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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO HEALTH AND SAFETY -- THE REPRODUCTIVE HEALTH CARE ACT

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 REPRODUCTIVE PRIVACY ACT

5 23-4.13-1. Short title.

6 This chapter shall be known and may be cited as the "Reproductive Privacy Act."

7 23-4.13-2. Abortion.

8 (a) Neither the state, nor any of its agencies, or political subdivisions shall restrict an
9 individual person from preventing, commencing, continuing, or terminating that individual's
10 pregnancy prior to fetal viability.

1 (b) The termination of an individual's pregnancy after fetal viability is expressly prohibited
2 except for when necessary in the good faith clinical medical judgment of the physician to save the
3 life of the individual, or in the event of a medical emergency, or if a continuation of the pregnancy
4 will impose on the individual a substantial risk of grave impairment to their physical or mental
5 health.

6 (c) For purposes of this section, "fetal viability" means that stage of gestation where the
7 attending physician, taking into account the particular facts of the case, has determined that there
8 is a reasonable likelihood of the fetus' sustained survival outside of the womb with or without
9 artificial support.

10 (d) For purposes of this section, "medical emergency" means that condition which, on the
11 basis of the physician's good faith clinical judgment, so complicates the medical condition of a
12 pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for
13 which a delay will create serious risk of substantial and irreversible impairment of a major bodily
14 function.

15 (e) Any physician who knowingly violates the provisions of this section shall be deemed
16 to have engaged in "unprofessional conduct" for the purpose of § 5-37-5.1 and shall be deemed
17 guilty of a felony.

18 **23-4.13-3. Constitutionality.**

19 If any part, clause or section of this chapter shall be declared invalid or unconstitutional by
20 a court of competent jurisdiction, the validity of the remaining provisions, parts or sections shall
21 not be affected.

22 SECTION 2. Chapter 11-3 of the General Laws entitled "Abortion" is hereby repealed in
23 its entirety:

24 **CHAPTER 3**

25 **Abortion**

26 **11-3-1. Procuring, counseling or attempting miscarriage.**

1 ~~Every person who, with the intent to procure the miscarriage of any pregnant woman or~~
2 ~~woman supposed by such person to be pregnant, unless the same be necessary to preserve her life,~~
3 ~~shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use~~
4 ~~any instrument or other means whatsoever or shall aid, assist or counsel any person so intending to~~
5 ~~procure a miscarriage, shall if the woman die in consequence thereof, be imprisoned not exceeding~~
6 ~~twenty (20) years nor less than five (5) years, and if she does not die in consequence thereof, shall~~
7 ~~be imprisoned not exceeding seven (7) years nor less than one (1) year; provided that the woman~~
8 ~~whose miscarriage shall have been caused or attempted shall not be liable to the penalties prescribed~~
9 ~~by this section.~~

10 ~~**11-3-2. Murder charged in same indictment or information.**~~

11 ~~Any person who shall be charged with the murder of any infant child, or of any pregnant~~
12 ~~woman, or of any woman supposed by such person to be or to have been pregnant, may also be~~
13 ~~charged in the same indictment or information with any or all the offenses mentioned in 11-3-1,~~
14 ~~and if the jury shall acquit such person on the charge of murder and find him guilty of the other~~
15 ~~offenses or either of them, judgment and sentence may be awarded against him accordingly.~~

16 ~~**11-3-3. Dying declarations admissible.**~~

17 ~~In prosecutions for any of the offenses described section 11-3-1, in which the death of a~~
18 ~~woman is alleged to have resulted from the means therein described, dying declarations of the~~
19 ~~deceased woman shall be admissible as evidence, as in homicide cases.~~

20 ~~**11-3-4. Construction and application of section 11-3-1.**~~

21 ~~It shall be conclusively presumed in any action concerning the construction, application or~~
22 ~~validity of section 11-3-1, that human life commences at the instant of conception and that said~~
23 ~~human life at said instant of conception is a person within the language and meaning of the~~
24 ~~fourteenth amendment of the constitution of the United States, and that miscarriage at any time~~
25 ~~after the instant of conception caused by the administration of any poison or other noxious thing or~~
26 ~~the use of any instrument or other means shall be a violation of said section 11-3-1, unless the same~~

