

# Public Health Committee JOINT FAVORABLE REPORT

**Bill No.:** HB-7070

AN ACT CONCERNING DECEPTIVE ADVERTISING PRACTICES OF LIMITED

**Title:** SERVICES PREGNANCY CENTERS.

**Vote Date:**

**Vote Action:**

**PH Date:** 2/11/2019

**File No.:**

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## **SPONSORS OF BILL:**

The Public Health Committee

## **REASONS FOR BILL:**

This legislation prohibits limited services pregnancy centers from providing false or misleading information regarding pregnancy-related services. In terms of the language, a limited services pregnancy center is defined as one that does not offer referrals for abortions or emergency contraception. In addition, this bill delegates power to the Attorney General to take action against centers accused of deceptive advertising. Under this bill, the Attorney General can apply to the court for “related injunctive relief” if the center was notified in writing beforehand and the violation was not resolved within a ten day period. The court is also able to order the center to distribute corrected materials and has the ability to impose civil penalties.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

**William Tong, State Attorney General:** Attorney General Tong strongly supports this legislation based on three key points: (1) the bill not only protects women, but promotes public health policy in Connecticut, (2) it does not harm constitutional rights, and (3) it is necessary to bridge gaps which protect women from deception. Some limited service pregnancy centers (LSPCs) are forthcoming with their positions, including that abortion is fundamentally wrong. While Attorney General Tong strongly disagrees with that position, he recognizes the importance of respecting those centers’ First Amendment rights. Other centers are not as open with their positions and that can contribute to deceptive advertising. Reproductive health services are time-sensitive; therefore, if a pregnant woman is delayed in learning her options, it can contribute to the loss of safer methods as well as the inability to terminate a pregnancy all together. While this is a significant public health issue, it also bears

a financial impact. If less-invasive options are lost due to a time delay, the state may be held responsible for the cost of more dangerous procedures. To address the second point, this bill does not limit the free speech rights of LSPCs. It does not ban anti-abortion campaigns; it protects the consumer from deceptive advertising. The language in this bill is similar to a measure passed in San Francisco and after being challenged in the Ninth Circuit Court of Appeals, it was determined that the language and concept is constitutional. The final point notes that this legislation would allow for enforcement gaps to be filled. Deceptive advertising is currently regulated under the Connecticut Unfair Trade Practices Act (CUTPA). Yet, some LSPCs may fall outside the scope of CUTPA depending on commercial standards and corporate structure. Massachusetts, for example, did not apply their fair practices act to a LSPC matter. The wellbeing of women in Connecticut is too significant to allow for gaps in enforcement.

**Representative Jillian Gilchrest, 18<sup>th</sup> Assembly District:** Representative Gilchrest supports this legislation. There are twenty-five Crisis Pregnancy Centers (CPC) in the state that present themselves as legitimate reproductive health clinics. CPCs do not offer referrals or healthcare choices and according to NARAL Pro-Choice CT, some CPCs have provided women with deceptive information such as that they may not “make it out alive” following a procedure. When women in the state seek specific healthcare services, they should receive them. CPCs can offer religious advice to pregnant women; however, they should not deceive them. As the former Director of Health Professional Outreach for the Connecticut Coalition Against Domestic Violence, Representative Gilchrest was responsible for training health care providers to know the signs of intimate partner violence (IPV). Victims of IPV may experience reproductive coercion, which could lead to unintended pregnancy. In these situations, it is important that women have access to honest and accurate services to ensure that they are aware of their options. Furthermore, it is crucial that they are aware of how legitimate centers operate. Being informed will help women differentiate between an illegitimate center and one that actually offers support services. This is a matter of sexism and one that should be changed.

**Mayor Luke Bronin, City of Hartford:** Mayor Bronin supports this legislation. Women deserve to receive honest information regarding their health and wellbeing. In Hartford, a measure was passed that banned deceptive advertising following the establishment of a “Crisis Pregnancy Center” (CPC) adjacent to the longstanding Hartford GYN Center. While the center has the right to provide services, it was reported that this CPC was leading women to believe that their appointments at the Hartford GYN Center were actually in their center. In addition, it was confirmed that this CPC was making direct attempts to “lure” women into the center. Despite differing opinions on abortion, the women in our state should be protected from deceptive practices. This bill does that, while also not infringing on First Amendment rights.

