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Bill 163

**An Act to enact the Safe Access to Abortion Services Act, 2017
and to amend the Freedom of Information and Protection of Privacy Act
in relation to abortion services**

The Hon. Y. Naqvi
Attorney General

Government Bill

1st Reading October 4, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

SCHEDULE 1 SAFE ACCESS TO ABORTION SERVICES ACT, 2017

The Schedule enacts the *Safe Access to Abortion Services Act, 2017*.

Section 1 provides that the purpose of the Act is to protect access to abortion services.

Section 2 defines a number of terms, including the following:

1. A clinic is a place, other than a place in a hospital, whose primary purpose is to provide abortion services.
2. A facility is either a place, other than a clinic, where abortion services are provided or the office of certain protected service providers.
3. Protected service providers are people who work in clinics or certain health professionals who provide, or assist in the provision of, abortion services.

Sections 3, 4 and 5 set out prohibitions. Section 3 prohibits certain activities in access zones for clinics or facilities. The prohibited activities include advising a person to refrain from accessing abortion services, informing a person concerning issues related to abortion services, performing certain acts of disapproval, certain persistent requests and certain actions for the purpose of dissuading a person from accessing abortion services or dissuading a protected service provider from providing abortion services. Further prohibited activities can be prescribed. Section 4 prohibits certain activities in access zones for residences of protected service providers. The prohibited activities include performing certain acts of disapproval, certain persistent requests and certain actions for the purpose of dissuading a protected service provider from providing abortion services. Section 5 prohibits, in any area, certain activities done for the purpose of dissuading protected service providers from providing abortion services.

Sections 6 and 7 establish access zones for clinics, prescribed facilities and residences of protected service providers. Those sections provide for the extent of the zones and provide for certain property to be excluded.

Sections 8 to 12 provide for enforcement. Section 8 provides for offences. Section 9 provides that a person may not be convicted of an offence for contravening a prohibition in an access zone unless the person knew, or was given notice of, the location of the access zone. Section 10 provides for a right to damages for losses resulting from contraventions. Section 11 provides for injunctions. Section 12 provides for powers of arrest without a warrant.

Section 13 provides for regulations.

SCHEDULE 2 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The Schedule amends the *Freedom of Information and Protection of Privacy Act* to remove an existing restriction on the application of the Act to records relating to the provision of abortion services (in subsection 65 (5.7) of the Act) and replace it with a narrower restriction set out in subsections 65 (13) and (14) of the Act. A new subsection 65 (15) is added to confirm that the Act continues to apply to statistical or other information relating to the provision of abortion services that is not referred to in subsection 65 (13).

**An Act to enact the Safe Access to Abortion Services Act, 2017 and to amend the
Freedom of Information and Protection of Privacy Act in relation to abortion services**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Protecting a Woman's Right to Access Abortion Services Act, 2017*.

SCHEDULE 1
SAFE ACCESS TO ABORTION SERVICES ACT, 2017

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PURPOSE

Purpose of Act

1 The purpose of this Act is to protect access to abortion services by protecting the safety, security, health and privacy of persons seeking to access these services and of persons providing, or assisting in the provision of, these services.

INTERPRETATION

Definitions

2 In this Act,

“abortion services” means lawful services provided for the termination of pregnancy including prescribing, dispensing or administering a drug to terminate pregnancy; (“services d’interruption volontaire de grossesse”)

“clinic” means a place, other than a place in a hospital, whose primary purpose is to provide abortion services; (“clinique”)

“facility” means,

- (a) a place, other than a clinic, where abortion services are provided including, for greater certainty, a hospital, health centre or pharmacy where abortion services are provided, or
- (b) the office of a person who is a protected service provider within the meaning of clause (b) of the definition of “protected service provider”; (“établissement”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“property”, in relation to a clinic, facility or residence, means,

- (a) property within the meaning of the *Land Titles Act* if that Act applies to the land where the clinic, facility or residence is located and clause (c) does not apply,
- (b) property within the meaning of the *Registry Act* if that Act applies to the land where the clinic, facility or residence is located and clause (c) does not apply,
- (c) property within the meaning of the *Condominium Act, 1998* or as prescribed for the purposes of this clause, if that Act governs the land where the clinic, facility or residence is located as described in clause 2 (3) (a) of that Act, or
- (d) property, as prescribed for the purposes of this clause, if none of clauses (a), (b) or (c) apply; (“unité foncière”)