1 ~~be necessary to preserve the life of a woman who is pregnant.~~

2 ~~**11-3-5. Constitutionality.**~~

3 ~~If any part, clause or section of this act shall be declared invalid or unconstitutional by a~~
4 ~~court of competent jurisdiction, the validity of the remaining provisions, parts or sections shall not~~
5 ~~be affected.~~

6 SECTION 3. Section 11-23-5 of the General Laws in Chapter 11-23 entitled "Homicide"
7 is hereby repealed in its entirety:

8 ~~**11-23-5. Willful killing of unborn quick child.**~~

9 (a) The willful killing of an unborn quick child by any injury to the mother of the child,
10 which would be murder if it resulted in the death of the mother; the administration to any woman
11 pregnant with a quick child of any medication, drug, or substance or the use of any instrument or
12 device or other means, with intent to destroy the child, unless it is necessary to preserve the life of
13 the mother; in the event of the death of the child; shall be deemed manslaughter.

14 (b) In any prosecution under this section, it shall not be necessary for the prosecution to
15 prove that any necessity existed.

16 (c) For the purposes of this section, "quick child" means an unborn child whose heart is
17 beating, who is experiencing electronically-measurable brain waves, who is discernibly moving,
18 and who is so far developed and matured as to be capable of surviving the trauma of birth with the
19 aid of usual medical care and facilities available in this state.

20 ~~(d) The provisions of this section shall not apply to any individual or physician involved in~~
21 ~~the termination of a pregnancy in accordance with the provisions of chapter 4.13 of title 23.~~

22 SECTION 4. Chapter 23-4.8 of the General Laws entitled "Spousal Notice for Abortion"
23 is hereby repealed in its entirety.

24 ~~CHAPTER 23-4.8~~

25 ~~Spousal Notice for Abortion~~

26 ~~**23-4.8-1. Declaration of purpose.**~~

1 ~~The purpose of this chapter is to promote the state's interest in furthering the integrity of~~
2 ~~the institutions of marriage and the family.~~

3 ~~**23-4.8-2. Spousal notice requirements.**~~

4 ~~If a married woman consents to an abortion, as that consent is required by chapter 4.7 of~~
5 ~~this title, the physician who is to perform the abortion or his or her authorized agent shall, if~~
6 ~~reasonably possible, notify the husband of that woman of the proposed abortion before it is~~
7 ~~performed.~~

8 ~~**23-4.8-3. Exceptions.**~~

9 ~~The requirements of § 23-4.8-2 shall not apply if:~~

10 ~~(1) The woman having the abortion furnishes to the physician who is to perform the~~
11 ~~abortion or the physician's authorized agent prior to the abortion being performed a written~~
12 ~~statement that she has given notice to her husband of the proposed abortion or a written statement~~
13 ~~that the fetus was not fathered by her husband;~~

14 ~~(2) The woman and her husband are living separate and apart or either spouse has filed a~~
15 ~~petition or complaint for divorce in a court of competent jurisdiction;~~

16 ~~(3) The physician who is to perform the abortion or his or her authorized agent receives the~~
17 ~~written affirmation of the husband that he has been notified of the proposed abortion; or~~

18 ~~(4) There is an emergency requiring immediate action. In the case of an emergency, the~~
19 ~~woman's attending physician shall certify in writing on the patient's medical record that an~~
20 ~~emergency exists and the medical basis for his or her opinion.~~

21 ~~**23-4.8-4. Penalties.**~~

22 ~~In the event a physician performs an abortion, as defined by chapter 4.7 of this title, upon~~
23 ~~a woman who he or she knows is married and the physician knowingly and intentionally violates~~
24 ~~the requirements of this chapter, he or she shall be guilty of "unprofessional conduct" for the~~
25 ~~purposes of § 5-37-5.1.~~

26 ~~**23-4.8-5. Severability.**~~

1 ~~If any section or provision of this chapter or the application of any section or provision is~~
2 ~~held invalid, that invalidity shall not affect other sections, provisions or applications, and to this~~
3 ~~end the sections and provisions of this chapter are declared severable.~~

4 SECTION 5. Chapter 23-4.12 of the General Laws entitled "Partial Birth Abortion" is
5 hereby amended by adding thereto the following section:

6 **23-4.12-7. Partial-birth abortion ban act of 2003.**

7 Nothing in this chapter shall be deemed to abrogate the provisions of 18 U.S.C. § 1531,
8 entitled "Partial-birth abortions prohibited" and cited as the "Partial-Birth Abortion Ban Act of
9 2003."

