



House of Representatives

File No. 936

General Assembly

January Session, 2019

(Reprint of File No. 753)

Substitute House Bill No. 7070
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 20, 2019

AN ACT CONCERNING DECEPTIVE ADVERTISING PRACTICES OF LIMITED SERVICES PREGNANCY CENTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2019*) As used in this section and
2 sections 2 and 3 of this act:

3 (1) "Abortion" means the termination of a pregnancy for purposes
4 other than producing a live birth. "Abortion" includes, but is not
5 limited to, a termination of a pregnancy using pharmacological agents;

6 (2) "Client" means an individual who is inquiring about or seeking
7 services at a pregnancy services center;

8 (3) "Clinical laboratory services" means the microbiological,
9 serological, chemical, hematological, biophysical, cytological or
10 pathological examination of materials derived from the human body
11 for the purpose of obtaining information for the diagnosis, prevention
12 or treatment of disease or the assessment of a health condition;

13 (4) "Emergency contraception" means one or more prescription
14 drugs (A) used separately or in combination for the purpose of
15 preventing pregnancy, (B) administered to or self-administered by a
16 patient within a medically recommended amount of time after sexual
17 intercourse, (C) dispensed for such purpose in accordance with
18 professional standards of practice, and (D) determined by the United
19 States Food and Drug Administration to be safe for such purpose;

20 (5) "Health information" means any oral or written information in
21 any form or medium that relates to health insurance or the past,
22 present or future physical or mental health or condition of a client;

23 (6) "Licensed health care provider" means a person licensed under
24 the provisions of federal or state law to provide health care or other
25 medical services;

26 (7) "Limited services pregnancy center" means a pregnancy services
27 center that does not directly provide or provide referrals for abortions
28 or emergency contraception;

29 (8) "Pregnancy-related service" means any medical or health
30 counseling service related to pregnancy or pregnancy prevention,
31 including, but not limited to, contraception and contraceptive
32 counseling, pregnancy testing, pregnancy diagnosis, pregnancy
33 options counseling, obstetric ultrasound, obstetric sonogram and
34 prenatal care;

35 (9) "Pregnancy services center" means a facility, including a mobile
36 facility, the primary purpose of which is to provide services to clients
37 who are or have reason to believe they may be pregnant and that
38 either (A) offers obstetric ultrasounds, obstetric sonograms, pregnancy
39 testing or diagnosis or prenatal care to pregnant clients, or (B) has the
40 appearance of a medical facility by virtue of having two or more of the
41 following factors present: (i) Staff or volunteers who wear medical
42 attire and uniforms; (ii) one or more examination tables; (iii) a private
43 or semiprivate room or area containing medical supplies or medical
44 instruments; (iv) staff or volunteers who collect health information

45 from clients; or (v) the facility is located on the same premises as a
46 licensed health care facility or licensed health care provider or shares
47 facility space with a licensed health care provider;

48 (10) "Premises" means land and improvements or appurtenances or
49 any part thereof; and

50 (11) "Prenatal care" means services consisting of a physical
51 examination, pelvic examination or clinical laboratory services
52 provided to a client during pregnancy.

53 Sec. 2. (NEW) (*Effective July 1, 2019*) No limited services pregnancy
54 center, with the intent to perform a pregnancy-related service, shall
55 make or disseminate before the public, or cause to be made or
56 disseminated before the public, in any newspaper or other publication,
57 through any advertising device, or in any other manner, including, but
58 not limited to, through use of the Internet, any statement concerning
59 any pregnancy-related service or the provision of any pregnancy-
60 related service that is deceptive, whether by statement or omission,
61 and that a limited services pregnancy center knows or reasonably
62 should know to be deceptive.

63 Sec. 3. (NEW) (*Effective July 1, 2019*) (a) The Attorney General may
64 apply to any court of competent jurisdiction for injunctive relief to
65 compel compliance with the provisions of section 2 of this act and
66 correct the effects of the deceptive advertising, provided the Attorney
67 General gives written notice to the limited services pregnancy center in
68 accordance with subsection (b) of this section. Any injunctive relief
69 ordered by the court may include requiring the limited service
70 pregnancy center to:

71 (1) Pay for and disseminate appropriate corrective advertising in the
72 same form and using the same advertising device as used in the
73 deceptive advertising;

74 (2) Post a remedial notice that corrects the effects of the deceptive
75 advertising; or

76 (3) Provide such other narrowly-tailored relief as the court deems
77 necessary to remedy the adverse effects of the deceptive advertising on
78 any clients seeking pregnancy-related services.

79 (b) Prior to commencing an action pursuant to subsection (a) of this
80 section, the Attorney General shall give written notice to the limited
81 services pregnancy center of the violation of section 2 of this act and
82 allow the limited services pregnancy center to cure such violation not
83 later than ten days after receipt of the written notice. The Attorney
84 General may file an action pursuant to subsection (a) of this section
85 after such ten-day period if the limited services pregnancy center does
86 not respond to the written notice or refuses to cure the violation of
87 section 2 of this act.

88 (c) Upon a finding by the court that a limited services pregnancy
89 center has violated any provision of section 2 of this act, the state shall
90 be entitled to recover (1) civil penalties of not less than fifty dollars and
91 not more than five hundred dollars per violation, and (2) reasonable
92 attorney's fees and costs.

