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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO HEALTH AND SAFETY - PARTIAL - BIRTH ABORTION

Introduced By: Representatives Serpa, O'Brien, Fellela, MacBeth, and Baldelli-Hunt

Date Introduced: February 07, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 23-4.12 of the General Laws entitled "Partial-Birth Abortion" is
2 hereby repealed in its entirety.

3 ~~CHAPTER 23-4.12~~

4 ~~Partial Birth Abortion~~

5 ~~**23-4.12-1. Definitions.** --- (a) For purposes of this chapter, "partial birth abortion" means~~
6 ~~an abortion in which the person performing the abortion vaginally delivers a living human fetus~~
7 ~~before killing the infant and completing the delivery.~~

8 ~~(b) For purposes of this chapter, the terms "fetus" and "infant" are used interchangeably~~
9 ~~to refer to the biological offspring of human parents.~~

10 ~~(c) As used in this section, "vaginally delivers a living fetus before killing the infant"~~
11 ~~means deliberately and intentionally delivers into the vagina a living fetus, or a substantial~~
12 ~~portion of the fetus, for the purpose of performing a procedure the person performing the abortion~~
13 ~~knows will kill the infant, and kills the infant.~~

14 ~~**23-4.12-2. Prohibition of partial birth abortions.** --- No person shall knowingly perform~~
15 ~~a partial birth abortion.~~

16 ~~**23-4.12-3. Life of the mother exception.** --- Section 23-4.12-2 shall not apply to a partial~~
17 ~~birth abortion that is necessary to save the life of a mother because her life is endangered by a~~
18 ~~physical disorder, physical illness, or physical injury, including a life-endangering condition~~
19 ~~caused by or arising from the pregnancy itself; provided, that no other medical procedure would~~

1 suffice for that purpose.

2 ~~**23-4.12-4. Civil remedies.** --- (a) The woman upon whom a partial birth abortion has~~
3 ~~been performed in violation of section 23-4.12-2, the father of the fetus or infant, and the~~
4 ~~maternal grandparents of the fetus or infant, and the maternal grandparents of the fetus or infant if~~
5 ~~the mother has not attained the age of eighteen (18) years at the time of the abortion, may obtain~~
6 ~~appropriate relief in a civil action, unless the pregnancy resulted from the plaintiff's criminal~~
7 ~~conduct or the plaintiff consented to the abortion.~~

8 ~~(b) The relief shall include:~~

9 ~~(1) Money damages for all injuries, psychological and physical, occasioned by the~~
10 ~~violation of this chapter; and~~

11 ~~(2) Statutory damages equal to three (3) times the cost of the partial birth abortion.~~

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

17 ~~**23-4.12-5. Penalty.** --- (a) Performance of a partial birth abortion deliberately and~~
18 ~~intentionally is a violation of this chapter and shall be a felony.~~

19 ~~(b) A woman upon whom a partial birth abortion is performed may not be prosecuted~~
20 ~~under this chapter for violating this chapter or any provision this chapter, or for conspiracy to~~
21 ~~violate this chapter or any provision this chapter.~~

22 ~~**23-4.12-6. Severability.** --- (a) If any one or more provisions, clauses, phrases, or words~~
23 ~~of section 23-4.12-3 or the application of that section to any person or circumstance is found to be~~
24 ~~unconstitutional, it is declared to be inseverable.~~

25 ~~(b) If any one or more provisions, sections, subsections, sentences, clauses, phrases or~~
26 ~~words of the remaining sections or the application of them to any person or circumstance is found~~
27 ~~to be unconstitutional, they are declared to be severable and the balance of the chapter shall~~
28 ~~remain effective notwithstanding the unconstitutionality. The legislature declares that it would~~
29 ~~have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or~~
30 ~~words, with the exception of section 23-4.12-3, irrespective of the fact that any one or more~~
31 ~~provisions, sections, subsections, sentences, clauses, phrases, or words be declared~~
32 ~~unconstitutional.~~

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

1 CHAPTER 4.13

2 PARTIAL - BIRTH ABORTION

3 **23-4.13-1. Definitions.** -- (a) For purposes of this chapter, "partial-birth abortion" means
4 an abortion in which the person performing the abortion: (1) Deliberately and intentionally
5 vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head
6 is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk
7 past the navel is outside the body of the mother, for the purpose of performing an overt act that
8 the person knows will kill the partially delivered living fetus; and

9 (2) Performs the overt act, other than completion of delivery, that kills the partially
10 delivered living fetus.

11 (b) "Physician" means a doctor of medicine or osteopathy legally authorized to practice
12 medicine and surgery in the state, or any other individual legally authorized by the state to
13 perform abortions: provided, however, that any individual who is not a physician or not otherwise
14 legally authorized by the state to perform abortions, but who nevertheless directly performs a
15 partial-birth abortion, shall be subject to the provisions of this chapter.

16 **23-4.13-2. Prohibition of partial-birth abortions.** -- Any physician who knowingly
17 performs a partial-birth abortion and thereby kills a human fetus is guilty of a felony. A female
18 upon whom a partial-birth abortion is performed may not be prosecuted under this chapter.

