

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0522.02 Michael Dohr x4347

HOUSE BILL 17-1085

HOUSE SPONSORSHIP

Neville P., Ransom

SENATE SPONSORSHIP

(None),

House Committees

Health, Insurance, & Environment
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADOPTION OF THE "WOMEN'S HEALTH PROTECTION**
102 **ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill requires all abortion clinics to file an annual registration with the attorney general. The attorney general shall create and make available the registration form. While keeping identifying information of any women who sought an abortion private, the registration form must include the following information:

! The number of abortions performed at the clinic during the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

previous year, including the trimester in which the abortion was performed, based on appropriately maintained records kept by the clinic;

- ! A specific report for each abortion performed at or after 20 weeks' gestation;
- ! A description of the method or methods of abortion performed at the clinic;
- ! The name of each physician performing abortions at the clinic, along with the state of each physician's licensure, any board certifications or specialties maintained by the physician, and any disciplinary action taken against the physician in the last 5 years;
- ! The number of babies born alive at the clinic during the year, whether the babies were born prior to, during, or after the attempted completion of an abortion, whether or not these babies survived, whether or not they were viable, and whether or not they were transported to a hospital; and
- ! The number of patients, including women and born-alive infants, who were transported to a hospital from the clinic following a partially or fully completed abortion in the previous year.

The attorney general has 30 days to reject an inaccurate or incomplete registration form and 30 days from the date of discovery to reject a form that contains false or fraudulent information. Failure to file a registration form or operating without a registration form subjects an abortion clinic to a fine, a suspension, or closure. All registration forms and inspection or investigation forms are public records.

The attorney general has a duty to inspect, without notice, each registered abortion clinic at least annually. At a minimum, each inspection must determine whether the abortion clinic is performing abortions at or after 20 weeks' gestation and whether it is operating with:

- ! Medically modern ultrasound equipment;
- ! Equipment to preserve the life of and to resuscitate born-alive infants;
- ! Legally approved methods of medical and hazardous waste disposal;
- ! Medically safe standards for sterilization of instruments and procedure areas and storage, medically safe policies for expired and opened medicines, and emergency exits sufficient to accommodate a stretcher or gurney; and
- ! Proper "Health Insurance Portability and Accountability Act of 1996" policies.

If the attorney general finds an inspection violation, he or she may impose a fine up to \$5,000 or impose a suspension or closure of the abortion clinic.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 7 to article
3 31 of title 24 as follows:

4 PART 7

5 WOMEN'S HEALTH PROTECTION ACT

6 **24-31-701. Short title.** THE SHORT TITLE OF THIS PART 7 IS THE
7 "WOMEN'S HEALTH PROTECTION ACT".

8 **24-31-702. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 FINDS THAT:

10 (a) A BASIC SURVEY OF FACTS AND REPORTING AROUND THE
11 NATION DEMONSTRATES THAT WHEN FACILITIES HOLDING THEMSELVES
12 OUT AS WOMEN'S HEALTH CARE CLINICS ARE OPERATED WITHOUT ANY
13 REQUIRED INSPECTIONS THE HEALTH AND SAFETY OF WOMEN IS
14 ENDANGERED; AND

15 (b) THE STATE OF COLORADO HAS AN INTEREST IN THE HEALTH
16 AND SAFETY OF WOMEN AND ALL ITS CITIZENS; THEREFORE, IT HAS A DUTY
17 TO HOLD ABORTION CLINICS TO ACCEPTED MEDICAL STANDARDS AND
18 APPROPRIATE LEGAL SAFEGUARDS. IT IS INEQUITABLE AND DANGEROUS TO
19 WOMEN WHEN THESE FACILITIES ARE ALLOWED TO OPERATE BENEATH THE
20 RADAR OF BASIC RESPONSIBILITY.

21 (2) BASED ON THE FINDINGS IN SUBSECTION (1) OF THIS SECTION,
22 THE PURPOSE OF THIS PART 7 IS TO PROVIDE FOR THE PROTECTION OF
23 PUBLIC HEALTH BY ENSURING THAT ALL ABORTION CLINICS ARE
24 REGISTERED WITH THE ATTORNEY GENERAL AND THAT THE ATTORNEY
25 GENERAL HAS THE RIGHT AND THE DUTY TO INSPECT ANY ABORTION
26 CLINIC OPERATING IN THE STATE OF COLORADO.

