

FEB 6 1990

SENATE FILE 2229
BY RENSINK

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the licensure of abortion facilities and civil
2 remedies for noncompliance with certain licensure
3 requirements.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

5C 2229

1 Section 1. NEW SECTION. 135J.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Abortion" means the termination of a human pregnancy
4 with the intent other than to produce a live birth or to
5 remove a dead fetus. Abortion does not include medical care
6 which has as its primary purpose the treatment of a serious
7 physical condition requiring emergency medical treatment
8 necessary to save the life of the mother.

9 2. "Facility" means a place, center, or clinic where
10 abortions are performed, other than a hospital licensed under
11 chapter 135B.

12 Sec. 2. NEW SECTION. 135J.2 LICENSURE REQUIRED.

13 A person shall not operate an abortion facility in this
14 state unless the person possesses a license issued pursuant to
15 section 135J.3. Failure to obtain and retain a license shall
16 result in the closure of the facility.

17 Sec. 3. NEW SECTION. 135J.3 REQUIREMENTS FOR LICENSURE -
18 - CLOSURE.

19 The Iowa department of public health shall issue a license
20 to a facility if the department determines that all of the
21 following conditions are met:

22 1. a. The facility maintains medical malpractice
23 liability insurance coverage or a bond in the amount of at
24 least two million dollars, or maintains a net worth of at
25 least two million dollars, and annually submits to the
26 department proof of the insurance coverage, bond, or net
27 worth.

28 b. The facility engages physicians licensed in this state,
29 engages physicians licensed in another state with admitting
30 privileges at a hospital within twenty miles of the facility,
31 or engages physicians licensed in another state who have
32 entered into an agreement with a physician with admitting
33 privileges at a hospital within twenty miles of the facility.

34 c. The facility maintains pathology reports on each
35 patient to assure that abortion procedures have been completed

1 in a manner which will not cause immediate adverse health
2 impacts on the patient.

3 d. The facility maintains copies of informed consent forms
4 signed by each patient documenting that the patient has been
5 fully informed of the risks of and alternatives to the
6 abortion procedures.

7 e. The facility maintains and makes available emergency
8 equipment, including resuscitators and oxygen, which is
9 operational at all times, as required by rule.

10 2. The facility complies with the requirements of all
11 applicable state and local building codes, including
12 electrical, plumbing, fire, and other building and safety
13 codes, unless the department determines by rule that such a
14 code is wholly inappropriate for the facility.

15 3. The facility complies with all rules adopted pursuant
16 to this chapter.

17 Sec. 4. NEW SECTION. 135J.4 APPLICATION -- FEES.

18 Licenses must be obtained from the department.

19 Applications must be made upon such forms and shall include
20 such information as the department requires, which may include
21 affirmative evidence of compliance with other applicable
22 statutes and local ordinances. Each application for licensure
23 shall be accompanied by the annual license fee subject to
24 refund to the applicant if the license is denied. License
25 fees shall be deposited in the general fund of the state. The
26 annual license fee shall be based upon the patient capacity of
27 the facility as determined by the department. However, the
28 fee shall not exceed fifty dollars.

29 Sec. 5. NEW SECTION. 135J.5 SCOPE OF LICENSE.

30 A license for a facility shall be issued only for the
31 premises and persons named in the application and shall not be
32 transferable or assignable except with the written approval of
33 the department, obtained prior to the purchase of the facility
34 involved. The license shall be posted in a conspicuous place
35 on the licensed premises as prescribed by rule of the

1 department. A license, unless sooner suspended or revoked,
2 shall expire one year after the date of issuance and may be
3 renewed annually upon application by the licensee. An
4 application for renewal must be made in writing to the
5 department, accompanied by the required fee, at least thirty
6 days prior to the expiration of a license. A facility which
7 has allowed its license to lapse through failure to make
8 timely application for renewal shall pay an additional fee of
9 twenty-five percent of the annual license fee prescribed in
10 section 135J.4.

11 Sec. 6. NEW SECTION. 135J.6 INSPECTIONS.

12 1. The department shall inspect or cause to be inspected
13 each facility before initial licensure and shall make or cause
14 to be made such further unannounced inspections as it deems
15 necessary to adequately enforce this chapter, including at
16 least one unannounced general inspection each year. The
17 inspector shall show identification to the person in charge of
18 the facility and state that an inspection is to be made before
19 beginning the inspection. A state employee who gives
20 unauthorized advance notice of an inspection made or planned
21 to be made under this section shall be disciplined as
22 determined by the department employing the employee, except
23 that if the employee is employed pursuant to chapter 19A the
24 discipline shall not exceed that authorized pursuant to that
25 chapter.

