

SENATE No. 174

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect patient privacy and prevent unfair and deceptive advertising of pregnancy-related services.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

SENATE No. 174

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 174) of Barry R. Finegold for legislation to protect patient privacy and prevent unfair and deceptive advertising of pregnancy-related services. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to protect patient privacy and prevent unfair and deceptive advertising of pregnancy-related services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 93A the
2 following chapter:-

3 CHAPTER 93A½.

4 Section 1. Definitions

5 As used in this chapter, the following words shall have the following meanings, unless
6 the context clearly requires otherwise:

7 “Abortion” shall have the same meaning as defined in section 12K of chapter 112.

8 “Client”, an individual who is inquiring about or seeking services at a pregnancy services
9 center.

10 “Clinical laboratory services”, the microbiological, serological, chemical, hematological,
11 biophysical, cytological or pathological examination of materials derived from the human body
12 for the purpose of obtaining information for the diagnosis, prevention or treatment of disease or
13 the assessment of a health condition.

14 “Collect”, buying, renting, gathering, obtaining, receiving or otherwise accessing any
15 personal information pertaining to an individual by any means, including, but not limited to,
16 obtaining information from an individual, either actively or passively, or by observing an
17 individual’s behavior.

18 “Consent”, a clear affirmative act signifying an individual’s freely given, specific,
19 informed, and unambiguous agreement to allow the processing of personal information relating
20 to the individual for a narrowly defined particular purpose; provided, however, that “consent”
21 may include a written statement, including a statement written by electronic means, or any other
22 unambiguous affirmative action; provided, however, that the following shall not constitute
23 “consent”:

24 (i) acceptance of a general or broad terms of use or similar document that contains
25 descriptions of personal information processing along with other, unrelated information; or

26 (ii) agreement obtained through: (1) a false, fictitious, fraudulent or materially misleading
27 statement or representation; or (2) a user interface designed or manipulated with the substantial
28 effect of subverting or impairing user autonomy, decision-making or choice.

29 “Emergency contraception”, one or more prescription drugs:

30 (i) used separately or in combination for the purpose of preventing pregnancy;

31 (ii) administered to or self-administered by a patient within a medically recommended
32 amount of time after sexual intercourse;

33 (iii) dispensed for such purpose in accordance with professional standards of practice;
34 and

35 (iv) determined by the United States Food and Drug Administration to be safe for such
36 purpose.

37 “Health information”, any oral or written information in any form or medium that relates
38 to health insurance or the past, present or future physical or mental health or condition of a
39 client.

40 “Identified or identifiable individual”, an individual who can be readily identified,
41 directly or indirectly.

42 “Individual”, a natural person residing in the commonwealth or whose personal
43 information is collected in the commonwealth; provided, however, that “individual” shall not
44 include a natural person acting in an employment or commercial context.

45 “Licensed health care provider”, a person licensed under the provisions of federal or state
46 law to provide health care or other medical services.

47 “Limited services pregnancy center”, a pregnancy services center that does not directly
48 provide, or provide referrals for, abortions or emergency contraception.

49 “Personal information”, information that identifies, relates to, describes, is reasonably
50 capable of being associated with or could reasonably be linked, directly or indirectly, with an
51 identified or identifiable individual.

52 “Pregnancy-related service”, any medical or health counseling service related to
53 pregnancy or pregnancy prevention, including, but not limited to, contraception and
54 contraceptive counseling, pregnancy testing, pregnancy diagnosis, pregnancy options counseling,
55 obstetric ultrasound, obstetric sonogram and prenatal care.

56 “Pregnancy services center”, a facility, including a mobile facility, whose primary
57 purpose is to provide services to clients who are or have reason to believe they may be pregnant
58 and that:

59 (i) offers obstetric ultrasounds, obstetric sonograms, pregnancy testing or diagnosis or
60 prenatal care to pregnant clients; or

61 (ii) has the appearance of a medical facility by virtue of having two or more of the
62 following factors present:

63 (1) staff or volunteers who wear medical attire and uniforms;

64 (2) one or more examination tables;

65 (3) a private or semiprivate room or area containing medical supplies or medical
66 instruments;

67 (4) staff or volunteers who collect health information from clients; or

68 (5) the facility is located on the same premises as a licensed health care facility or
69 licensed health care provider or shares facility space with a licensed health care provider.

70 “Premises”, land and improvements or appurtenances or any part thereof.

