Section 10. Definitions. As used in this Act:

2 "Abortion" has the meaning given to that term in Section
3 1-10 of the Reproductive Health Act.

4 "Abortion clinic" means a facility, other than an
5 accredited hospital or health care professional's office, in
6 which 5 or more first-trimester abortions, that are not
7 chemical abortions, in any month or any second-trimester or
8 third-trimester abortions are performed, and whose primary
9 purpose is the performance of abortions.

10 "Advanced practice registered nurse" has the meaning given
11 to that term in Section 50-10 of the Nurse Practice Act.

12 "Department" means the Department of Public Health.

13 "Director" means the Director of the Department of Public
14 Health.

15 "Health care professional" means a person who is a
16 licensed physician, advanced practice registered nurse, or
17 physician assistant.

18 "Licensee" means an individual, a partnership, an
19 association, a limited liability company, or a corporation
20 authorized by the Department of Public Health to operate an
21 abortion clinic.

22 "Physician" means a person licensed to practice medicine
23 in all its branches under the Medical Practice Act of 1987.

24 "Physician assistant" has the meaning given to that term
25 in Section 4 of the Physician Assistant Practice Act of 1987.

1 Section 15. Licensure requirements.

2 (a) Beginning one year after the effective date of this
3 Act, all abortion clinics shall be licensed by the Department.
4 Any existing abortion clinic shall apply for licensure within
5 one year of the effective date of this Act.

6 (b) A licensure applicant shall apply to the Department
7 with Department-provided forms. The Department shall include
8 such information as the Department reasonably requires,
9 including affirmative evidence of ability to comply with such
10 reasonable standards and rules as are lawfully prescribed
11 hereunder. The Department shall supply supplemental forms for
12 additional information it requires as needed.

13 (c) The Department shall issue a license which is valid
14 for a period of one year after the following procedures are
15 fulfilled:

16 (1) the Department receives an application for
17 license;

18 (2) the applicant and the facility meet the
19 requirements established by this Act; and

20 (3) the minimum standards and administrative rules are
21 adopted in accordance with this Act.

22 (d) The Department may issue a temporary or provisional
23 license to an abortion clinic for a period of 6 months in cases
24 where:

25 (1) no other State or local agency who is authorized

1 to inspect abortion facilities has given a disapproval to
2 such abortion clinic;

3 (2) sufficient compliance with the Department's
4 minimum standards and rules require a time extension; and

5 (3) any failure to comply is not detrimental to the
6 public's health and safety.

7 (e) A license:

8 (1) only applies to the location and licensee stated
9 on the application;

10 (2) is nontransferable between other places or
11 licensees once issued;

12 (3) if the location of the facility is changed, the
13 license shall be automatically revoked;

14 (4) is valid for one year from the issuance date,
15 unless sooner revoked;

16 (5) is only granted from a Department-prescribed form;
17 and

18 (6) may be renewed yearly upon application and payment
19 of the license fee if the applicant procures the original
20 license.

21 (f) A licensee or licensee applicant shall:

22 (1) complete a renewal application form prior to all
23 license renewals; and

24 (2) enclose a fee of \$2,500, which is levied as the
25 license fee for a one-year operation of an abortion clinic
26 and paid into the Department's fund.

1 (g) The Department may deny, suspend, revoke, or refuse to
2 renew a license in any case in which it finds that the
3 applicant or licensee has substantially failed to comply with
4 this Act's requirements or the Department's minimum standards
5 and administrative rules adopted by the Department in
6 accordance with this Act. In such case, the Department shall
7 furnish the person, applicant, or licensee 30 days' notice
8 specifying the reason or reasons for the action, however, if
9 in the discretion of the Department, the failure to comply
10 presents a substantial present threat to patient health and
11 safety, the denial, suspension, revocation, or refusal to
12 renew may be effective immediately.

13 (h) All final administrative decisions of the Department
14 are subject to judicial review pursuant to the Administrative
15 Review Law and its rules. As used in this subsection,
16 "administrative decisions" has the meaning given to that term
17 in Section 3-101 of the Code of Civil Procedure.

18 (i) The Department shall adopt any rules necessary to
19 implement this Section.

20 Section 20. Inspections and investigations.

21 (a) The Department shall establish policies and procedures
22 for conducting prelicensure and relicensure inspections of
23 abortion clinics. Prior to issuing or reissuing a license, the
24 Department shall conduct an on-site inspection to ensure
25 compliance with this Act.