**Senator Martin Looney, 11<sup>th</sup> District:** Senator Looney supports this bill. This concept was proposed as part of the Senate Democratic Caucus agenda for the 2019 session. This bill would protect individuals from false advertising, specifically from facilities that appear to be legitimate “family planning clinics.” Through delay tactics and inaccurate information, these clinics impact a woman’s right to make the best personal medical decisions. These centers are typically in urban or underserved areas where reproductive healthcare services are not readily available. Regardless of one’s views on abortion, it is important to protect the people of Connecticut from deceptive advertising.

**Representative Liz Linehan, 103<sup>rd</sup> Assembly District:** Representative Linehan is in favor of the bill. In 2017, Representative Linehan toured the Hope Crisis Pregnancy Center in Cheshire, an organization that she has been supporting for ten years. To the best of her knowledge, the Hope Crisis Pregnancy Center does not engage in deceptive practices. This legislation would not impact centers that are providing the services they advertise; it would regulate the centers utilizing deceptive practices. Similar to Mayor Bronin’s testimony, Representative Linehan discussed a center in Hartford that was placed next to legitimate abortion-providing healthcare clinic. The center was not licensed and staff wore lab coats to make it appear as though they provided medical services when they did not. This bill would prevent these establishments from deceiving women and threatening a time-sensitive matter. While religious support groups should be protected, it is important that consumers are aware of the limitations in these centers. This legislation is a “consumer advocacy bill.” It will not harm centers that do as they say; it will simply hold other centers to the same standard.

**Representative Brian Lanoue, 45<sup>th</sup> Assembly District:** Representative Lanoue is opposed to this legislation. Representative Lanoue was invited to the Women’s Center of Eastern Connecticut by a constituent who serves as the Executive Director. For thirty years, the center has provided services to women facing unplanned pregnancies, including parenting classes and ultrasounds. While at the center, Representative Lanoue met two clients who had great experiences and in turn, have referred their friends. Other organizations have indicated that the Women’s Center is an important contributor to the community. This legislation would have an impact on these beneficial centers who do not receive state funding. Furthermore, it harms religious freedom and personal privacy.

#### **NATURE AND SOURCES OF SUPPORT:**

**Commissions on Women, Children & Seniors and Equity & Opportunity:** The CWCS offers strong support for this legislation, which would prohibit deceptive advertising by limited service pregnancy centers (LSPCs). The availability of accurate medical information and services is fundamental to public health. According to the testimony, “This bill is about access, transparency, and honesty in advertising of services.” LSPCs that use deceptive advertising typically market that they offer counseling and various medical services. In reality, these centers utilize strategies such as delay tactics to prevent time sensitive procedures. In a report composed by the National Association for the Repeal of Abortion Laws in Connecticut (NARAL CT), it states that there are twenty-five LSPCs in the state. These centers are located near reproductive healthcare centers, college campuses, and underserved regions in Connecticut. The report also identified that over half of these centers have “misleading” names and advertise in a similar manner to OB-GYN clinics. Health care centers are important for a number of reasons beyond reproductive services; therefore, it is important that Connecticut residents have access to legitimate healthcare providers.

**Jordan Goldberg, Director of Policy, National Institute for Reproductive Health (NIRH):** NIRH supports the proposed legislation. This bill would protect consumers in the state while also ensuring that pregnancy centers maintain their First Amendment right. Pregnancy centers have the right to campaign against abortions and even attempt to persuade pregnant women not to have abortions; however, they do not have the right to advertise a service that they do not offer. Clinics advertise their operations in a number of ways: some are forthcoming about their anti-abortion perspective and encourage continued pregnancy by

providing clothing and supplies while others are more vague when providing information, with the intent of luring women into the clinic in an attempt to steer them away from abortion. There are cases across the country as well as more local cases in Hartford where women have experienced deceptive practices, including delay tactics that challenge a time-sensitive matter. In terms of speech, centers engage in commercial speech; thus, they are held to commercial fraud standards. There have been a number of cases examining the role of regulating speech and how to specifically highlight deceptive speech. In terms of this bill, it would only ensure that deceptive speech is being regulated.