1 **24-31-703. Definitions.** AS USED IN THIS PART 7, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "ABORTION" MEANS THE ACT OF USING OR PRESCRIBING ANY
4 INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE, DEVICE, OR
5 MEANS WITH THE INTENT TO TERMINATE THE CLINICALLY DIAGNOSABLE
6 PREGNANCY OF A WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY
7 THOSE MEANS WILL, WITH REASONABLE LIKELIHOOD, CAUSE THE DEATH
8 OF THE UNBORN CHILD. SUCH USE, PRESCRIPTION, OR MEANS IS NOT AN
9 ABORTION IF DONE WITH THE INTENT TO:

10 (a) SAVE THE LIFE OR PRESERVE THE HEALTH OF THE UNBORN
11 CHILD;

12 (b) REMOVE A DEAD UNBORN CHILD CAUSED BY SPONTANEOUS
13 ABORTION; OR

14 (c) REMOVE AN ECTOPIC PREGNANCY.

15 (2) "ABORTION CLINIC" OR "CLINIC" MEANS A FACILITY, OTHER
16 THAN AN ACCREDITED HOSPITAL, THAT PERFORMS MORE THAN THREE
17 FIRST-TRIMESTER ABORTIONS IN ONE MONTH OR ANY SECOND- OR
18 THIRD-TRIMESTER ABORTIONS IN ONE MONTH.

19 (3) "BORN ALIVE" MEANS THE COMPLETE EXPULSION OF AN INFANT
20 AT ANY STAGE OF DEVELOPMENT THAT HAS A HEARTBEAT, PULSATION OF
21 THE UMBILICAL CORD, BREATH, OR MUSCLE MOVEMENT, NO MATTER IF THE
22 UMBILICAL CORD HAS BEEN CUT OR IF THE EXPULSION OF THE INFANT WAS
23 NATURAL OR THE RESULT OF INDUCED LABOR, CESAREAN SECTION, OR
24 INDUCED ABORTION.

25 (4) "CONCEPTION" MEANS THE FUSION OF THE HUMAN
26 SPERMATOZOON WITH A HUMAN OVUM.

27 (5) "INFANT" MEANS THE OFFSPRING OF HUMAN BEINGS, AT ANY

1 STAGE OF DEVELOPMENT OR GESTATION, WHO HAS BEEN BORN ALIVE.

2 (6) "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS
3 FROM CONCEPTION UNTIL BIRTH.

4 **24-31-704. Registration requirements - fees.** (1) (a) ALL
5 ABORTION CLINICS SHALL FILE A REGISTRATION WITH THE ATTORNEY
6 GENERAL ANNUALLY. A NEW ABORTION CLINIC SHALL FILE THE
7 REGISTRATION FORM WITHIN NINETY DAYS PRIOR TO BEGINNING
8 OPERATIONS, AND A PREVIOUSLY REGISTERED ABORTION CLINIC SHALL
9 FILE ITS RENEWAL REGISTRATION WITHIN TEN DAYS AFTER THE MONTH
10 AND DAY OF THE PREVIOUS REGISTRATION.

11 (b) FOR 2017, ALL EXISTING ABORTION CLINICS SHALL FILE A
12 REGISTRATION FORM WITH THE ATTORNEY GENERAL WITHIN THIRTY DAYS
13 AFTER THE EFFECTIVE DATE OF THIS PART 7.

14 (c) AN ABORTION CLINIC THAT FAILS TO FILE A REGISTRATION
15 FORM, OPERATES WITHOUT A REGISTRATION FORM, OR FILES A FALSE OR
16 FRAUDULENT REGISTRATION FORM IS OPERATING IN VIOLATION OF
17 COLORADO LAW, AND THE ATTORNEY GENERAL MAY IMPOSE A FINE OR
18 SUSPENSION OR CLOSE THE ABORTION CLINIC BASED ON STANDARDS
19 PROMULGATED BY THE ATTORNEY GENERAL.

20 (d) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, AN
21 ABORTION CLINIC SHALL NOT FILE A REGISTRATION FORM THAT INCLUDES
22 THE NAME OR IDENTIFYING INFORMATION OF A WOMAN WHO OBTAINED AN
23 ABORTION AT THE ABORTION CLINIC.

