

# FINAL BILL REPORT

## ESHB 1338

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Synopsis as Enacted

C 128 L 93

**Brief Description:** Prohibiting interference with access to or from a health care facility.

By House Committee on Judiciary (originally sponsored by Representatives Thibaudeau, Appelwick, Ballasiotes, H. Myers, Flemming, Dyer, Eide, Cooke, Zellinsky, Johanson, Romero, Forner, Reams, Rust, Schmidt, Riley, Dunshee, Brough, Ogden, J. Kohl, Locke, Anderson, Ludwig, Edmondson, Horn, Heavey, Cothorn, R. Johnson, King, Voloria, Rayburn, Bray, Orr, Pruitt, Karahalios, Lemmon, Carlson, Kessler, Wolfe, R. Fisher, Hansen, Jacobsen, Morris, Quall, Franklin, L. Johnson, Leonard, Jones, Valle, G. Cole, Holm, Wang, Grant, Dorn, Sheldon, Sommers, Miller, Finkbeiner, Brown, Scott, Roland, Shin, R. Meyers, Springer, Basich, Campbell, Wood, Long, Wineberry and Dellwo).

House Committee on Judiciary  
Senate Committee on Law & Justice

**Background:** In recent years, contentious and sometimes long running demonstrations have been conducted at health care facilities in this state and elsewhere. Usually, these demonstrations have been at facilities that perform abortions. These demonstrations have ranged from peaceful picketing to physical confrontations between demonstrators and health care personnel or their patients.

In some instances, these demonstrations may lead to criminal prosecutions for crimes such as assault, trespass or disorderly conduct. Civil lawsuits may also be filed, sometimes resulting in the issuance of restraining orders against further demonstrations.

A 1986 Washington Supreme Court decision, Bering v. Share, generally upheld the issuance of a permanent injunction against a group who had demonstrated at a health care center in Spokane. The center offered a variety of health care services, including abortion. The injunction prohibited several activities, including: (1) picketing, demonstrating or counseling at the center, except at designated locations; (2) threatening, assaulting, intimidating or coercing anyone entering or leaving the center; (3) interfering with ingress or egress at the center or its parking lot; (4) trespassing on the premises; (5) engaging in any unlawful activity

directed at the center's doctors or patients; and (6) making specific oral statements.

The state Supreme Court concluded in a six-to-three opinion that these restrictions on First Amendment rights of speech were justified by the state's compelling interest in assuring reasonable access to health care for its citizens. The dissenters would have held unconstitutional those portions of the injunction that limited the demonstrators to one side of the center's property and that prohibited specific oral statements.

In some cases, health care providers have sought injunctive relief from demonstrations under federal civil rights legislation. However, in a split decision in Bray v. Alexandria Women's Health Clinic, the United States Supreme Court held that the Civil Rights Act of 1871 does not afford grounds for injunctive relief in federal courts against health care facility demonstrators.

**Summary:** Criminal and civil sanctions are imposed for certain activities that interfere with access to a health care facility, or that disrupt the normal functioning of the facility.

Prohibited activities include reckless interference or disruption by:

- (1) physically obstructing or impeding access;
- (2) making noise that unreasonably disturbs;
- (3) trespassing;
- (4) telephoning the facility repeatedly; or
- (5) threatening injury to persons or property.

However, an exception from these prohibitions is provided for "lawful picketing or other publicity for the purpose of providing the public with information."

The crime of engaging in any of the prohibited activities is a gross misdemeanor, with a maximum penalty of one year in jail and a \$5,000 fine. Minimum penalties are also provided. For a first offense the minimum penalty is one day in jail and a \$250 fine; for a second offense, seven days in jail and a \$500 fine; and for a third offense, 30 days in jail and a \$1,000 fine.

Police officers are given the authority to arrest a person without a warrant and without having witnessed the crime, if

there is probable cause to believe the person committed the crime within the past 24 hours.

A party "aggrieved" by a violation of this act may bring a civil lawsuit. Aggrieved parties may include persons whose access is impeded or whose care is disrupted at a facility, as well as the facility and its employees.

A defendant in a civil suit may be liable without having been convicted in a criminal prosecution. An individual plaintiff may recover actual damages plus punitive damages of \$500 per day for each day of violation. A health care facility plaintiff may recover actual damages plus punitive damages of \$5,000 per day. The prevailing party in a civil suit is entitled to costs and attorneys' fees.

Courts are authorized to grant injunctive relief, and state and local governments are directed to cooperate in the enforcement of injunctions.

Courts are directed to "take all steps reasonably necessary" in protecting the privacy of patients and health care providers.

Criminal justice agencies are directed to release to civil litigants any information they may have about violations of the act, including photographs, unless the release would jeopardize a criminal investigation.

**Votes on Final Passage:**

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|--------|----|----|-------------------|
| House  | 84 | 14 |                   |
| Senate | 33 | 13 | (Senate amended)  |
| House  | 81 | 14 | (House concurred) |

**Effective:** April 26, 1993