

STORAGE NAME: h1845.hhs

DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 1845 (PCB HCL 99-01)

RELATING TO: Licensing & Regulation of Abortion Clinics

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Fasano and others

COMPANION BILL(S): SB 1876(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 8 NAYS 2
 - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1845 revises the definition of an abortion clinic to include any facility in which an abortion is performed, other than a hospital. This revision requires all abortions to be performed in a licensed abortion clinic (exempts hospitals). The bill establishes progressive penalties for willfully failing to file the monthly report on the number of abortions performed, the reason for such abortion, and the gestation period at the time the procedure was performed. Finally, the bill increases the maximum annual license fee for an abortion clinic from \$250 to \$500.

Pursuant to s. 390.011, F.S., an abortion is defined as "the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus." Abortions are required to be performed by a physician licensed under chapter 458 (medical physician) or chapter 459 (osteopathic physician) or a physician practicing medicine or osteopathic medicine in the employment of the United States.

Under current law, abortions are to be performed in a licensed abortion clinic; however, s. 390.011(2), F.S., exempts a hospital or a physician's office that is not used primarily for the performance of abortions from the licensure requirements. The Agency for Health Care Administration (AHCA) interprets "primarily" to mean "more than 50%," therefore, if 50% or less of the services provided in a physician's office are not abortions, that office does not meet the requirement of a licensed abortion clinic. In December 1998, there were 65 licensed abortion clinics operating in Florida.

The Agency for Health Care Administration charges an application and annual fee of \$250. Section 390.014, F.S., states that the license fee shall be "reasonably calculated to cover the cost of regulation..., but may not be less than \$35 nor more than \$250."

The Department of Health reported that in 1997, 23 physicians reported performing over 7,200 abortions in their offices which were unlicensed abortion clinics. It is estimated that the additional 23 physicians' offices that are known to perform abortions will result in an increase of revenues of \$11,500. The currently licensed abortion clinics will now be required to pay an additional \$250 each, resulting in a \$16,250 increase in revenues. It is estimated that additional revenues from the licensure of abortion clinics will gross \$27,750 for an estimated \$44,000 in the first year if the maximum fee of \$500 is charged to all clinics and physicians' offices. The agency expenditures exceeded revenues in FY 1996-97 by \$28,136 and in FY 1997-98 by \$36,068.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Abortions have been regulated in the State of Florida since 1978 (ch. 78-382, Laws of Florida). Pursuant to s. 390.011, F.S., an abortion is defined as “the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.”

Abortions are required to be performed by a physician licensed under chapter 458 (medical physician) or chapter 459 (osteopathic physician) or a physician practicing medicine or osteopathic medicine in the employment of the United States.

Abortions are to be performed in a licensed abortion clinic; however, s. 390.011(2), F.S., exempts a hospital or a physician’s office that is not used primarily for the performance of abortions from the licensure requirements. The Agency for Health Care Administration (AHCA) interprets “primarily” to mean “more than 50%,” therefore, if 50% or less of the services provided in a physician’s office are not abortions, that office does not meet the requirement of a licensed abortion clinic. In December 1998, there were 65 licensed abortion clinics operating in Florida. The following chart details the number of reported abortions that have been performed in the state since 1995 in licensed and unlicensed facilities as reported to the Department of Health:

<u>Year</u>	<u>Total</u>	<u>Abortion Clinics</u>	<u>Hospitals</u>	<u>Private Physicians’ Offices</u>
1995	74,749	66,520	1,246	6,983
1996	80,040	71,019	1,423	7,598
1997	81,692	73,104	1,321	7,267
1998**	63,315	56,345	1,019	5,951

****1998 only includes the reported abortions from January - September 1998.**

Section 390.0112, F.S., requires the director of any medical facility (hospital or abortion clinic) in which a pregnancy is terminated to file a monthly report to the Department of Health, Office of Vital Statistics. Reports submitted are confidential and will not be revealed except under the order of a court. Such reports shall include the following information:

- ▶ number of procedures performed;
- ▶ reason for same (personal choice, physical condition, mental condition, abnormal fetus, or other reason which must be specified); and
- ▶ period of gestation at the time such procedures were performed.

If the termination of pregnancy was not performed in a medical facility (physician’s office), the physician performing the procedure is also responsible for reporting such information to the Department of Health. A \$200 fine is assessed against any person who willingly fails to file the monthly report. The Department of Health, Office of Vital Statistics reports that “no licensed abortion clinic has been fined for failure to meet reporting requirements. However, if at any time the department determines that an abortion clinic willfully fails to file the report, the Agency for Health Care Administration will be notified immediately.”

An application for a license to operate an abortion clinic is required to be filed with the AHCA and is valid for one year from the date of issuance. The application, which is made under oath, contains: the name and address of the applicant; the name by which the clinic is to be known; the location of the clinic; and the name of the person under whose management or supervision the clinic will be operated. Prior to a license being issued, the agency inspects the facility to determine compliance with the laws and rules.

