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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO HEALTH AND SAFETY -- WOMEN'S RIGHT TO KNOW ACT

Introduced By: Representatives Palumbo, MacBeth, Edwards, Azzinaro, and Giannini

Date Introduced: February 05, 2009

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

CHAPTER 4.13

WOMEN'S RIGHT TO KNOW ACT

5 **23-4.13-1. Short title.** -- This act shall be known and may be cited as the "Women's
6 **Right to Know Act.**"

7 23-4.13-2. Definitions. -- As used in this chapter, the term:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

12 (2) “Attempt to perform an abortion” means an act, or an omission of a statutorily
13 required act, that, under the circumstances as the actor believes them to be, constitutes a
14 substantial step in a course of conduct planned to culminate in the performance of an abortion in
15 Rhode Island in violation of this chapter.

(3) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

1 (4) "Physician" means a person licensed under the provisions of chapter 37 of title 5.

2 (5) "Probable gestational age of the unborn child" means what, in the judgment of the

3 physician, will with reasonable probability be the gestational age of the unborn child at the time

4 the abortion is planned to be performed.

5 (6) "Stable internet website" means a website that, to the extent reasonably practicable, is

6 safeguarded from having its content altered other than by the director of the department of health.

7 **23-4.13-3. Informed consent. --** No abortion shall be performed in this state except with

8 the voluntary and informed consent of the female upon whom the abortion is to be performed.

9 Except in the case of a medical emergency, consent to an abortion is voluntary and informed if

10 and only if:

11 (1) Information which must be provided by physician. The female is told the following,

12 by telephone or in person, by the physician who is to perform the abortion or by a referring

13 physician, at least twenty-four (24) hours before the abortion:

14 (i) The name of the physician who will perform the abortion;

15 (ii) The particular medical risks associated with the particular abortion procedure to be

16 employed including, when medically accurate, the risks of infection, hemorrhage, danger to

17 subsequent pregnancies, and infertility;

18 (iii) The probable gestational age of the unborn child at the time the abortion is to be

19 performed; and

20 (iv) The medical risks associated with carrying her child to term.

21 The information required by this subsection may be provided by telephone without

22 conducting a physical examination or tests of the patient, in which case the information required

23 to be provided may be based on facts supplied to the physician by the female and whatever other

24 relevant information is reasonably available to the physician. It may not be provided by a tape

25 recording, but must be provided during a consultation in which the physician is able to ask

26 questions of the female and the female is able to ask questions of the physician. If a physical

27 examination, test, or the availability of other information to the physician subsequently indicate,

28 in the medical judgment of the physician, a revision of the information previously supplied to the

29 patient, that revised information may be communicated to the patient at any time prior to the

30 performance of the abortion. Nothing in this section may be construed to preclude a provision of

31 required information in a language understood by the patient through a translator.

32 (2) Information which may be provided by agent of physician. The female shall be

33 informed, by telephone or in person, by the physician who is to perform the abortion, by a

34 referring physician, or by an agent of either physician at least twenty-four (24) hours before the

1 abortion:
2 (i) That medical assistance benefits may be available for prenatal care, childbirth, and
3 neonatal care;

4 (ii) That the father is liable to assist in the support of her child, even in instances in which
5 the father has offered to pay for the abortion; and

6 (iii) That she has the right to review the printed materials described in section 23-4.13-4
7 that these materials are available on a state-sponsored website, and what the website address is.
8 The physician or the physician's agent shall orally inform the female that the materials have been
9 provided by the state of Rhode Island and that they describe the unborn child and list agencies
10 which offer alternatives to abortion. If the female chooses to view the materials other than on the
11 website, they shall either be given to her at least twenty-four (24) hours before the abortion,
12 mailed to her at least seventy-two (72) hours before the abortion by certified mail restricted
13 delivery to addressee, which means the postal employee can only deliver the mail to the
14 addressee.

15 The information required by this subsection may be provided by a tape recording if a
16 provision is made to record or otherwise register specifically whether the female does or does not
17 choose to have printed materials given or mailed to her.

18 (3) Certification required. The female certifies in writing, prior to the abortion, that the
19 information described in subsections (1) and (2) of this section has been furnished to her, and that
20 she has been informed of her opportunity to review the information referred to in subsection (2)
21 of this section.

22 (4) Copy of certification. Prior to the performance of the abortion, the physician who is to
23 perform the abortion or the physician's agent receives a copy of the written certification
24 prescribed by subsection (3) of this section.