26 2. An inspector may enter a licensed facility without a
27 warrant, and may examine all records pertaining to the care
28 provided by the facility. An inspector may contact or
29 interview any patient, employee, or other person who might
30 have knowledge about the operation of a facility. However,
31 the inspector shall not violate any confidentiality
32 requirements relating to the facility or its employees or
33 patients.

34 Sec. 7. NEW SECTION. 135J.7 DENIAL, SUSPENSION, OR
35 REVOCATION OF LICENSE.

1 The department may deny, suspend, or revoke a license if
2 the department finds that the facility fails to comply with
3 this chapter or the rules adopted pursuant to this chapter.
4 The department shall revoke the license of a facility which
5 violates three or more of the separate licensing conditions
6 stated in section 135J.3, subsection 1, paragraphs "a" through
7 "e" in any twelve-month period. All licensing proceedings are
8 subject to the requirements of chapter 17A.

9 The department, after an inspection, may suspend the
10 license of a facility prior to a hearing on an emergency basis
11 if the department finds that the health or safety of any
12 patient may be endangered by the conditions of the facility.

13 Sec. 8. NEW SECTION. 135J.8 CONDITIONAL LICENSE.

14 The department may conditionally issue or continue a
15 license for no longer than one year, dependent upon the
16 continuing efforts by the applicant or licensee to comply with
17 the requirements of this chapter or of rules adopted pursuant
18 to this chapter. If the applicant or licensee does not make
19 diligent efforts to comply with the conditions prescribed or
20 does not comply with the conditions prescribed within a
21 reasonable period of time as established by the department,
22 the department may deny, suspend, or revoke the license.

23 Sec. 9. NEW SECTION. 135J.9 JUDICIAL REVIEW.

24 Judicial review of any action of the department may be
25 sought in accordance with chapter 17A. Notwithstanding the
26 terms of the Iowa administrative procedure Act, chapter 17A,
27 petitions for judicial review may be filed in the district
28 court of the county where the facility or proposed facility is
29 located, and pending final disposition of the matter the
30 status quo of the applicant or licensee shall be preserved
31 unless the department determines that the health or safety of
32 a patient may be endangered by the conditions of the facility,
33 in which case the department may order the immediate closure
34 of the facility.

35 Sec. 10. NEW SECTION. 135J.10 CIVIL ACTION.

1 A patient of a facility which violates two or more of the
2 separate licensing conditions stated in section 135J.3,
3 subsection 1, paragraphs "a" through "e", in any twelve-month
4 period, may bring a civil action against the facility and, on
5 submission of proof that the patient was a patient at the
6 facility for an abortion procedure during the period of time
7 the facility was in violation, the patient is entitled to
8 recover actual damages as a result of the violation, plus
9 three times the cost paid for the abortion procedure at the
10 facility, court costs, and reasonable attorney fees.

11 Sec. 11. NEW SECTION. 135J.11 RULES.

12 The department, in accordance with chapter 17A, shall adopt
13 and enforce rules for the administration of this chapter,
14 including rules setting minimum standards for facilities.

15 Sec. 12. NEW SECTION. 135J.12 COMPLIANCE.

16 A facility which is in operation on the date of adoption of
17 rules pursuant to this chapter, which contain standards for
18 the operation of a facility, shall be given a reasonable time
19 to comply with the rules. The director of public health may
20 grant successive thirty-day extensions of the time for
21 compliance where evidence of a good faith attempt to achieve
22 compliance is furnished, if the extensions will not place in
23 undue jeopardy the patients of the facility to which the
24 extensions are granted.

25 Sec. 13. NEW SECTION. 135J.13 CONSTRUCTION.

26 This chapter shall not be construed to interfere with the
27 right of a woman to have an abortion in this state subject to
28 the constitutional limits as defined by the courts of the
29 United States.

30 Sec. 14. Section 135.11, subsection 17, Code Supplement
31 1989, is amended to read as follows:

32 17. Administer chapters 125, 135A, 135J, 136A, 136C, 139,
33 140, 142, 144, and 147A.

34 EXPLANATION

35 This bill requires the Iowa department of public health to

1 set standards, by rule, for and to license abortion
2 facilities.

3 Licensure standards include maintenance of medical
4 malpractice liability insurance coverage; engaging of local
5 physicians; maintenance of pathology reports, informed consent
6 forms, and emergency medical equipment; and compliance with
7 building code requirements. Application, inspection, and
8 licensure procedures are provided. A civil remedy is provided
9 for certain licensure violations.

- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35