1 (b) The Department shall:

2 (1) establish policies and procedures for conducting
3 inspections and investigations in accordance with
4 complaints received by the Department and made against any
5 abortion clinic; and

6 (2) receive, record, and dispose of complaints in
7 accordance with established policies and procedures.

8 (c) If the Director determines that there is probable
9 cause to believe a licensee, licensed abortion clinic, or
10 abortion clinic is not adhering to this Act's requirements,
11 the minimum standards or administrative rules adopted by the
12 Department under the authority of this Act, or with any other
13 standards and administrative rules related to the provision of
14 abortion, the Director may issue an order authorizing an
15 appropriately qualified employee or agent of the Department to
16 enter upon the business premises with due consideration for
17 patient care of the abortion clinic so as to inspect the
18 physical premises and equipment and furnishing therein. No
19 such order shall include the right of inspection of business,
20 medical, or personnel records located on the premises. Any
21 such order shall expire and become void 5 business days after
22 its issuance by the Illinois State Medical Board. The
23 execution of any such order shall be valid only during the
24 normal business hours of the abortion clinic.

25 (d) An application for a license pursuant to this Act and
26 the minimum standards or administrative rules adopted by the

1 Department under the authority of this Act constitutes
2 permission for an entry or inspection of the premises during
3 the pendency of the application and, if licensed, during the
4 term of the license, consistent with subsection (c).

5 (e) The Director may deny, suspend, revoke, or refuse to
6 renew a license to operate an abortion clinic, if an
7 inspection or investigation conducted pursuant to subsection
8 (a), (b), or (c) reveals that a licensee or licensed abortion
9 clinic is not adhering to:

- 10 (1) this Act's requirements; or
- 11 (2) the minimum standards or administrative rules
12 adopted by the Department under this Act.

13 Section 25. Minimum standards and administrative rules for
14 abortion clinics.

15 (a) The Director shall adopt rules for an abortion
16 clinic's physical facilities. At a minimum, these rules shall
17 prescribe standards for:

- 18 (1) adequate private space specifically designated for
19 interviewing, counseling, and performing medical
20 evaluations;
- 21 (2) dressing rooms for staff and patients;
- 22 (3) appropriate lavatory areas;
- 23 (4) areas for preprocedure hand washing;
- 24 (5) private procedure rooms;
- 25 (6) adequate lighting and ventilation for abortion

1 procedures;

2 (7) surgical or gynecologic examination tables and
3 other fixed equipment;

4 (8) post-procedure recovery rooms that are supervised,
5 staffed, and equipped to meet the patients' needs;

6 (9) emergency exits to accommodate a stretcher or
7 gurney;

8 (10) areas for cleaning and sterilizing instruments;

9 (11) adequate areas for the secure storage of medical
10 records and necessary equipment and supplies; and

11 (12) a display in the abortion clinic, in a place that
12 is conspicuous to patients, of the clinic's current
13 license issued by the Department.

14 (b) The Director shall adopt rules to prescribe abortion
15 clinic supply and equipment standards, including supplies and
16 equipment that are required to be immediately available for
17 use in an emergency. At a minimum, these rules shall:

18 (1) prescribe required equipment and supplies,
19 including medications, required for:

20 (A) performing, in an appropriate fashion, any
21 abortion procedure; and

22 (B) monitoring each patient's progress throughout
23 the procedure and recovery period.

24 (2) require that the number or amount of equipment and
25 supplies at the abortion clinic is adequate at all times
26 to assure sufficient quantities of clean, sterilized,

1 durable equipment, and supplies to meet each patient's
2 needs;

3 (3) prescribe required equipment, supplies, and
4 medications that shall be available and ready for
5 immediate use in an emergency and requirements for written
6 protocols and procedures to be followed by staff in an
7 emergency, such as the loss of electrical power;

8 (4) prescribe required equipment and supplies for
9 laboratory tests and the requirements for protocols to
10 maintain laboratory equipment located in the abortion
11 clinic or any equipment operated by clinic staff;

12 (5) require ultrasound equipment in all abortion
13 clinics; and

14 (6) require that all equipment is safe for patients
15 and the staff, meets applicable federal standards, and is
16 checked annually.