25 **23-4.13-4. Printed information. --** (a) Alternatives to abortion and unborn development
26 data. Within ninety (90) days after this act is enacted, the department of health shall cause to be
27 published, in English and in each language which is the primary language of two percent (2%) or
28 more of the state's population, and shall cause to be available on the state website provided for in
29 section 23-4.13-5 of this act, the following printed materials in such a way as to ensure that the
30 information is easily comprehensible:

31 (1) Geographically indexed materials designed to inform the female of public and private
32 agencies and services available to assist a female through pregnancy, upon childbirth, and while
33 the child is dependent, including adoption agencies, which shall include a comprehensive list of
34 the agencies available, a description of the services they offer, and a description of the manner,

1 including the telephone numbers, in which they might be contacted or, at the option of the
2 department of health, printed materials including a toll-free, twenty-four (24) hour a day
3 telephone number which may be called to obtain, orally, such a list and description of agencies in
4 the locality of the caller and of the services they offer; and

5 (2) Materials designed to inform the female of the probable anatomical and physiological
6 characteristics of the unborn child at two (2) week gestational increments from the time when a
7 female can be known to be pregnant to full term, including any relevant information on the
8 possibility of the unborn child's survival and pictures or drawings representing the development
9 of unborn children at two (2) week gestational increments, provided that any such pictures or
10 drawings must contain the dimensions of the fetus and must be realistic and appropriate for the
11 stage of pregnancy depicted. The materials shall be objective, nonjudgmental and designed to
12 convey only accurate scientific information about the unborn child at the various gestational ages.
13 The material shall also contain objective information describing the methods of abortion
14 procedures commonly employed, and the medical risks commonly associated with each such
15 procedure, the possible detrimental psychological effects of abortion and the medical risks
16 commonly associated with carrying a child to term.

17 (b) Legibility. The materials referred to in subsection (a) of this section shall be printed in
18 a typeface large enough to be clearly legible. The website provided for in section 23-4.13-5 shall
19 be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on this
20 website shall be a minimum of 200x300 pixels. All letters on the website shall be a minimum of
21 eleven (11) point font. All information and pictures shall be accessible with an industry standard
22 browser, requiring no additional plug-ins.

23 (c) Availability. The materials required under this section shall be available at no cost
24 from the department of health upon request and in appropriate number to any person, facility or
25 hospital.

26 **23-4.13-5. Internet website.** -- The department of health shall develop and maintain a
27 stable internet website to provide the information described under section 23-4.13-4. No
28 information regarding who uses the website shall be collected or maintained. The department of
29 health shall monitor the website on a daily basis to prevent and correct tampering.

30 **23-4.13-6. Procedure in case of medical emergency.** -- When a medical emergency
31 compels the performance of an abortion, the physician shall inform the female, prior to the
32 abortion if possible, of the medical indications supporting the physician's judgment that an
33 abortion is necessary to avert her death or that a twenty-four (24) hour delay will create a serious
34 risk of substantial and irreversible impairment of a major bodily function.

1 **23-4.13-7. Reporting requirements.** -- (a) Reporting form. Within ninety (90) days
2 after this act is enacted, the department of health shall prepare a reporting form for physicians
3 containing a reprint of this act and listing:

4 (1) The number of females to whom the physician provided the information described in
5 subsection (a) of section 23-4.13-3, of that number, the number provided by telephone and the
6 number provided in person; and of each of those numbers, the number provided in the capacity of
7 a referring physician and the number provided in the capacity of a physician who is to perform
8 the abortion;

9 (2) The number of females to whom the physician or an agent of the physician provided
10 the information described in subsection (b) of section 23-4.13-3 of that number, the number
11 provided by telephone and the number provided in person; of each of those numbers, the number
12 provided in the capacity of a referring physician and the number provided in the capacity of a
13 physician who is to perform the abortion; and of each of those numbers, the number provided by
14 the physician and the number provided by an agent of the physician;

15 (3) The number of females who availed themselves of the opportunity to obtain a copy of
16 the printed information described in section 23-4.13-4 other than on the website, and the number
17 who did not; and of each of those numbers, the number who, to the best of the reporting
18 physician's information and belief, went on to obtain the abortion; and

19 (4) The number of abortions performed by the physician in which information otherwise
20 required to be provided at least twenty-four (24) hours before the abortion was not so provided
21 because an immediate abortion was necessary to avert the female's death, and the number of
22 abortions in which such information was not so provided because a delay would create serious
23 risk of substantial and irreversible impairment of a major bodily function.

24 (b) Distribution of forms. The department of health shall ensure that copies of the
25 reporting forms described in subsection (a) of this section are provided:

26 (1) Within one hundred twenty (120) days after this act is enacted, to all physicians
27 licensed to practice in this state;

28 (2) To each physician who subsequently becomes newly licensed to practice in this state,
29 at the same time as official notification to that physician that the physician is so licensed; and

30 (3) By December 1 of each year, other than the calendar year in which forms are
31 distributed in accordance with paragraph (1) of this subsection, to all physicians licensed to
32 practice in this state.

33 (c) Reporting requirement. By February 28 of each year following a calendar year in any
34 part of which this act was in effect, each physician who provided or whose agent provided,

1 information to one or more females in accordance with section 23-4.13-3 during the previous
2 calendar year shall submit to the department of health a copy of the form described in subsection
3 (a) of this section, with the requested data entered accurately and completely.