“protected service provider” means,

- (a) a person who works at a clinic, or
- (b) a person who provides, or assists in the provision of, abortion services and who is,
 - (i) a member of the College of Physicians and Surgeons of Ontario,
 - (ii) a member of the College of Nurses of Ontario,
 - (iii) a member of the Ontario College of Pharmacists who holds a certificate of registration as a pharmacist, or
 - (iv) a regulated health professional prescribed for the purpose of this subclause. (“fournisseur de services protégé”)

PROHIBITIONS

Prohibitions in access zones for clinics or facilities

- 3** (1) While in an access zone established under section 6 for a clinic or facility, no person shall,
- (a) advise or persuade, or attempt to advise or persuade, a person to refrain from accessing abortion services;
 - (b) inform or attempt to inform a person concerning issues related to abortion services, by any means, including oral, written or graphic means;
 - (c) perform or attempt to perform an act of disapproval concerning issues related to abortion services, by any means, including oral, written or graphic means;
 - (d) persistently request that,
 - (i) a person refrain from accessing abortion services, or
 - (ii) a protected service provider refrain from providing, or assisting in the provision of, abortion services;
 - (e) for the purpose of dissuading a person from accessing abortion services,
 - (i) continuously or repeatedly observe the clinic or facility or persons entering or leaving the clinic or facility,
 - (ii) physically interfere with or attempt to physically interfere with the person,
 - (iii) intimidate or attempt to intimidate the person, or
 - (iv) photograph, film, videotape, sketch or in any other way graphically record the person;
 - (f) for the purpose of dissuading a protected service provider from providing, or assisting in the provision of, abortion services,
 - (i) continuously or repeatedly observe the clinic or facility or persons entering or leaving the clinic or facility,
 - (ii) physically interfere with or attempt to physically interfere with the provider,
 - (iii) intimidate or attempt to intimidate the provider, or
 - (iv) photograph, film, videotape, sketch or in any other way graphically record the provider; or
 - (g) do anything prescribed for the purpose of this clause.

Exception

- (2) Clauses (1) (a), (b), (c) and (d) do not apply,
- (a) to anything done in the course of a person’s work at the clinic or facility; or
 - (b) to anything occurring between a person accessing, or attempting to access, abortion services and someone who is accompanying the person with the person’s consent.

Prohibitions in access zones for residences

- 4** While in an access zone established under section 7 for the residence of a protected service provider, no person shall,
- (a) perform or attempt to perform an act of disapproval, directed at or about the provider, concerning issues related to abortion services, by any means, including oral, written or graphic means;
 - (b) persistently request that the provider refrain from providing, or assisting in the provision of, abortion services; or
 - (c) for the purpose of dissuading the provider from providing, or assisting in the provision of, abortion services,
 - (i) continuously or repeatedly observe the residence,
 - (ii) physically interfere with or attempt to physically interfere with the provider or a member of the provider’s household,

- (iii) intimidate or attempt to intimidate the provider or a member of the provider's household, or
- (iv) photograph, film, videotape, sketch or in any other way graphically record the provider or a member of the provider's household.

Harassment of providers

5 (1) No person shall, for the purpose of dissuading a protected service provider from providing, or assisting in the provision of, abortion services,

- (a) repeatedly approach, accompany or follow the provider or a person known to the provider;
- (b) continuously or repeatedly observe the provider;
- (c) persistently request that the provider refrain from providing, or assisting in the provision of, abortion services; or
- (d) engage in threatening conduct directed at the provider or a person known to the provider.

Same

(2) No person shall repeatedly communicate by telephone, fax or electronic means with a protected service provider or a person known to the provider, for the purpose of dissuading the provider from continuing to provide, or assist in the provision of, abortion services, after the person being communicated with has requested that such communications cease.

ACCESS ZONES

Access zones for clinics and facilities

6 (1) An access zone is established,

- (a) for each clinic; and
- (b) for each facility prescribed for the purpose of this clause.

Extent of zone - clinics

(2) The access zone for a clinic consists of,

- (a) the property on which the clinic is located and the area within 50 metres, or such other prescribed distance not exceeding 150 metres, from the boundaries of the property; or
- (b) such area with different boundaries, as may be prescribed for the purpose of this clause.

