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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

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A N A C T

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

Introduced By: Senators Alves, Goodwin, Ciccone, Blais, and McBurney

Date Introduced: February 13, 2007

Referred To: Senate Judiciary

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:

3 CHAPTER 4.13

4 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:

8 (1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any
9 other substance or device intentionally to terminate the pregnancy of a female known to be
10 pregnant with an intention other than to increase the probability of a live birth, to preserve the life
11 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.

16 (3) "Medical emergency" means any condition which, on the basis of the physician's
17 good faith clinical judgment, so complicates the medical condition of a pregnant female as to
18 necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will
19 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, a revision of the information previously supplied to the patient, that revised information
30 may be communicated to the patient at any time prior to the performance of the abortion.
31 Nothing in this section may be construed to preclude a provision of required information in a
32 language understood by the patient through a translator.

33 (2) Information which may be provided by agent of physician. The female shall be
34 informed, by telephone or in person, by the physician who is to perform the abortion, by a

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

3 (i) That medical assistance benefits may be available for prenatal care, childbirth, and
4 neonatal care;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 risk of substantial and irreversible impairment of a major bodily function.

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

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

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

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

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

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

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

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

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

34 (c) Reporting requirement. By February 28 of each year following a calendar year in any

1 part of which this act was in effect, each physician who provided or whose agent provided,
2 information to one (1) or more females in accordance with section 23-4.13-3 during the previous
3 calendar year shall submit to the department of health a copy of the form described in subsection
4 (a) of this section, with the requested data entered accurately and completely.

5 (d) Failure to report as required. Reports that are not submitted by the end of a grace
6 period of thirty (30) days following the due date shall be subject to a late fee of five hundred
7 dollars (\$500) for each additional thirty (30) day period or portion of a thirty (30) day period they
8 are overdue. Any physician required to report in accordance with this section who has not
9 submitted a report, or has submitted only an incomplete report, more than one (1) year following
10 the due date, may, in an action brought by the department of health, be directed by a court of
11 competent jurisdiction to submit a complete report within a period stated by court order or be
12 subject to sanctions for civil contempt.

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

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

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

1 informed of her opportunity to review the information referred to in subsection (2).

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

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

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

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

1 of witnesses from the defendant.

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

6 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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