10 SECTION 6. Section 27-18-28 of the General Laws in Chapter 27-18 entitled "Accident
11 and Sickness Insurance Policies" is hereby repealed.

12 **~~27-18-28. Health insurance contracts -- Abortion.~~**

13 ~~(a) No health insurance contract, plan, or policy, delivered or issued for delivery in the~~
14 ~~state, shall provide coverage for induced abortions, except where the life of the mother would be~~
15 ~~endangered if the fetus were carried to term or where the pregnancy resulted from rape or incest,~~
16 ~~and except by an optional rider for which there must be paid an additional premium. This section~~
17 ~~shall be applicable to all contracts, plans, or policies of:~~

18 ~~(1) All health insurers subject to this title;~~

19 ~~(2) All group and blanket health insurers subject to this title;~~

20 ~~(3) All nonprofit hospital, medical, surgical, dental, and health service corporations; and~~

21 ~~(4) All health maintenance organizations;~~

22 ~~(5) Any provision of medical, hospital, surgical, and funeral benefits, and of coverage~~
23 ~~against accidental death or injury, when the benefits or coverage are incidental to or part of other~~
24 ~~insurance authorized by the statutes of this state.~~

25 ~~(b) Nothing contained in this section shall be construed to pertain to insurance coverage~~
26 ~~for complications as the result of an abortion.~~

1 SECTION 7. Section 36-12-2.1 of the General Laws in Chapter 36-12 entitled "Insurance
2 Benefits" is hereby amended to read as follows:

3 **36-12-2.1. Health insurance benefits -- Coverage for abortions excluded.**

4 (a) The state of Rhode Island ~~or any city or town~~ shall not include in any health insurance
5 contracts, plans, or policies covering employees, any provision which shall provide coverage for
6 induced abortions (except where the life of the mother would be endangered if the fetus were carried
7 to term, or where the pregnancy resulted from rape or incest). This section shall be applicable to all
8 contracts, plans or policies of:

9 (1) All health insurers subject to title 27;

10 (2) All group and blanket health insurers subject to title 27;

11 (3) All nonprofit hospital, medical, surgical, dental, and health service corporations;

12 (4) All health maintenance organizations; and

13 (5) Any provision of medical, hospital, surgical, and funeral benefits and of coverage
14 against accidental death or injury when the benefits or coverage are incidental to or part of other
15 insurance authorized by the statutes of this state.

16 (b) Provided, however, that the provisions of this section shall not apply to benefits
17 provided under existing collective bargaining agreements entered into prior to June 30, 1982.

18 (c) Nothing contained herein shall be construed to pertain to insurance coverage for
19 complications as the result of an abortion.

20 SECTION 8. Section 42-12.3-3 of the General Laws in Chapter 42-12.3 entitled "Health
21 Care for Children and Pregnant Women" is hereby amended to read as follows:

22 **42-12.3-3. Medical assistance expansion for pregnant women/RItE Start.**

23 (a) The director of the department of human services is authorized to amend its title XIX
24 state plan pursuant to title XIX of the Social Security Act to provide Medicaid coverage and to
25 amend its title XXI state plan pursuant to Title XXI of the Social Security Act to provide medical
26 assistance coverage through expanded family income disregards for pregnant women whose family

1 income levels are between one hundred eighty-five percent (185%) and two hundred fifty percent
2 (250%) of the federal poverty level. The department is further authorized to promulgate any
3 regulations necessary and in accord with title XIX [42 U.S.C. § 1396 et seq.] and title XXI [42
4 U.S.C. § 1397 et seq.] of the Social Security Act necessary in order to implement said state plan
5 amendment. The services provided shall be in accord with title XIX [42 U.S.C. § 1396 et seq.] and
6 title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