19 **23-4.13-3. License suspension or revocation and fines.** -- If the offender is a
20 professionally licensed person, in addition to any other penalty imposed by law for the offense,
21 the state board of medical licensure and discipline may assess a civil fine, after proper notice and
22 an opportunity to be heard, against a licensee for unprofessional conduct in an amount not to
23 exceed twenty-five thousand dollars (\$25,000) for the first (1st) violation, fifty thousand dollars
24 (\$50,000) for the second (2nd) violation and one hundred thousand dollars (\$100,000) for the third
25 (3rd) violation and for each subsequent violation an amount in excess of one hundred thousand
26 dollars (\$100,000) sufficient to deter future violations. Additionally his or her license shall be
27 subject to suspension or revocation in accordance with procedures provided under chapter 37 of
28 title 5. All fines assessed and collected under this subsection shall be remitted to the state
29 treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount
30 in the state treasury to the credit of the state general fund.

31 **23-4.13-4. Affirmative defense.** -- In any proceeding pursuant to this chapter relating to
32 the performance of a partial-birth abortion, it is an affirmative defense that the defendant
33 performed the partial-birth abortion if it was necessary to save the life of a mother whose life is
34 endangered by a physical disorder, physical illness, or physical injury, including a life-

1 endangering physical condition caused by or arising from the pregnancy itself.

2 **23-4.13-5. Review by state medical board.** -- (a) A defendant accused of an offense
3 under this chapter may seek a hearing before the state board of medical licensure and discipline
4 on whether the physician's conduct was necessary to save the life of the mother whose life was
5 endangered by a physical disorder, physical illness, or physical injury, including a life-
6 endangering physical condition caused by or arising from the pregnancy itself.

7 (b) The finding on that issue are admissible on that issue at the trial of the defendant.
8 Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than
9 thirty (30) days to permit such a hearing to take place.

10 **23-4.13-6. Civil remedies.** -- (a) The woman upon whom a partial-birth abortion has
11 been performed, the parent of a minor upon whom a partial-birth abortion has been performed,
12 and the father of the unborn child subject to a partial-birth abortion that has been performed,
13 unless the pregnancy resulted from the plaintiff's criminal conduct, may, in a civil action, obtain
14 appropriate relief from the person who performed the partial-birth abortion unlawfully under this
15 chapter with knowledge that it was such an abortion or with reckless disregard for whether it was
16 such an abortion.

17 (b) Such relief shall include:

18 (1) Money damages for all injuries, psychological and physical, occasioned by the
19 violation of this chapter; and

20 (2) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

21 (c) If judgment is rendered in favor of the plaintiff in an action described in this section,
22 the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against
23 the defendant.

24 (d) No person is estopped from recovery in such a suit on the ground that either the
25 plaintiff or the person upon whom the partial-birth abortion was performed gave consent to the
26 abortion. Any contract of indemnification for such damages is void.

27 (e) No damages or attorney's fees may be assessed against the female on whom a partial-
28 birth abortion is performed.

29 **23-4.13-7. Provision for anonymity of female.** -- In every proceeding or action pursuant
30 to this chapter, the court shall rule whether the anonymity of any female upon whom a partial-
31 birth abortion is performed should be preserved from public disclosure if she does not give her
32 consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and,
33 upon determining that her anonymity should be preserved, shall issue orders to the parties,
34 witnesses and counsel, and shall direct the sealing of the record and exclusion of individuals from

1 courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public
2 disclosure. Each such order shall be accompanied by a specific written findings explaining why
3 the anonymity of the female should be preserved from public disclosure, why the order is
4 essential to that end, how the order is narrowly tailored to serve that interest, and why no
5 reasonable less restrictive alternative exists. In the absence of written consent of the female upon
6 whom a partial-birth abortion has been performed, anyone, other than a public official, who
7 brings an action under this section shall do so under a pseudonym. This section may not be
8 construed to conceal the identity of the plaintiff or of witnesses from the defendant.

9 **23-4.13-8. Construction.** -- (a) Nothing in this chapter shall be construed as creating or
10 recognizing a right to abortion.

11 (b) It is not the intention of this chapter to make lawful an abortion that is currently
12 unlawful.

13 (c) The adoption of this chapter does not repeal or modify, by implication or otherwise,
14 any provision of state law not expressly amended by this chapter.

15 **23-4.13-9. Severability.** -- If any provision of this chapter or the application thereof to
16 any person or circumstance is held invalid, such invalidity does not affect the provisions for
17 applications of this chapter which can be given effect without the invalid provision or application
18 and to this end, the provisions of this chapter are declared to be severable.

19 SECTION 3. 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 - PARTIAL - BIRTH ABORTION

1 This act would repeal chapter 23-4.12 of the general laws entitled "Partial-Birth
2 Abortion" in its entirety and results in place thereof with language that creates a prohibition of
3 partial-birth abortions. This act would also make any physician who knowingly performs a
4 partial-birth abortion guilty of a felony and imposes penalties and fines.

5 This act would take effect upon passage.

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