



## Legislation Text

---

**File #:** Int 0826-2008, **Version:** A

---

Int. No. 826-A

By The Speaker (Council Member Quinn) and Council Members Reyna, Lappin, Foster, Yassky, Seabrook, Sears, de Blasio, Arroyo, Comrie, Fidler, Garodnick, Gonzalez, Jackson, James, Koppell, Liu, Mark-Viverito, Martinez, Nelson, Palma, Sanders Jr., Stewart, Weprin, White Jr., Gerson, Mendez, Gennaro, Brewer, Rivera, Dickens and The Public Advocate (Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to the prohibition of activities to prevent access to reproductive health care facilities.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The council of the city of New York finds that the right to access reproductive health services is an important personal right protected by state and federal law. Likewise, the right to peaceably protest and express one's views is protected by state and federal law. Such actions include, but are not limited to, the right to speak, march, demonstrate, picket, pray, associate with others in expressive behavior or engage in other activity protected by the First Amendment. The council is aware that there are individuals or groups of individuals who may exceed the boundaries of lawful First Amendment expression by engaging in physical activities that prevent access to reproductive health care facilities or by engaging in activities that unlawfully harass or intimidate individuals trying to access such facilities. Such activities unlawfully interfere with both the operators of reproductive health care facilities and all individuals seeking free entrance and egress from such facilities.

The council finds that current law does not adequately protect reproductive health care facilities and those who work in or seek services from such facilities. Therefore, the council finds it appropriate for the protection of the public health, safety and welfare, to enact new legislation to strengthen the prohibitions on interference with access to reproductive health care facilities and services.

§2. Section 8-801 of chapter 8 of title 8 of the administrative code of the city of New York, as added by Local Law 3 for the year 1994, is amended to read as follows.

§8-801. Short title. This local law shall be known as the “access to reproductive health[ services] care facilities act.”

§3. Current subdivision c of section 8-802 of chapter 8 of title 8 of the administrative code of the city of New York is REPEALED and a new subdivision c is added to read as follows:

c. “Premises of a reproductive health care facility” shall mean the driveway, entrance, entryway, or exit of a reproductive health care facility and the building in which such facility is located and any parking lot in which the facility has an ownership or leasehold interest.

§4. Section 8-803 of chapter 8 of title 8 of the administrative code of the city of New York, as added by Local Law 3 for the year 1994, is amended to read as follows:

§8-803. Prohibition of activities to prevent access to reproductive health[ services] care facilities. a. It shall be unlawful for any person[, with the intent to prevent any other person from obtaining or rendering, or assisting in obtaining or rendering, any reproductive health care service or counseling] (1) to knowingly physically obstruct or block[ such other] another person from entering into or exiting from the[ entryway or exit of a reproductive health care facility, or the] premises[ in which such] of a reproductive health care facility[ is located] by physically striking, shoving, restraining, grabbing, or otherwise subjecting a person to unwanted physical contact, or attempting to do the same; (2) to knowingly obstruct or block the premises of a reproductive health care facility, so as to impede access to or from the facility, or attempt to do the same; (3) to follow and harass[ such other] another person within 15 feet of the premises of a reproductive health care facility; (4)[ in or about a public place or places or] to engage in a course of conduct or repeatedly commit acts within 15 feet of the premises of a reproductive health care facility when such behavior places[ such other] another person in reasonable fear of physical harm, or attempt to do the same;[ or (3)] (5) to physically damage a reproductive health care facility so as to[ significantly disrupt its] interfere with its operation, or attempt to do

the same[.]; or (6) to knowingly interfere with the operation of a reproductive health care facility, or attempt to do the same, by activities including, but not limited to, interfering with, or attempting to interfere with (i) medical procedures being performed at such facility or (ii) the delivery of goods to such facility.

b. Violations. Any person who shall violate any provision of subdivision a of this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars or imprisonment not to exceed six months, or both, for a first conviction under this section. For a second and each subsequent conviction under this section, the penalty shall be a fine not to exceed five thousand dollars or imprisonment not to exceed one year, or both.

§5. The opening paragraph of section 8-804 of chapter 8 of title 8 of the administrative code of the city of New York, as added by Local Law 3 for the year 1994, is amended to read as follows:

Where there has been a violation of subdivision (a) of section 8-803,[ Any] any person whose ability to [ obtain or render, or assist in obtaining or rendering] access a reproductive health care[ or counseling,] facility has been interfered with[ in violation of paragraphs one or two of subdivision (a) of section 8-803], and any owner or operator of a reproductive health care facility or owner of[ premises] a building in which such a facility is located,[ where there has been a violation of subdivision (a) of section 8-803,] may bring a civil action in any court of competent jurisdiction for any or all of the following relief:

§6. Section 8-805 of chapter 8 of title 8 of the administrative code of the city of New York, as added by Local Law 3 for the year 1994, is amended to read as follows:

§8-805. Civil action by city of New York to enjoin interference with access to reproductive health [ services] care facilities.