71 “Prenatal care”, services consisting of a physical examination, pelvic examination or
72 clinical laboratory services provided to a client during pregnancy.

73 “Process”, any operation or set of operations performed on personal information or on
74 sets of personal information, whether or not by automated means, such as the collection, use,
75 storage, disclosure, sharing, analysis, prediction, deletion or modification of personal
76 information.

77 Section 2. Deceptive Advertising of Pregnancy-Related Services

78 No limited services pregnancy center, with the intent to perform a pregnancy-related
79 service, shall make or disseminate before the public, or cause to be made or disseminated before
80 the public, in any newspaper or other publication, through any advertising device, or in any other
81 manner, including, but not limited to, through use of the internet, any statement concerning any
82 pregnancy-related service or the provision of any pregnancy-related service that:

83 (i) is deceptive, whether by statement or omission; and

84 (ii) a limited services pregnancy center knows or reasonably should know to be
85 deceptive.

86 Section 3. Privacy Standards for Pregnancy-Related Services

87 (a) A pregnancy services center shall process an individual’s personal information:

88 (i) lawfully, fairly and in a transparent manner in relation to the individual;

89 (ii) for specified, explicit and legitimate purposes and not further process the personal
90 information in a manner that is incompatible with those purposes;

91 (iii) in a manner that is adequate, relevant and limited to what is reasonably necessary in
92 relation to the purposes for which it is processed;

93 (iv) in a form which permits identification of individuals for no longer than is necessary
94 for the purposes for which the information is processed; and

95 (v) in a manner that ensures that the information remains appropriately secure.

96 (b) A pregnancy services center shall not process an individual's personal information
97 unless the center has obtained the individual's consent.

98 (c) Prior to processing an individual's personal information, a pregnancy services center
99 shall provide the individual with a reasonably accessible, clear and meaningful privacy notice
100 that shall include:

101 (i) the pregnancy services center's specific purposes for processing such information;

102 (ii) the categories of personal information processed by the pregnancy services center;

103 and

104 (iii) the categories of third parties and other entities to whom the pregnancy services
105 center discloses personal information.

106 (d) A pregnancy services center shall not process the personal information of an
107 individual for purposes incompatible with the disclosed purposes for which the information was
108 collected without first: (i) obtaining the individual's consent; and (ii) providing the individual
109 with notice consistent with this section.

110 (e) A pregnancy services center shall provide an effective, clear and conspicuous
111 mechanism for an individual to revoke consent that the individual previously provided pursuant
112 to this section. Upon revocation of such consent, the pregnancy services center shall cease to
113 process the individual's personal information as soon as practicable, but not later than fifteen
114 days after the receipt of such request.

115 (f) A pregnancy services center shall exercise reasonable due diligence in:

116 (i) selecting an entity to process an individual's personal information on behalf of the
117 pregnancy services center; and

118 (ii) deciding whether to disclose personal information to a third party.

119 Section 4. Limitations

120 (a) Section 3 shall not apply to:

121 (i) a covered entity or business associate, as such terms are defined in 45 CFR 160.103;

122 (ii) health information processed pursuant to 45 C.F.R. 160, 162 and 164;

123 (iii) patient identifying information for purposes of 42 C.F.R. 2, established pursuant to
124 42 U.S.C. 290dd-2;

125 (iv) information and documents created for purposes of the federal Health Care Quality
126 Improvement Act of 1986, 42 U.S.C. 11101 et seq.;

127 (v) patient safety work product for purposes of the federal Patient Safety and Quality
128 Improvement Act, 42 U.S.C. 299b-21 et seq.;

129 (vi) information that is: (1) derived from any of the health care-related information listed
130 in this subsection; and (2) de-identified in accordance with the requirements for de-identification
131 pursuant to 45 C.F.R. 164;

132 (vii) information that is treated in the same manner as, or that originates from and is
133 intermingled to be indistinguishable with, information exempt under this subsection that is
134 maintained by: (1) a covered entity or business associate, as defined in 45 CFR 160.103; or (2) a
135 program of a qualified service organization as defined by 42 U.S.C. 290dd-2;

136 (viii) publicly available information about an individual that:

137 (1) is lawfully made available from federal, state or local government records; or

138 (2) a pregnancy services center has a reasonable basis to believe is lawfully and
139 intentionally made available to the general public: (A) through widely distributed media; or (B)
140 by the individual, unless the individual has restricted the information to a specific audience; and