24 (2) THE ATTORNEY GENERAL SHALL CREATE AND MAKE
25 AVAILABLE A REGISTRATION FORM. THE ATTORNEY GENERAL MAY
26 INCLUDE ADDITIONAL ITEMS ON THE FORM, BUT, AT A MINIMUM, THE FORM
27 MUST REQUIRE THE FOLLOWING INFORMATION:

1 (a) THE NUMBER OF ABORTIONS PERFORMED AT THE CLINIC
2 DURING THE PREVIOUS YEAR, INCLUDING THE TRIMESTER IN WHICH THE
3 ABORTION WAS PERFORMED, BASED ON APPROPRIATELY MAINTAINED
4 RECORDS KEPT BY THE CLINIC;

5 (b) A SPECIFIC REPORT FOR EACH ABORTION PERFORMED AT OR
6 AFTER TWENTY WEEKS' GESTATION;

7 (c) A DESCRIPTION OF THE METHOD OR METHODS OF ABORTION
8 PERFORMED AT THE CLINIC;

9 (d) THE NAME OF EACH PHYSICIAN PERFORMING ABORTIONS AT
10 THE CLINIC, ALONG WITH THE STATE OF EACH PHYSICIAN'S LICENSURE, ANY
11 BOARD CERTIFICATIONS OR SPECIALTIES MAINTAINED BY THE PHYSICIAN,
12 AND ANY DISCIPLINARY ACTION TAKEN AGAINST THE PHYSICIAN IN THE
13 LAST FIVE YEARS;

14 (e) THE NUMBER OF INFANTS BORN ALIVE AT THE CLINIC DURING
15 THE YEAR, WHETHER THE INFANTS WERE BORN PRIOR TO, DURING, OR
16 AFTER THE ATTEMPTED COMPLETION OF AN ABORTION, WHETHER OR NOT
17 THESE INFANTS SURVIVED, WHETHER OR NOT THEY WERE VIABLE, AND
18 WHETHER OR NOT THEY WERE TRANSPORTED TO A HOSPITAL; AND

19 (f) THE NUMBER OF PATIENTS, INCLUDING WOMEN AND
20 BORN-ALIVE INFANTS, WHO WERE TRANSPORTED TO A HOSPITAL FROM THE
21 CLINIC FOLLOWING A PARTIALLY OR FULLY COMPLETED ABORTION IN THE
22 PREVIOUS YEAR.

23 (3) THE ATTORNEY GENERAL HAS THE RIGHT TO REJECT AN
24 ABORTION CLINIC'S REGISTRATION FORM IF IT IS INACCURATE OR
25 INCOMPLETE WITHIN THIRTY DAYS OF RECEIPT. IF ANY FALSE OR
26 FRAUDULENT INFORMATION IS FOUND ON THE FORM, IT CAN BE REJECTED
27 BY THE ATTORNEY GENERAL WITHIN THIRTY DAYS OF THIS DISCOVERY.

1 **24-31-705. Inspections and investigations.** (1) AFTER EACH
2 CLINIC'S FIRST REGISTRATION IS SUBMITTED, THE ATTORNEY GENERAL
3 SHALL CONDUCT AN INSPECTION OF THE CLINIC WITHOUT PRIOR
4 NOTIFICATION TO THE CLINIC. AFTER THIS INITIAL INSPECTION, THE
5 ATTORNEY GENERAL SHALL CONDUCT AT LEAST ONE INSPECTION
6 ANNUALLY WITHOUT PRIOR NOTIFICATION TO THE CLINIC.

7 (2) THE ATTORNEY GENERAL SHALL ESTABLISH POLICIES AND
8 PROCEDURES FOR ANNUAL INSPECTIONS. AT A MINIMUM, EACH INSPECTION
9 MUST DETERMINE WHETHER THE ABORTION CLINIC IS PERFORMING
10 ABORTIONS AT OR AFTER TWENTY WEEKS' GESTATION AND WHETHER IT IS
11 OPERATING WITH:

- 12 (a) MEDICALLY MODERN ULTRASOUND EQUIPMENT;
- 13 (b) EQUIPMENT TO PRESERVE THE LIFE OF AND TO RESUSCITATE
14 BORN-ALIVE INFANTS;
- 15 (c) LEGALLY APPROVED METHODS OF MEDICAL AND HAZARDOUS
16 WASTE DISPOSAL;
- 17 (d) MEDICALLY SAFE STANDARDS FOR STERILIZATION OF
18 INSTRUMENTS AND PROCEDURE AREAS AND STORAGE, MEDICALLY SAFE
19 POLICIES FOR EXPIRED AND OPENED MEDICINES, AND EMERGENCY EXITS
20 SUFFICIENT TO ACCOMMODATE A STRETCHER OR GURNEY; AND
- 21 (e) PROPER FEDERAL "HEALTH INSURANCE PORTABILITY AND
22 ACCOUNTABILITY ACT OF 1996", 42 U.S.C. SEC. 1320d, POLICIES.