**Iyanna Liles, MD, The American Congress of Obstetricians and Gynecologists (ACOG):** ACOG stands in strong support of this bill because the organization advocates for “the elimination of all barriers to the provision of abortion.” Dr. Liles recounted the story of a patient who was pressured to enter a crisis pregnancy center (CPC). This patient was unaware of her options and left the CPC with no further clarity to make her decision. This legislation promotes transparency, honesty, and protects against a threat to our state’s public health.

**Susan L Yolen, Vice President, Policy and Advocacy, Planned Parenthood of Southern New England:** Planned Parenthood supports this legislation. This bill mirrors federal court decisions issued to protect against false advertising while not suppressing speech in any way. In preventing delay tactics, the bill ensures that a woman can receive the care she wants in a timely and cost-effective manner. If this legislation was to pass, centers would still be able to continue providing the services that they actually offer. It is important to note that the First Amendment does not protect an individual’s right to deceptive speech.

**Liz Gustafson, Organizer and Volunteer Coordinator, NARAL Pro-Choice CT:** NARAL is in support of the bill. In 2015, twenty-two in person investigations were conducted with an additional five in 2017 that examined the strategies of pregnancy centers in this state. The results of the studies are encompassed in the testimony, which highlight specific instances of women being deceived by limited services pregnancy centers.

**Lucy Nolan, Director of Policy and Public Relations, CT Alliance to End Sexual Violence:** The Alliance supports this legislation. According to the testimony, only 230 cases out of 1000 cases of rape are reported to the police. There are a number of reasons as to why these cases are not reported: the feeling of shame, a lack of belief that the police will help, and fear. With a low number of cases reported, there is a disparity in individuals who receive victim services. For women who are sexually assaulted, they may turn to a Morning after Pill or turn to a Crisis Pregnancy Center, believing that they will receive all of the advertised services. That is not always guaranteed. In some cases, they are unable to make the best decision for them due to the time sensitive nature of the matter. It is important that such victims are given appropriate information regarding their options. Passing this legislation will ensure deception is monitored.

**58 other individuals submitted testimony in support of HB 7070.**

#### **NATURE AND SOURCES OF OPPOSITION:**

**Jeanneane Maxon, Associate Scholar, Charlotte Lozier Institute:** Pregnancy service centers provide support and services through all stages of pregnancy as well as post-abortion

treatment for women and men. These services are offered at no cost to clients. In passing this legislation, state resources will likely be wasted, as regulation of centers will be increased. The proposed bill is not neutral, as it only regulates facilities that do not provide referrals for abortion. These beliefs are typically promoted by pro-life centers. Clients of pro-choice centers are not afforded any protections, simply because the centers allow for abortions or access to contraception. According to the courts, “viewpoint discrimination” is a form of content discrimination and the government should not regulate speech when the speaker has logical rationale. HB 7070 would place an unconstitutional restriction on these centers. In terms of financial liability, violations could lead to civil penalties ranging from \$50-\$500 plus legal fees. In addition, a center may be required to pay “corrective advertising” fees that currently do not have a limit. By enabling the Attorney General to determine what constitutes deceptive language, the First Amendment would be violated. This legislation would also violate the Equal Protection Clause of the Fourteenth Amendment because abortion clinics are not subject to the same regulations. It also offers due process issues and violates rights of conscience protections.