The Agency for Health Care Administration charges an application and annual fee of \$250. Section 390.014, F.S., states that the license fee shall be “reasonably calculated to cover the cost of regulation..., but may not be less than \$35 nor more than \$250.”

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On January 15, 1999, the AHCA provided a cost breakdown of the fees collected and the cost of regulating abortion clinics which revealed that the program has been operating in a deficit for many years:

<u>Year</u>	<u>Revenue</u>	<u>SVCS charged to providers</u>	<u>Expenditures</u>	<u>Balance</u>
1993-94	\$15,029	\$1,097	\$24,829	\$ (10,897)
1994-95	17,250	1,259	36,012	(30,918)
1995-96	17,438	1,273	25,412	(40,165)
1996-97	28,850	2,106	58,092	(71,513)
1997-98	17,750	1,296	55,114	(110,173)

Once the license is issued and every year thereafter, an "Abortion Clinic Licensure Survey Report" is conducted and the following requirements are checked:

- ▶ license is current and posted in a conspicuous place;
- ▶ abortions are performed only by a licensed physician;
- ▶ fetal remains are disposed of in a sanitary and appropriate manner and in accordance with standard health practices;
- ▶ clinical records are maintained on each patient which is complete, accurate documented, and systematically organized to facilitate storage and retrieval;
- ▶ clinical records are kept on file for a minimum of five years from the date of the last entry; and
- ▶ The number of terminations of pregnancy is reported to the Office of Vital Statistics of the Department of Health.

A license can be suspended or revoked by the agency for up to 2 years for certain violations or the agency may impose a fine upon a clinic in the amount of \$1,000 for each violation in lieu of suspension or revocation. The agency has taken administrative action against 18 abortion clinics since 1994. Fifteen clinics were fined for failure to submit their renewal applications in a timely manner. Three clinics were fined for performing abortions prior to obtaining a license.

B. EFFECT OF PROPOSED CHANGES:

Revises the definition of an abortion clinic to include any facility in which an abortion is performed, other than a hospital. This revision requires all abortions to be performed in a licensed abortion clinic (exempts hospitals). Establishes progressive penalties for willfully failing to file the monthly report on abortions. Increases the maximum license fee from \$250 to \$500.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The Agency for Health Care Administration will have to promulgate rules to implement the provisions of this bill. The Department of Health will have to promulgate rules to impose the penalties and to report to the agency when a report is not filed timely.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Same as above.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. The maximum licensure fee to operate an abortion clinic is increased from \$250 to \$500.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Persons operating an abortion clinic will be responsible for paying a licensure fee which is required to cover the cost of implementation of the program.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Physicians presently allowed to perform abortions in their offices without the necessity of an abortion clinic license, will be required to obtain said license if the physician intends to continue performing abortions in that office.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 390.011, 390.0112, and 390.014, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 390.011, F.S., to remove the exemption of a physician's office from the definition of an abortion clinic thereby requiring all abortions (with the exception of those performed in a hospital) to be performed in a licensed abortion clinic.

Section 2. Amends s. 390.0112, F.S., to require reporting of all abortions performed by a physician to the Department of Health. Provides a \$500 fine for a second violation of reporting requirements, and provides for suspension of the abortion clinic license for a third violation of not reporting in a timely manner.

Section 3. Amends s. 390.014, F.S., to increase the maximum annual license fee for an abortion clinic from \$250 to \$500.

Section 4. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues:	1999-00	2000-01
Agency for Health Care Administration		
Increase in fees from \$250 to \$500 for		
the 65 licensed clinics	\$16,250	\$ 16,250
\$500 for the estimated 23 offices		
in which abortions were performed in 1997	<u>\$ 11,500</u>	<u>\$ 11,500</u>
 Total increase in revenues (AHCA)	 \$ 27,750	 \$ 27,750

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See number 2. above

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Presently, a physician's office that is not used primarily for the performance of abortions is not required to be licensed as an abortion clinic. The bill requires physicians who perform one or more abortions in their private offices to be licensed as an abortion clinic. The Department of Health reported that in 1997, 23 physicians reported performing over 7,200 abortions in their offices. Since there are presently 65 licensed abortion clinics in Florida, if the maximum fee of \$500 is assessed, the 65 licensed abortion clinics would be required to pay an additional \$250 each when they renew their license.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

It is estimated that the additional 23 physicians' offices that are known to perform abortions will result in an increase of revenues of \$11,500. The currently licensed abortion clinics will now be required to pay an additional \$250 each, resulting in a \$16,250 increase in revenues. It is estimated that additional revenues from the licensure of abortion clinics will gross \$27,750 for an estimated \$44,000 in the first year if the maximum fee of \$500 is charged to all clinics and physicians' offices. The agency expenditures exceeded revenues in FY 1996-97 by \$28,136 and in FY 1997-98 by \$36,068.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not required counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

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