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## FISCAL IMPACT REPORT

SPONSOR: Beam DATE TYPED: 2/20/03 HB 509  
 SHORT TITLE: Health Care Obstruction Act SB \_\_\_\_\_  
 ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Fiscal Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Offices of the District Attorney  
 Office of the Attorney General  
 Corrections Department  
 Department of Health

### SUMMARY

#### Synopsis of Bill

House Bill 509 creates a new act, the Health Care Obstruction Act. This act makes it a crime to interfere with, obstruct, physically contact, follow, harass, etc. any individual seeking or rendering reproductive health care services.

A person guilty of violating the Health Care Obstruction Act is guilty of a misdemeanor. The act provides for both criminal and civil penalties.

Finally, the act expressly provides that no provision shall be construed or interpreted to limit the right of a person to engage in activities protected by the First Amendment of the Constitution of the United States.

#### Significant Issues

- I. This area of law has spawned a great deal of litigation. The debate is the balance between the constitutional right to free speech in the First Amendment of the Bill of Rights and a women's constitutional right to privacy and her constitutional right to choose to have an abortion as found in Roe v. Wade, 410 U.S. 113 (1973).

HB 509 raises the issue of how to balance current state and federal court decisions and legislative initiatives to protect women lacking access to reproductive health services and laws that either create a “buffer zone” around abortion clinics, or criminalize the act of obstructing a health care facility providing reproductive health care services.

This constitutional issue has not been clearly decided by the United States Supreme Court.

The most pertinent case law is as follows:

1. Madsen v. Women’s Health Center, Inc., 512 U.S. 753 (1994). The court allowed the enforcement of buffer zones outside of abortion clinics as long as they burdened no more speech than necessary to promote the legitimate government interests, and those which did burden more speech than necessary were ruled unconstitutional.
2. Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357 (1997). The U.S. Supreme Court discussed in more detail the evolution of the balancing between First Amendment rights of abortion clinic demonstrators and a woman’s right to an abortion as it relates to court ordered injunctions. The Court emphasized in this case that any “floating buffer zone” established a broad prohibition on speech and struck down the use of floating buffer zones.
3. Hill v. Colorado, 530 U.S. 703 (2000). This case involved a Colorado State Statute, which also allowed for “floating buffer zones” outside abortion clinics. The U.S. Supreme Court found that under the very narrow circumstances and parameters of the facts in this case, that a floating buffer zone was constitutional. However, there was still a question as to the constitutionality of the use of future buffer zones in other jurisdictions.
4. McGuire v. Reilly, 260 F.3d 36 (1<sup>st</sup> Cir. 2001). The U.S. Court of Appeals for the First Circuit in Boston, Massachusetts upheld the constitutionality of a Massachusetts law creating a buffer zone around abortion clinics.

- II. Seemingly, the way in which HB 509 is written, it should stand strong against a constitutional challenge. The focus is not on the right of protesters to speak/shout their beliefs and march with signs. The focus is on prohibiting conduct that is already criminal, conduct that constitutes assault, battery, stalking, etc. The Constitution does not grant the right to, with hostile intentions, physically touch another person. In fact, everyone, including those seeking to undertake an action many disagree with, has a right to life and liberty ---- which would seemingly inherently equate to the right to be free of such hostile, criminal contact.

## FISCAL IMPLICATIONS

There are no direct fiscal implications for the state. However, there will likely be secondary costs, such as litigating the constitutionality and resolution of charges brought against those who violate the act. These costs will fall primarily to the courts and district attorneys.