**Jeremy Bradley, Executive Director, Caring Families Pregnancy Services:** Mr. Bradley is in strong opposition to this bill as it not only threatens the work of centers, but the women and families of Connecticut as well. Since 1986, his center has provided over \$1 million in support services with no funding from the state. This legislation has been proposed to prevent deceptive advertising although there have been no reports of false advertising and there are currently laws in place to protect against deception. Also, this bill only focuses on pregnancy centers and not on family planning clinics. Caring Families has recently come under social media fire from NARAL Pro-Choice Connecticut who has accused the organization of assaulting women in their “sketchy” Mobile Care vans. There are medical professionals in the vans and they aim to help local communities. Mr. Bradley urges the committee to meet with the staff of these centers and research the matter on their own.

**Daniel O’Neill, Day Kimball Medical Group:** Mr. O’Neill, the Medical Director of ABC Women’s Center and Caring Families, is opposed to this bill which aims to restrict freedom of speech. Both centers where Mr. O’Neill is director provide medical services by licensed professionals. They advise women on their options, including abortion, and only advertise the services provided. The title of the bill is prejudiced because it seemingly asserts that all limited services pregnancy centers (LSPCs) promote deceptive practices. In addition, it also terms centers that do not provide abortion as “limited services” centers. Connecticut already has laws in place protecting against deceptive advertising, so why do we need another set of laws to promote the same protections? NARAL has recently led a series of “defamatory campaigns” on social media and according to Mr. O’Neill, these seem to violate the Connecticut Unfair Trade Practices Act (CUTPA). Pregnancy centers provide important services for the state and aid in promoting public health.

**Ellen Cavallo, Director, Carolyn’s Place Pregnancy Care Center:** Carolyn’s Place has served thousands of men, women, and children and provides free, 24/7 care to clients. Clients of Carolyn’s Place are free to remain in contact with the center for as long as they’d like. Services begin during pregnancy and continue following birth, if clients choose to remain connected. Carolyn’s Place has connections with a number of obstetricians, as well as Safe Haven and Wellmore. There are already laws in place to protect against deception, thus it appears as though these centers are being targeted. The CT Pregnancy Care Coalition has never claimed to be anything other than a support system for parents.

**Rachel N. Morrison, Litigation Counsel, Americans United for Life:** Ms. Morrison opposes this bill as it is in violation of the First Amendment. It specifically focuses on pro-life pregnancy centers, as the term “limited services pregnancy centers” only addresses facilities that do not offer referrals for abortions or emergency contraception. According to the testimony, these centers are targeted due to their pro-life views. Also, the legislation states that it will “prohibit deceptive advertising practices by limited services pregnancy centers.” This statement does not ensure that deceptive advertising is regulated at all pregnancy centers, just the ones that do not offer abortions. This speaks to targeting only pro-life institutions. According to Ms. Morrison, this legislation arose in response to a report by NARAL Pro-Choice CT. The report does not include actual evidence of deceptive advertising; thus, Ms. Morrison argues that the report is grounded in the differing viewpoints. This was further confirmed in a Connecticut Capitol News Briefing where the matter was addressed as a “serious problem,” though no evidence was provided. The language in the bill is also a problem as it is overbroad and vague. It addresses all advertising, regardless if a center advertises in the first place. Furthermore, the terms “false, misleading, and deceptive” are not explicitly defined. This leaves it up to an objective interpreter. In addition, deceptive advertising is already regulated under law. As reflected in earlier testimony, this restrictive legislation is a form of discrimination against pro-life centers and infringes upon First Amendment rights. According to the testimony, the bill delegates power to the Attorney General who may choose to use the power negatively due to opposing viewpoints. The final point is the fees that centers would have to pay if it is found that they are practicing deceptive advertising. These fees could draw money away from centers that are actually doing positive things for the people of Connecticut.

**The Connecticut Catholic Public Affairs:** The Conference opposes the bill for three primary reasons: (1) laws are already in place to regulate deceptive practices, (2) this law is directed exclusively at pregnancy centers, and (3) the right of free speech is restricted. The attempt to restrict the speech of pregnancy centers was challenged in California and determined to be unconstitutional. This bill is similar to the language in California and therefore reflects a constitutional flaw.

**176 other individuals submitted testimony in opposition to HB 7070.**

**Reported by: Meagan Schantz**

**Date: 3/20/19**