17 (c) The Director shall adopt rules relating to abortion
18 clinic personnel. At a minimum, the rules shall:

19 (1) require an abortion clinic designate a medical
20 director who is licensed to practice medicine and surgery
21 in this State as follows:

22 (A) health Care Professionals performing abortions
23 are:

24 (i) licensed in this State; and

25 (ii) trained and educated in the procedures
26 involved;

1 (B) registered nurses, licensed practical nurses,
2 or other personnel supervised by a health care
3 professional receive training in the specific
4 responsibilities of their services provided at an
5 abortion clinic; and

6 (C) volunteers, if any, receive training in the
7 specific responsibilities of the services that
8 volunteers provide at an abortion clinic, including
9 counseling and patient advocacy;

10 (2) provide procedures for medical screening and
11 evaluation of each abortion clinic patient;

12 (3) provide procedures for abortion;

13 (4) prescribe minimum recovery room standards for the
14 abortion clinic;

15 (5) prescribe standards for follow-up care for
16 abortion patients;

17 (6) prescribe minimum abortion clinic incident
18 reporting. At a minimum, these reporting rules shall
19 require that:

20 (A) the abortion clinic record each incident
21 resulting in a patient's serious injury occurring at
22 an abortion clinic, and report the incident in writing
23 to the Department within 10 days after the incident.
24 As used in this paragraph, "serious injury" means an
25 injury that occurs at an abortion clinic and that
26 creates a serious risk of substantial impairment of a

1 major body organ or function;

2 (B) if a patient's death occurs, the abortion
3 clinic report it to the Department no later than the
4 next Department work day.

5 (C) an incident reports be filed with the
6 Department and other appropriate professional
7 regulatory boards; and

8 (7) prohibit the Department from releasing personally
9 identifiable patient or physician information.

10 (d) This Act's provisions and the rules adopted under the
11 Act shall be in addition to any other laws and administrative
12 or other rules which are applicable to abortion clinics.

13 Section 30. Civil penalties.

14 (a) Whoever operates an abortion clinic without a valid
15 license issued by the Department is guilty of a business
16 offense fine of \$5,000.

17 (b) Any person who intentionally violates this Act or any
18 rules adopted under this Act is guilty of a business offense
19 fine of \$5,000 for each violation.

20 (c) Any violation of this Act or any rules adopted under
21 this Act may be subject to a business offense fine of \$1,000
22 for a first violation and \$5,000 for each subsequent violation
23 imposed by the Department.

24 (d) Each day of violation constitutes a separate violation
25 for purposes of assessing civil penalties or fines.

1 (e) In deciding whether and to what extent to impose
2 fines, the Department shall consider the following factors:

3 (1) the gravity of the violation, including the
4 probability that death or serious physical harm to a
5 patient or individual will result or has resulted;

6 (2) the size of the population at risk due to the
7 violation;

8 (3) the severity and scope of the actual or potential
9 harm;

10 (4) the extent to which the provisions of the
11 applicable statutes and rules were violated;

12 (5) any indications of good faith exercised by the
13 licensee;

14 (6) the duration, frequency, and relevance of any
15 previous violations committed by the licensee; and

16 (7) the financial benefit to the licensee of
17 committing or continuing the violation.

18 (f) Both the Office of the Attorney General and the Office
19 of the State's Attorney for the county in which the violation
20 occurred may initiate a legal action to enforce collection of
21 civil penalties or fines.

22 Section 35. Injunctive remedies. In addition to any other
23 penalty provided by law, whenever, in the Director's judgment,
24 any person has engaged, or is about to engage, in any acts or
25 practices which constitute, or will constitute, a violation of

1 this Act, or any rule adopted under this Act, the Director
2 shall apply to any court of competent jurisdiction for an
3 order enjoining such acts and practices. Upon the Director's
4 showing that such person has engaged, or is about to engage, in
5 any such acts or practices, an injunction, restraining order,
6 or such other order as may be appropriate shall be granted by
7 such court without bond.

8 Section 40. Construction. Nothing in this Act makes lawful
9 an abortion that is currently unlawful.

10 Section 97. Severability. Any provision of this Act held
11 to be invalid or unenforceable by its terms, or as applied to
12 any person or circumstance, shall be construed so as to give it
13 the maximum effect permitted by law, unless such holding shall
14 be one of utter invalidity or unenforceability, in which event
15 such provision shall be deemed severable from this Act and
16 shall not affect the remainder of this Act or the application
17 of such provision to other persons not similarly situated or
18 to other, dissimilar circumstances.

19 Section 99. Effective date. This Act takes effect one year
20 after becoming law.