23 (3) THE ATTORNEY GENERAL SHALL ALSO ESTABLISH POLICIES AND
24 PROCEDURES FOR CONDUCTING INSPECTIONS AND INVESTIGATIONS
25 PURSUANT TO COMPLAINTS RECEIVED BY THE ATTORNEY GENERAL AND
26 MADE AGAINST ANY ABORTION CLINIC. THE ATTORNEY GENERAL SHALL
27 RECEIVE, RECORD, AND TAKE ACTION ON COMPLAINTS IN ACCORDANCE

1 WITH ESTABLISHED POLICIES AND PROCEDURES.

2 **24-31-706. Registration forms and inspection or investigation**
3 **reports - public records.** ALL REGISTRATION FORMS AND INSPECTION OR
4 INVESTIGATION REPORTS ARE PUBLIC RECORDS AND MAY BE INSPECTED
5 PURSUANT TO SECTION 24-72-203 SO THAT WOMEN ARE AWARE OF THE
6 FACTS AND CONDITIONS AT ALL ABORTION CLINICS IN THE STATE.

7 **24-31-707. Civil penalties and fines.** (1) (a) AN ABORTION
8 CLINIC IS SUBJECT TO CIVIL PENALTIES IF AN INSPECTION BY THE
9 ATTORNEY GENERAL FINDS THAT THE ABORTION CLINIC:

10 (I) FAILS TO OPERATE IN A MEDICALLY SAFE MANNER;

11 (II) FAILS TO HAVE APPROPRIATE EQUIPMENT TO PRESERVE THE
12 LIFE OF AND RESUSCITATE BORN-ALIVE INFANTS;

13 (III) FAILS TO TRANSPORT BORN-ALIVE INFANTS TO HOSPITALS OR
14 OTHER MEDICAL FACILITIES THAT CAN CARE FOR THEM IN A TIMELY
15 MANNER; OR

16 (IV) VIOLATED A PROVISION OF LAW.

17 (b) THE ATTORNEY GENERAL MAY IMPOSE A FINE OF UP TO FIVE
18 THOUSAND DOLLARS OR SUSPENSION OR CLOSURE FOR EACH VIOLATION.
19 EACH DAY OF VIOLATION CONSTITUTES A SEPARATE VIOLATION FOR
20 PURPOSES OF ASSESSING CIVIL PENALTIES OR FINES.

21 (2) (a) IN DECIDING WHETHER AND TO WHAT EXTENT TO IMPOSE
22 FINES, SUSPENSION, OR CLOSURE, THE ATTORNEY GENERAL SHALL
23 CONSIDER THE FOLLOWING FACTORS:

24 (I) THE GRAVITY OF THE VIOLATION, INCLUDING THE PROBABILITY
25 THAT DEATH OR SERIOUS PHYSICAL HARM TO A PATIENT OR INDIVIDUAL
26 WILL RESULT OR HAS RESULTED;

27 (II) THE SEVERITY AND SCOPE OF THE ACTUAL OR POTENTIAL

1 HARM;

2 (III) THE EXTENT TO WHICH THE PROVISIONS OF THE APPLICABLE
3 STATUTES, MEDICAL STANDARDS, OR RULES WERE VIOLATED;

4 (IV) THE DURATION, FREQUENCY, AND RELEVANCE OF ANY
5 PREVIOUS VIOLATIONS COMMITTED BY THE ABORTION CLINIC; AND

6 (V) THE FINANCIAL BENEFIT TO THE ABORTION CLINIC OF
7 COMMITTING OR CONTINUING THE VIOLATION.

8 (b) BOTH THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY
9 FOR THE JUDICIAL DISTRICT IN WHICH THE VIOLATION OCCURRED MAY
10 INSTITUTE A LEGAL ACTION TO ENFORCE COLLECTION OF CIVIL PENALTIES
11 OR FINES. A WOMAN OR INFANT INJURED BY THE ACTIONS OF AN ABORTION
12 CLINIC THAT VIOLATE THIS STATUTE ALSO HAS STANDING TO BRING A CIVIL
13 SUIT TO RECOVER DAMAGES.

14 **SECTION 2. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.