4 (d) Failure to report as required. Reports that are not submitted by the end of a grace
5 period of thirty (30) days following the due date shall be subject to a late fee of five hundred
6 dollars (\$500) for each additional thirty (30) day period or portion of a thirty (30) day period they
7 are overdue. Any physician required to report in accordance with this section who has not
8 submitted a report, or has submitted only an incomplete report, more than one year following the
9 due date, may, in an action brought by the department of health, be directed by a court of
10 competent jurisdiction to submit a complete report within a period stated by court order or be
11 subject to sanctions for civil contempt.

12 (e) Public statistics. By June of each year the department of health shall issue a public
13 report providing statistics for the previous calendar year compiled from all of the reports covering
14 that year submitted in accordance with this section for each of the items listed in subsection (a) of
15 this section. Each such report shall also provide the statistics for all the previous calendar years,
16 adjusted to reflect any additional information from late or corrected reports. The department of
17 health shall take care to ensure that none of the information included in the public reports could
18 reasonably lead to the identification of any individual provided information in accordance with
19 subsections (a) or (b) or subsection (c)

20 (f) Modifications by regulation. The department of health may by regulation,
21 promulgated in accordance with the administrative procedures act, chapter 35 of title 42, alter the
22 dates established by subsections (b)(3), (c) or (e) of this section or consolidate the forms or
23 reports described in this section with other forms or reports to achieve administrative convenience
24 or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are
25 sent to all licensed physicians in the state at least once every year and the report described in
26 subsection (c) is issued at least once every year.

27 **23-4.13-8. Criminal penalties.** – Any person who knowingly or recklessly performs or
28 attempts to perform an abortion in violation of this act shall be guilty of a felony. Any physician
29 who knowingly or recklessly submits a false report under subsection (c) of section 23-4.13-6 shall
30 be guilty of a misdemeanor. No penalty may be assessed against the female upon whom the
31 abortion is performed or attempted to be performed. No penalty or civil liability may be assessed
32 for failure to comply with paragraph (iii) of subsection (2) of section 23-4.13-3 or that portion of
33 subsection (3) of section 23-4.13-3 requiring a written certification that the female has been
34 informed of her opportunity to review the information referred to in subsection (2).

1 **23-4.13-9. Civil remedies.** – (a) Civil suits for violation. Any person upon whom an
2 abortion has been performed without complying with this chapter, the father of the unborn child
3 who was the subject of such an abortion, or the grandparent of such an unborn child may maintain
4 an action against the person who performed the abortion in knowing or reckless violation of this
5 chapter for actual and punitive damages. Any person upon whom an abortion has been attempted
6 without complying with this chapter may maintain an action against the person who attempted to
7 perform the abortion in knowing or reckless violation of this chapter for actual or punitive
8 damages.

9 (b) Suit to compel statistical report. If the department of health fails to issue the public
10 report required by subsection (c) of section 23-4.13-6 any group of ten (10) or more citizens of
11 this state may seek an injunction in a court of competent jurisdiction against the director of the
12 department of health requiring that a complete report be issued within a period stated by court
13 order. Failure to abide by such an injunction shall subject the director to sanctions for civil
14 contempt.

15 (c) Attorney's fee. If judgment is rendered in favor of the plaintiff in any action
16 described in this section, the court shall also render judgment for a reasonable attorney's fee in
17 favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and
18 the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also
19 render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

20 **23-4.13-10. Protection of privacy in court proceedings.** – In every civil or criminal
21 proceeding or action brought under this article, the court shall rule whether the anonymity of any
22 female upon whom an abortion has been performed or attempted shall be preserved from public
23 disclosure if she does not give her consent to such disclosure. The court, upon motion or sua
24 sponte, shall make such a ruling and, upon determining that her anonymity should be preserved,
25 shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record
26 and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to
27 safeguard her identity from public disclosure. Each such order shall be accompanied by specific
28 written findings explaining why the anonymity of the female should be preserved from public
29 disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that
30 interest, and why no reasonable less restrictive alternative exists. In the absence of written
31 consent of the female upon whom an abortion has been performed or attempted, anyone, other
32 than a public official, who brings an action under subsection (a) of section 23-4.13-8 shall do so
33 under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or
34 of witnesses from the defendant.

1 **23-4.13-11. Severability.** -- If any provision of this chapter or the application thereof to
2 any person or circumstances is held invalid, such invalidity shall not affect any other provisions
3 or applications of the chapter, which can be given effect without the invalid provision or
4 application, and to this end the provisions of this chapter are declared to be severable.

5 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- WOMEN'S RIGHT TO KNOW ACT

- 1 This act would establish informed consent procedures for women seeking abortions.
- 2 The act would take effect upon passage.

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