7 (b) The director of the department of human services is authorized and directed to establish
8 a payor of last resort program to cover prenatal, delivery and postpartum care. The program shall
9 cover the cost of maternity care for any woman who lacks health insurance coverage for maternity
10 care and who is not eligible for medical assistance under title XIX [42 U.S.C. § 1396 et seq.] and
11 title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act including, but not limited to, a non-
12 citizen pregnant woman lawfully admitted for permanent residence on or after August 22, 1996,
13 without regard to the availability of federal financial participation, provided such pregnant woman
14 satisfies all other eligibility requirements. The director shall promulgate regulations to implement
15 this program. Such regulations shall include specific eligibility criteria; the scope of services to be
16 covered; procedures for administration and service delivery; referrals for non-covered services;
17 outreach; and public education. Excluded services under this paragraph will include, but not be
18 limited to, induced abortion except ~~to prevent the death of the mother~~ in cases of rape or incest or
19 to save the life of the pregnant individual.

20 (c) The department of human services may enter into cooperative agreements with the
21 department of health and/or other state agencies to provide services to individuals eligible for
22 services under subsections (a) and (b) above.

23 (d) The following services shall be provided through the program:

24 (1) Ante-partum and postpartum care;

25 (2) Delivery;

26 (3) Cesarean section;

1 (4) Newborn hospital care;

2 (5) Inpatient transportation from one hospital to another when authorized by a medical
3 provider;

4 (6) Prescription medications and laboratory tests;

5 (e) The department of human services shall provide enhanced services, as appropriate, to
6 pregnant women as defined in subsections (a) and (b), as well as to other pregnant women eligible
7 for medical assistance. These services shall include: care coordination, nutrition and social service
8 counseling, high risk obstetrical care, childbirth and parenting preparation programs, smoking
9 cessation programs, outpatient counseling for drug-alcohol use, interpreter services, mental health
10 services, and home visitation. The provision of enhanced services is subject to available
11 appropriations. In the event that appropriations are not adequate for the provision of these services,
12 the department has the authority to limit the amount, scope and duration of these enhanced services.

13 (f) The department of human services shall provide for extended family planning services
14 for up to twenty-four (24) months postpartum. These services shall be available to women who
15 have been determined eligible for RItE Start or for medical assistance under title XIX [42 U.S.C. §
16 1396 et seq.] or title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

17 SECTION 9. Section 5-37-5.1 of the General Laws in Chapter 5-37 entitled "Board of
18 Medical Licensure and Discipline" is hereby amended to read as follows:

19 **5-37-5.1. Unprofessional conduct.**

20 The term "unprofessional conduct" as used in this chapter includes, but is not limited to,
21 the following items or any combination of these items and may be further defined by regulations
22 established by the board with the prior approval of the director:

23 (1) Fraudulent or deceptive procuring or use of a license or limited registration;

24 (2) All advertising of medical business, which is intended or has a tendency to deceive the
25 public;

26 (3) Conviction of a crime involving moral turpitude; conviction of a felony; conviction of

- 1 a crime arising out of the practice of medicine;
- 2 (4) Abandoning a patient;
- 3 (5) Dependence upon controlled substances, habitual drunkenness, or rendering
4 professional services to a patient while the physician or limited registrant is intoxicated or
5 incapacitated by the use of drugs;
- 6 (6) Promotion by a physician or limited registrant of the sale of drugs, devices, appliances,
7 or goods or services provided for a patient in a manner as to exploit the patient for the financial
8 gain of the physician or limited registrant;
- 9 (7) Immoral conduct of a physician or limited registrant in the practice of medicine;
- 10 (8) Willfully making and filing false reports or records in the practice of medicine;
- 11 (9) Willfully omitting to file or record, or willfully impeding or obstructing a filing or
12 recording, or inducing another person to omit to file or record, medical or other reports as required
13 by law;
- 14 (10) Failing to furnish details of a patient's medical record to succeeding physicians, health
15 care facility, or other health care providers upon proper request pursuant to § 5-37.3-4;
- 16 (11) Soliciting professional patronage by agents or persons or profiting from acts of those
17 representing themselves to be agents of the licensed physician or limited registrants;
- 18 (12) Dividing fees or agreeing to split or divide the fees received for professional services
19 for any person for bringing to or referring a patient;
- 20 (13) Agreeing with clinical or bioanalytical laboratories to accept payments from these
21 laboratories for individual tests or test series for patients;
- 22 (14) Making willful misrepresentations in treatments;
- 23 (15) Practicing medicine with an unlicensed physician except in an accredited
24 preceptorship or residency training program, or aiding or abetting unlicensed persons in the practice
25 of medicine;
- 26 (16) Gross and willful overcharging for professional services; including filing of false