Extent of zone - facilities

(3) The access zone for a facility consists of,

- (a) the property on which the facility is located and the area within the prescribed distance, not exceeding 150 metres, from the boundaries of the property; or
- (b) such area with different boundaries, as may be prescribed for the purpose of this clause.

Limitation

(4) No part of an area prescribed for the purpose of clause (2) (b) or (3) (b) may be further than 150 metres from the closest boundary of the property on which the clinic or facility is located.

Certain property excluded

(5) The access zone for a clinic or facility does not include real property that one or more persons has the exclusive right to use or occupy if none of those persons is the occupier of the clinic or facility.

Regulations only on request, after notice

(6) A regulation prescribing a facility for the purpose of clause (1) (b) or prescribing anything in relation to a clinic or facility for the purpose of subsection (2) or (3) may be made only if the occupier of the clinic or facility,

- (a) has requested the regulation; or
- (b) has been given notice of the intention to make the regulation and a reasonable opportunity to make written submissions before the regulation is made.

Revocations not affected

(7) Subsection (6) does not apply to,

- (a) a regulation that revokes anything prescribed for the purpose of subsection (2) in relation to a clinic that ceases to be a clinic; or

- (b) a regulation that revokes the prescription of a facility for the purpose of clause (1) (b) or that revokes anything prescribed for the purpose of subsection (3) in relation to a facility that ceases to be prescribed for the purpose of clause (1) (b).

Access zones for residences

7 (1) An access zone is established for the residence of each protected service provider.

Extent of zone

(2) The access zone for a residence consists of the property on which the residence is located and the area within 150 metres, or such other prescribed lesser distance, from the boundaries of the property.

Certain property excluded

(3) The access zone for a residence of a protected service provider does not include real property that one or more persons has the exclusive right to use or occupy if none of those persons is the provider or a member of the provider's household.

ENFORCEMENT

Offences

8 A person who contravenes subsection 3 (1) or section 4 or 5 is guilty of an offence and, on conviction, is liable,

- (a) in the case of a first offence under this Act, to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both;
- (b) in the case of a second or subsequent offence under this Act, to a fine of not less than \$1,000 and not more than \$10,000 or to imprisonment for a term of not more than one year, or to both.

Limit on conviction - knowledge or notice of zone

9 A person may not be convicted of an offence for contravening subsection 3 (1) or section 4 unless the person knew or, at any time before the contravention, was given notice of, the location of the relevant access zone.

Damages

10 A person who suffers loss as a result of a contravention of subsection 3 (1) or section 4 or 5 by another person has a right of action for damages against that person.

Injunction

11 On application by a person, including the Attorney General, the Superior Court of Justice may grant an injunction to restrain a person from contravening subsection 3 (1) or section 4 or 5.

Arrest without warrant

12 A police officer may arrest without warrant a person the officer believes, on reasonable and probable grounds, has committed, or is committing, an offence under this Act.

REGULATIONS

Regulations

13 The Attorney General may make regulations,

- (a) prescribing anything that is referred to, in this Act, as prescribed;
- (b) setting out, for information purposes, the names and locations of the clinics in Ontario and descriptions of the access zones established under section 6 for those clinics.

COMMENCEMENT AND SHORT TITLE

Commencement

14 The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15 The short title of the Act set out in this Schedule is the *Safe Access to Abortion Services Act, 2017*.

SCHEDULE 2
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

1 (1) Subsection 65 (5.7) of the *Freedom of Information and Protection of Privacy Act* is repealed.

(2) Section 65 of the Act is amended by adding the following subsections:

Non-application of Act, provision of abortion services

(13) This Act does not apply to information relating to the provision of abortion services if,

- (a) the information identifies an individual or facility, or it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; or
- (b) disclosure of the information could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building.

Same, pharmacies

(14) A reference in subsection (13) to a facility includes reference to a pharmacy, hospital pharmacy or institutional pharmacy, as those terms are defined in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*.

Related statistical information

(15) For greater certainty, this Act applies to statistical or other information relating to the provision of abortion services that does not meet the conditions of clause (13) (a) or (b).

Commencement

2 This Schedule comes into force on the day the *Protecting a Woman's Right to Access Abortion Services Act, 2017* receives Royal Assent.