93 (d) Nothing in this section shall prohibit the state or any political
94 subdivision thereof from seeking any administrative, legal or equitable
95 relief permitted by law, including, but not limited to, relief permitted
96 by chapter 735a of the general statutes and the regulations adopted
97 thereunder.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2019	New section
Sec. 2	July 1, 2019	New section
Sec. 3	July 1, 2019	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Attorney General	GF - Potential Revenue Gain	Up to 10,000	Up to 10,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill prohibits deceptive advertising by pregnancy centers under certain conditions. It allows the Attorney General (AG) to apply to court for injunctive relief, if written notice is given to the center first and it did not cure the violation within ten days.¹ If the court finds that the center violated the deceptive advertising practices, the pregnancy center also must pay civil penalties of \$50 to \$500 per violation and reasonable attorney’s fees.

This could result in a revenue gain to the extent violations of the bill’s provisions occur; it is estimated that there are approximately 30 pregnancy centers that meet the bill’s definitions. As such, the bill could result in a revenue gain up to \$10,000 annually.

House “A” replaces the underlying bill resulting in the impact

¹ Injunctive relief is a court-ordered act or prohibition against an act or condition which has been requested, and sometimes granted, in a petition to the court for an injunction. Such an act is the use of judicial (court) authority to handle a problem and is not a judgment for money. Whether the relief will be granted is usually argued by both sides in a hearing rather than in a full-scale trial, although sometimes it is part of a lawsuit for damages and/or contract performance.

described above.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations that occur.

OLR Bill Analysis**sHB 7070 (as amended by House "A")******AN ACT CONCERNING DECEPTIVE ADVERTISING PRACTICES OF LIMITED SERVICES PREGNANCY CENTERS.*****SUMMARY**

This bill prohibits deceptive advertising by limited services pregnancy centers, which it defines as pregnancy services centers (see below) that do not directly provide, or provide referrals for, abortions or emergency contraception. Specifically, it prohibits these centers, with intent to perform a pregnancy-related service, from making or otherwise disseminating a statement about any pregnancy-related service or the provision of any such service (1) that is deceptive and (2) that the center knows or reasonably should know is deceptive.

This prohibition applies only to statements made before the public, in an advertisement, print publication, online, or in any other manner. It applies (1) whether the centers make these statements themselves or cause others to do so and (2) whether the statement itself is deceptive or is deceptive by omission.

The bill allows the attorney general to apply to court for related injunctive relief, if he first gave written notice to the center and it did not respond or cure the violation within 10 days. Among other things, the court can order the center to pay for and disseminate appropriate corrective advertising. If the court finds that the center violated the above prohibition, the center also must pay civil penalties and reasonable attorney's fees.

The bill specifies that it does not prohibit the state or municipalities from seeking any administrative, legal, or equitable relief permitted by law, including relief available under the unfair trade practices act (see BACKGROUND).

*House Amendment "A" specifies that the bill applies (1) only to statements made before the public, (2) to centers that do not directly provide abortions or emergency contraception, not just centers that do not refer for such services, and (3) to centers that have the intent to perform a pregnancy-related service. The amendment also (1) requires other relief the court orders to be narrowly tailored and (2) makes various minor, clarifying, and technical changes.

EFFECTIVE DATE: July 1, 2019

DEFINITIONS

Under the bill, a "limited services pregnancy center" is a pregnancy services center that does not directly provide, or provide referrals for, abortions or emergency contraception. A "pregnancy services center" is a facility, including a mobile facility, whose primary purpose is to provide services to clients who are or have reason to believe that they may be pregnant, and that either (1) offers obstetric ultrasounds or sonograms, pregnancy testing or diagnosis, or prenatal care, or (2) has the appearance of a medical facility by having at least two of the following five specified factors present:

1. staff or volunteers who wear medical attire and uniforms;
2. one or more examination tables;
3. a private or semiprivate room or area with medical supplies or instruments;
4. staff or volunteers who collect health information from clients; or
5. the facility (a) is on the same premises as a licensed health care facility or licensed health care provider or (b) shares facility space with a licensed provider.

The bill applies to statements about a "pregnancy-related service," which is any medical or health counseling service related to pregnancy or pregnancy prevention, including contraception and contraceptive

counseling, pregnancy testing or diagnosis, pregnancy options counseling, obstetric ultrasound or sonogram, and prenatal care.

ATTORNEY GENERAL ENFORCEMENT AND COURT AUTHORITY

Under the bill, before the attorney general may apply to court for injunctive relief in response to such deceptive advertising, he must give written notice of the violation to the limited services pregnancy center. If the center does not respond or refuses to correct the advertising within this 10-day period, the attorney general may apply to court for injunctive relief to compel compliance and correct the effects of the advertising.

The court may order the center to:

1. pay for and disseminate appropriate corrective advertising in the same form and using the same advertising device as the deceptive advertising;
2. post a remedial notice that corrects the effects of the deceptive advertising; or
3. provide other narrowly-tailored relief as the court deems necessary to remedy the deceptive advertising's adverse effects on any clients seeking pregnancy-related services.

If the court finds that a center violated the bill's prohibition, it also must order the center to pay to the state (1) civil penalties of \$50 to \$500 per violation and (2) reasonable attorney's fees and costs.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and

accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for a violation of a restraining order.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 14 Nay 11 (03/29/2019)