1 statements for collection of fees for which services are not rendered, or willfully making or assisting
2 in making a false claim or deceptive claim or misrepresenting a material fact for use in determining
3 rights to health care or other benefits;

4 (17) Offering, undertaking, or agreeing to cure or treat disease by a secret method,
5 procedure, treatment or medicine;

6 (18) Professional or mental incompetency;

7 (19) Incompetent, negligent, or willful misconduct in the practice of medicine which
8 includes the rendering of medically unnecessary services, and any departure from, or the failure to
9 conform to, the minimal standards of acceptable and prevailing medical practice in his or her area
10 of expertise as is determined by the board. The board does not need to establish actual injury to the
11 patient in order to adjudge a physician or limited registrant guilty of the unacceptable medical
12 practice in this subdivision;

13 (20) Failing to comply with the provisions of chapter 4.7 of title 23;

14 (21) Surrender, revocation, suspension, limitation of privilege based on quality of care
15 provided, or any other disciplinary action against a license or authorization to practice medicine in
16 another state or jurisdiction; or surrender, revocation, suspension, or any other disciplinary action
17 relating to a membership on any medical staff or in any medical or professional association or
18 society while under disciplinary investigation by any of those authorities or bodies for acts or
19 conduct similar to acts or conduct which would constitute grounds for action as described in this
20 chapter;

21 (22) Multiple adverse judgments, settlements or awards arising from medical liability
22 claims related to acts or conduct which would constitute grounds for action as described in this
23 chapter;

24 (23) Failing to furnish the board, its chief administrative officer, investigator or
25 representatives, information legally requested by the board;

26 (24) Violating any provision or provisions of this chapter or the rules and regulations of

1 the board or any rules or regulations promulgated by the director or of an action, stipulation, or
2 agreement of the board;

3 (25) Cheating on or attempting to subvert the licensing examination;

4 (26) Violating any state or federal law or regulation relating to controlled substances;

5 (27) Failing to maintain standards established by peer review boards, including, but not
6 limited to, standards related to proper utilization of services, use of nonaccepted procedure, and/or
7 quality of care;

8 (28) A pattern of medical malpractice, or willful or gross malpractice on a particular
9 occasion;

10 (29) Agreeing to treat a beneficiary of health insurance under title XVIII of the Social
11 Security Act, 42 U.S.C. § 1395 et seq., "Medicare Act", and then charging or collecting from this
12 beneficiary any amount in excess of the amount or amounts permitted pursuant to the Medicare
13 Act; or

14 (30) Sexual contact between a physician and patient during the existence of the
15 physician/patient relationship; or

16 (31) Knowingly violating the provisions of § 23-4.13-2(b).

17 SECTION 10. Severability.

18 If any chapter, section or provision of this legislation or the application of any chapter,
19 section or provision is held invalid, that invalidity shall not affect other chapters, sections,
20 provisions or applications, and to this end the chapters, sections and provisions of this legislation
21 are declared severable.

22 SECTION 11. This act shall take effect upon passage.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- THE REPRODUCTIVE HEALTH CARE ACT

- 1 This act would serve to codify the privacy rights guaranteed by the decision reached in the
- 2 United States Supreme Court case of *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny.
- 3 This act would take effect upon passage.