141 (ix) de-identified information that cannot reasonably be used to infer information about,
142 or otherwise be linked to, an identified or identifiable individual, or a device linked to such
143 individual; provided, however, that the pregnancy services center that possesses the information:

144 (1) takes reasonable technical and organizational measures to ensure that the information
145 cannot, at any point, be associated with or used to re-identify an identified or identifiable
146 individual;

147 (2) publicly commits to process the information solely in a de-identified fashion;

148 (3) does not attempt to re-identify the information; provided, however, that the pregnancy
149 services center may attempt to re-identify the information solely for the purpose of determining
150 whether its de-identification procedures satisfy the provisions of this definition; and

151 (4) contractually obligates any recipients of the information to comply with the
152 provisions of this clause with respect to the information and requires that such obligations be
153 included contractually in all subsequent instances for which the information may be received.

154 (b) Section 3 shall not apply where compliance by the pregnancy services center would
155 violate an evidentiary privilege under the laws of the Commonwealth or be construed to prevent
156 the pregnancy services center from providing personal information concerning an individual to a
157 person covered by an evidentiary privilege under the laws of the Commonwealth as part of a
158 privileged communication.

159 (c) Nothing in section 3 shall be construed to restrict a pregnancy services center's ability
160 to:

161 (i) comply with federal, state or local laws, rules or regulations;

162 (ii) comply with a civil, criminal or regulatory inquiry, subpoena or summons by federal,
163 state, local or other governmental authorities;

164 (iii) cooperate with law enforcement agencies concerning conduct or activity that the
165 pregnancy services center reasonably and in good faith believes may violate federal, state or
166 local laws, rules or regulations;

167 (iv) investigate, establish, exercise, prepare for or defend legal claims; or

168 (v) take immediate steps to protect the security or protection of a natural person, if that
169 natural person is at risk or danger of death or serious physical injury.

170 Section 5. Enforcement by the Attorney General

171 (a) Whenever the attorney general has reasonable cause to believe that a pregnancy
172 services center has engaged in, is engaging in or is about to engage in a violation of this chapter,
173 the attorney general may issue a civil investigative demand. The provisions of section 6 of
174 chapter 93A of the General Laws shall apply mutatis mutandis to civil investigative demands
175 under this chapter.

176 (b) The attorney general may apply to any court of competent jurisdiction for injunctive
177 relief to compel compliance with the provisions of this chapter and, with respect to violations of
178 section 2, to correct the effects of the deceptive advertising; provided, however, that the attorney
179 general shall give written notice to the pregnancy services center in accordance with subsection
180 (c) of this section.

181 (c) Prior to commencing an action pursuant to this section, the attorney general shall give
182 written notice to the pregnancy services center of the violation of this chapter and allow the
183 pregnancy services center to cure such violation not later than 10 days after receipt of the written
184 notice. The attorney general may file an action pursuant to this section after such period if the
185 pregnancy services center does not respond to the written notice or refuses to cure such violation.

186 (d) Upon a finding by the court that a pregnancy services center has violated any
187 provision of this chapter, the state shall be entitled to recover:

188 (i) civil penalties of up to one thousand dollars per violation; and

189 (ii) reasonable attorneys' fees and costs.

190 (e) In determining the overall amount of civil penalties to seek or assess against a
191 pregnancy services center, the attorney general or the court shall include, but not be limited to,
192 the following in its consideration:

193 (i) the nature and severity of the violation;

194 (ii) the size, scope, and type of the pregnancy services center; and

195 (iii) the good faith cooperation of the pregnancy services center with any investigations
196 conducted by the attorney general pursuant to this section.

197 (f) Any injunctive relief ordered by the court in response to a violation of section 2 may
198 include requiring the limited service pregnancy center to:

199 (i) pay for and disseminate appropriate corrective advertising in the same form and using
200 the same advertising device as used in the deceptive advertising;

201 (ii) post a remedial notice that corrects the effects of the deceptive advertising; or

202 (iii) provide such other narrowly tailored relief as the court deems necessary to remedy
203 the adverse effects of the deceptive advertising on any clients seeking pregnancy-related
204 services.

205 (g) Nothing in this section shall prohibit the state or any political subdivision thereof
206 from seeking any administrative, legal or equitable relief permitted by law, including, but not
207 limited to, relief permitted by chapter 93A of the General Laws.

208 SECTION 2. Chapter 93A½ of the General Laws shall take effect 6 months after the
209 passage of this act.