

SENATE No. 2283

Senate, July 16, 2014 --Text of the Senate Bill to promote public safety and protect access to reproductive health care facilities (being the text of Senate, No. 2281, printed as amended)

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act to promote public safety and protect access to reproductive health care facilities.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith access to reproductive health care facilities, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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. Section 11H of chapter 12 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by adding the following paragraph:-

3 If the attorney general prevails in an action under this section, the attorney general shall
4 be entitled to: (i) an award of compensatory damages for any aggrieved person or entity; and (ii)
5 litigation costs and reasonable attorneys’ fees in an amount to be determined by the court. In a
6 matter involving the interference or attempted interference with any right protected by the
7 constitution of the United States or of the commonwealth, the court may also award civil
8 penalties against each defendant in an amount not exceeding \$5,000 for each violation.

9 SECTION 2. Chapter 266 of the General Laws is hereby amended by striking out section
10 120E½, as so appearing, and inserting in place thereof the following section:-

11 Section 120E½. (a) As used in this section, the following words shall have the following
12 meanings unless the context clearly requires otherwise:

13 “Driveway”, an entry from a public street to a public or private parking area used by a
14 reproductive health care facility.

15 “Entrance”, a door to a reproductive health care facility that directly abuts the public
16 sidewalk; provided, however, that if the door does not directly abut the public sidewalk, the

17 “entrance” shall be the point at which the public sidewalk intersects with a pathway leading to
18 the door.

19 “Impede”, to obstruct, block, detain or render passage impossible, unsafe or unreasonably
20 difficult.

21 “Law enforcement official”, a duly authorized member of a law enforcement agency,
22 including a member of a municipal, metropolitan or state police department, sheriffs or deputy
23 sheriffs.

24 “Reproductive health care facility”, a place, other than within or upon the grounds of a
25 hospital, where abortions are offered or performed including, but not limited to, the building,
26 grounds and driveway of the facility and a parking lot in which the facility has an ownership or
27 leasehold interest.

28 (b) A law enforcement official may order the immediate withdrawal of 1 or more
29 individuals who have on that day substantially impeded access to or departure from an entrance
30 or a driveway to a reproductive health care facility. A withdrawal order issued pursuant to this
31 section shall be in writing and shall include the following statements: (i) the individual or
32 individuals have substantially impeded access to or departure from the reproductive health care
33 facility; (ii) the individual or individuals so ordered shall, under the penalty of arrest and
34 prosecution, immediately withdraw and cease to stand or be located within at least 25 feet of an
35 entrance or a driveway to the reproductive health care facility; and (iii) the order shall remain in
36 place for 8 hours or until the close of business of the reproductive health facility, whichever is
37 earlier. This subsection shall apply during the business hours of a reproductive health care
38 facility. This subsection shall also apply only if the 25-foot boundary is clearly marked and
39 subsections (a) through (c), inclusive, of this section are posted outside of the reproductive health
40 care facility.

41 (c) A person who fails to comply with a withdrawal order pursuant to subsection (b) shall
42 be punished, for the first offense, by a fine of not more than \$500 or not more than 3 months in a
43 jail or house of correction or by both such fine and imprisonment and, for each subsequent
44 offense, by a fine of not less than \$500 nor more than \$5,000 or not more than 2½ years in a jail
45 or house of correction or by both such fine and imprisonment.

46 (d) A person who, by force, physical act or threat of force, intentionally injures or
47 intimidates or attempts to injure or intimidate a person who attempts to access or depart from a
48 reproductive health care facility shall be punished, for the first offense, by a fine of not more
49 than \$2,000 or not more than 1 year in a jail or house of correction or by both such fine and
50 imprisonment and, for each subsequent offense, by a fine of not less than \$10,000 nor more than
51 \$50,000 or not more than 2½ years in a jail or house of correction or not more than 5 years in a
52 state prison or by both such fine and imprisonment. For the purpose of this subsection,

53 “intimidate” shall mean to place a person in reasonable apprehension of bodily harm to that
54 person or another.

55 (e) A person who impedes a person’s access to or departure from a reproductive health
56 care facility with the intent to interfere with that person’s ability to provide, support the provision
57 of or obtain services at the reproductive health care facility shall be punished, for the first
58 offense, by a fine of not more than \$1,000 or not more than 6 months in a jail or house of
59 correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of
60 not less than \$5,000 nor more than \$25,000 or not more than 2½ years in a jail or house of
61 correction or not more than 5 years in the state prison or by both such fine and imprisonment.

62 (f) A person who knowingly impedes or attempts to impede a person or a vehicle
63 attempting to access or depart from a reproductive health care facility shall be punished, for the
64 first offense, by a fine of not more than \$500 or not more than 3 months in a jail or house of
65 correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of
66 not less than \$1,000 nor more than \$5,000 or not more than 2½ years in a jail or house of
67 correction or by both such fine and imprisonment.

68 (g) A person who recklessly interferes with the operation of a vehicle that attempts to
69 enter, exit or park at a reproductive health care facility shall be punished, for the first offense, by
70 a fine of not more than \$500 or not more than 3 months in a jail or house of correction or by both
71 such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$1,000
72 nor more than \$5,000 or not more than 2½ years in a jail or house of correction or by both such
73 fine and imprisonment.

74 (h) A person who fails to comply with a withdrawal order pursuant to said subsection (b)
75 or who violates subsections (c), (d), (e), (f) or (g) may be arrested without a warrant by a law
76 enforcement official.

77 (i) If a person or entity fails to comply with a withdrawal order pursuant to subsection (b)
78 or violates subsections (c), (d), (e), (f) or (g), an aggrieved person or entity or the attorney
79 general or both may commence a civil action. The civil action shall be commenced either in the
80 superior court for the county in which the conduct complained of occurred or in the superior
81 court for the county in which the person or entity complained of resides or has a principal place
82 of business.

83 (j) In an action pursuant to subsection (i), a court may award as remedies: (1) temporary,
84 preliminary and permanent injunctive relief; (2) compensatory and punitive damages; and (3)
85 costs, attorneys’ fees and expert witness fees. In an action brought by the attorney general
86 pursuant to subsection (i), the court may also award civil penalties against each defendant in an
87 amount not exceeding: (A) \$10,000 for a nonviolent violation and \$15,000 for other first
88 violations; and (B) \$15,000 for a subsequent nonviolent violation and \$25,000 for any other
89 subsequent violation.

90 (k) A violation of an injunction entered by a court in an action brought pursuant to
91 subsection (i) shall be a criminal offense under section 11J of chapter 12.