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HOUSE BILL NO. 670

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-558, relating to the regulation of the business of providing abortions; penalties.*

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-558, as follows:

CHAPTER 50.**ABORTION PROVIDER BUSINESSES.****§ 59.1-550. Purpose.**

It is the purpose of this chapter to regulate abortion provider businesses and related activities to promote the health, safety, and general welfare of the citizens of the Commonwealth, and to establish reasonable and uniform regulations to prevent the deleterious location of abortion provider businesses within the Commonwealth. The provisions of this statute have neither the purpose nor effect of imposing a limitation or restriction on the content of any reproductive activities, including birth control materials and abortions.

§ 59.1-551. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abortion provider business" means a facility in which more than two abortions are performed in a 12-month period.

"Criminal activity" means a felony or misdemeanor offense for which:

1. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than 10 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than 10 years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

"Employee" means a person who performs any service at an abortion provider business on a full-time, part-time, contract, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage, or other compensation by the operator of the abortion provider business. "Employee" does not include a person at an abortion provider business exclusively (i) to make repairs or conduct maintenance of the premises or equipment at the premises, (ii) to make a delivery of goods to the premises, or (iii) as a patron or customer of the abortion provider business.

"Licensed day-care center" means a facility that provides care, training, education, custody, treatment, or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

"Licensee" means (i) the person in whose name a business license to conduct an abortion provider business has been issued and (ii) any individual listed as an applicant on the application for such a license.

"Premises" means the real property upon which the abortion provider business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the abortion provider business and any grounds, private walkways, parking lots, and parking garages adjacent to such facility that are under the ownership, control, or supervision of the licensee.

§ 59.1-552. Inspection.

Any person who owns, operates, or manages an abortion provider business shall permit

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59 representatives of agencies and departments of state and local government that are responsible for
60 ensuring compliance with applicable law to inspect the premises of an abortion provider business to
61 determine such compliance at any time that the abortion provider business is open for business.

62 § 59.1-553. Location restrictions.

63 A. Abortion provider businesses shall be permitted to operate only in any location at which
64 applicable zoning and land use regulations permit the operation of a hospital, provided that an abortion
65 provider business shall not be operated within:

- 66 1. 1,500 feet of a church, synagogue, or regular place of religious worship;
- 67 2. 1,500 feet of a public or private elementary or secondary school;
- 68 3. 1,500 feet of a boundary of any property zoned for residential use;
- 69 4. 1,500 feet of a public park;
- 70 5. 1,500 feet of a licensed day-care center; or
- 71 6. 1,500 feet of an entertainment business that is oriented primarily towards children or family
72 entertainment.

73 B. For the purpose of this section, measurement shall be made in a straight line, without regard to
74 intervening structures or objects, from the nearest portion of the building wherein the abortion provider
75 business is conducted to (i) the nearest property line of the premises of a church, synagogue, regular
76 place of worship, or public or private elementary or secondary school or (ii) the nearest boundary of a
77 public park, property zoned for residential use, licensed day-care center, or entertainment business that
78 is oriented primarily towards children or family entertainment.

79 § 59.1-554. Nonconforming uses; period for continued operation of nonconforming use.

80 A. An abortion provider business operating on July 1, 2008, in violation of the location restrictions
81 set forth in § 59.1-553 shall be deemed a nonconforming use. Notwithstanding any provision of
82 § 15.2-2307 to the contrary, the nonconforming use may continue for a period not to exceed two years,
83 unless the use (i) is sooner terminated for any reason or (ii) is voluntarily discontinued for a period of
84 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except
85 that the use may be changed to a conforming use. Following the expiration of the period in which such
86 a nonconforming use is permitted to continue, it shall be unlawful for any person to operate the
87 abortion provider business in violation of the location restrictions.

88 B. Notwithstanding the provisions of subsection A, an abortion provider business that is lawfully
89 operating as a conforming use shall not be rendered a nonconforming use by the location or
90 establishment of a church, synagogue, or regular place of religious worship, public or private
91 elementary or secondary school, licensed day-care center, public park, residential district, or child or
92 family entertainment business within 1,500 feet of the abortion provider business subsequent to the
93 issuance or renewal of a business license by a locality that authorizes the conduct of the abortion
94 provider business.