The corporation counsel may bring a civil action on behalf of the city in any court of competent jurisdiction for injunctive and other appropriate equitable relief in order to prevent or cure a violation of subdivision a of section 8-803.

§7. This local law shall take effect ninety days after its enactment into law.

AS  
 LS # 4160  
 2/17/09

**CHART 1.**

	<b>Federal Freedom of Access to Clinic Entrances (FACE) (42 USC § 248)</b>	<b>State Penal Law (NY Penal Law § 240.70)</b>
<b>Intent</b>	<ul style="list-style-type: none"> <li>Requires that intent be established when proving that any of the prohibited activities occurred.</li> </ul>	<ul style="list-style-type: none"> <li>Requires that intent be established when proving that any of the prohibited activities occurred.</li> </ul>
<b>Protection of Persons</b>	<ul style="list-style-type: none"> <li>Prohibits someone from using force, the threat of force or physical obstruction in order to injure, intimidate or interfere with anyone obtaining or providing reproductive health services. • Also prohibits the attempt to do any of the above</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits someone from using force, the threat of force or physical obstruction to injure, intimidate or interfere with anyone:                             <ul style="list-style-type: none"> <li>obtaining or providing health care services.</li> <li>in order to discourage him or her from obtaining or providing health care services.</li> </ul>                             • Also prohibits the attempt to do any of the above.                         </li> </ul>
<b>Protection of Facilities</b>	<ul style="list-style-type: none"> <li>Prohibits damaging or destroying the property of a reproductive health care facility (or attempting to do so).</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits damaging the property of a reproductive health care facility (or attempting to do so).</li> </ul>
<b>Remedies &amp; Penalties</b>	<ul style="list-style-type: none"> <li>Any person can bring civil action to enforce.                             <ul style="list-style-type: none"> <li>But, a violation of the prohibitions related to persons can only be brought by someone obtaining, trying to obtain, providing or trying to provide services in a reproductive health care facility.</li> </ul>                             • U.S. Attorney General and state attorney generals may seek civil remedies injunctive relief and compensatory damages.                         </li> </ul>	<ul style="list-style-type: none"> <li>Second degree is class A misdemeanor. • First degree is a class E felony.</li> </ul>

**CHART 2.**

<b>Current Law</b>	<b>What will change?</b>
--------------------	--------------------------

<p>Intent to prevent another from obtaining or rendering, or assisting in obtaining or rendering any reproductive health care services or counseling must be proven in <i>all</i> cases, including prosecutions for: • Physically obstructing or blocking another person from (a) accessing an entryway or exit of a clinic, or (b) the premises in which a clinic is located. • Following and harassing another in or about a public place placing another in reasonable fear of physical harm.</p>	<p>Current law is difficult to enforce because of its intent requirement. Under the new legislation, all the same activities (plus new ones) are illegal, police would not need to “see” intent to make an arrest, and proof of such intent would no longer be required for any prosecution under the law.</p>
<p>As long as the above elements, including intent, are met, the police can make an arrest under this statute anywhere around a clinic</p>	<p>Because intent is impossible to “see,” it the old law made it difficult for the police to determine whether the law was being broken so arrests rarely occurred. Under the new law, if any illegal behavior occurs within 15 feet of a clinic, it would be clear the law is being broken.</p>
<p>If intent can be discerned and is proven, the prohibited conduct is an A misdemeanor, if not it is likely to be a B misdemeanor or violation</p>	<p>If prohibited conduct occurs within 15 feet of clinic premises, it would be an A misdemeanor, if not it would likely be a B misdemeanor or violation.</p>
<p>All arrests AND prosecutions require a complainant who was obtaining or rendering or assisting another in obtaining or rendering reproductive health services or counseling - “merely” blocking an entrance or exit does not violate the law.</p>	<p>Arrests can be made based on observation alone if a protestor is knowingly obstructing or blocking the premises of a clinic - no complainant is required</p>
<p>Clinics and premises in which they are located are protected, but premises is not defined</p>	<p>Premises would be specifically defined to include both parking lots and driveways, which is critically important for clinics in the outer boroughs and expands the 15 foot area.</p>
<p>No opportunity for a clinic to complain based on protesters’ activities.</p>	<p>Knowingly interfering with the operation of a clinic would be a violation of the law.</p>
<p>Peaceful protest is not unlawful</p>	<p>No change.</p>