95 § 59.1-555. Unlawful acts; penalty.

96 A. It shall be unlawful for any person to own, operate, or manage an abortion provider business:

- 97 1. In a location at which the operation of an abortion provider business is prohibited pursuant to
98 § 59.1-553, unless the operation of the abortion provider business is permitted at such location in
99 violation of such location restrictions as a nonconforming use;
- 100 2. In which an owner, operator, manager, or employee:
 - 101 a. Has been convicted of a criminal activity or is awaiting trial on pending charges of a felony or
102 misdemeanor;
 - 103 b. Has had a previous license under any health care statute or regulation or abortion provider
104 business statute from any state or locality denied, suspended, or revoked;
 - 105 c. Has any unsatisfied judgments for indebtedness or damages incurred as a result of the provision
106 of health care or the conduct of an abortion provider business;
 - 107 d. Has falsely answered a question or request for information on any health care or business
108 licensing form;
 - 109 e. Is under the age of 18 years;
 - 110 f. Has had a health care license or certification revoked or suspended by any licensing or regulatory
111 authority within the preceding 10 years;
 - 112 g. Uses an alias or any name other than his legal name by which to identify himself to persons using
113 the services of the abortion provider business;
 - 114 h. Has operated or performed services in an abortion provider business while intoxicated by the use
115 of alcoholic beverages or controlled substances;
 - 116 i. Refused to allow prompt inspection of the abortion provider business premises as authorized by
117 § 59.1-552;
 - 118 j. Had patient contact when not licensed by the appropriate health care agency for that level of
119 patient contact;
 - 120 k. Permitted any person to have patient contact who is not licensed by the appropriate health care

agency for that level of patient contact;

l. Permitted the possession, use, or sale of controlled substances on the premises other than as prescribed by a physician;

m. Permitted the sale, use, or consumption of alcoholic beverages on the premises;

n. Permitted the illegal dissemination of prescription drugs on the premises;

o. Permitted the performance of abortions on a minor without the parents' or court's permission; or

p. Permitted the performance of abortions with the assistance of any person who is not licensed by the appropriate health care agency for that level of patient contact; or

3. In which the premises to be used for the abortion provider business has not been approved by its jurisdiction's health department, fire department, and building department as being in compliance with all applicable local, state, and federal laws, regulations, and statutes governing outpatient surgical facilities.

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor. § 59.1-556. Persons younger than 18 prohibited from entry; attendant required.

A. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of an abortion provider business at any time the abortion provider business is open for business without the permission of the minor's parents or the approval of a court.

B. It shall be unlawful for the operator of an abortion provider business to fail to ensure that an attendant is stationed at each public entrance to the abortion provider business at all times during such abortion provider business's regular business hours. It shall be unlawful for the attendant to fail to prevent any person under the age of 18 years from entering the abortion provider business without the permission of the minor's parents or approval of a court. It shall be presumed that an attendant knew a person was under the age of 18 and without the permission of the minor's parents or court approval unless:

1. The attendant asked for and was furnished a valid operator's, commercial operator's, or chauffeur's driver's license, or a valid personal identification certificate issued by the Commonwealth of Virginia reflecting that such person is 18 years of age or older;

2. The minor is accompanied by the minor's parent; or

3. The attendant asked for and was furnished a certified copy of an order pursuant to subsection V of § 16.1-241.

C. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor. § 59.1-557. Injunction.

In addition to any other remedies or penalties provided in this chapter, a court of proper jurisdiction is authorized to grant a temporary or permanent injunction restraining any person from operating or causing to be operated an abortion provider business without a valid business license or in violation of this chapter.

§ 59.1-558. Civil Remedies.

A. Any person who shall be injured by reason of a violation of this chapter may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel, and without limiting the generality of the term, "damages" shall include consequential damages, emotional damages, and loss of consortium.

B. Whenever a person shall duly file a civil action in the circuit court of any county or city against any person alleging violations of the provisions of this chapter and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to plaintiff's counsel.