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H.254

Introduced by Representatives Mulvaney-Stanak of Burlington, Andriano of
Orwell, Anthony of Barre City, Brumsted of Shelburne,
Burrows of West Windsor, Chase of Chester, Cina of
Burlington, Cole of Hartford, Cordes of Lincoln, Garofano of
Essex, Goldman of Rockingham, Graning of Jericho, Headrick
of Burlington, Krasnow of South Burlington, Leavitt of Grand
Isle, Logan of Burlington, McCann of Montpelier, Nicoll of
Ludlow, Ode of Burlington, Priestley of Bradford, Rachelson of
Burlington, Rice of Dorset, Sibia of Dover, Small of
Winooski, Stebbins of Burlington, Stone of Burlington, White
of Bethel, Whitman of Bennington, and Williams of Barre City

Referred to Committee on

Date:

Subject: Consumer protection; unfair or deceptive acts or practice; pregnancy
centers

Statement of purpose of bill as introduced: This bill proposes to prohibit crisis
pregnancy centers (CPC) from disseminating any advertising about the
services or proposed services at the center if the management of the center
knows or, by the exercise of reasonable care, ought to know it is untrue or
clearly designed to mislead the public about the nature of services provided or

1 delay time-sensitive medical care or both. This bill will ensure consumers are
2 aware of whether the CPCs are licensed medical facilities and what services
3 actually provided, as well as protect consumer privacy and data. A violation
4 would be considered an unfair or deceptive act or practice in commerce and
5 subject to the enforcement actions authorized for such under current law.

6 An act relating to pregnancy center fraud

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 Sec. 1. 9 V.S.A. chapter 63, subchapter 11 is added to read:

9 Subchapter 11. Pregnancy Center Fraud

10 § 2491. LEGISLATIVE FINDINGS

11 The General Assembly finds that:

12 (1) In June 2022, the U.S. Supreme Court ruled in *Dobbs v. Jackson* that
13 abortion is not a constitutional right, leaving abortion regulation up to
14 individual states. This changed the legal access to abortion in many states
15 where state law restricts access to abortion but could not enforce the law due to
16 *Roe vs. Casey*.

17 (2) Due to changes in legal access to abortion care in other states,
18 individuals are seeking care in states where abortion care is legal and
19 accessible. National organizations have shifted resources to account for
20 changes in legal access. This, in part, caused medical clinics providing

1 abortion care and other reproductive health care in Vermont to close leaving
2 some rural areas of the State without an easily accessible site to seek abortion
3 care. Individuals who are from states where abortion is no longer legally
4 accessible, as well as individuals from neighboring states, are traveling to
5 Vermont to seek care. This is creating pressure on existing medical clinics to
6 provide timely and accessible care to Vermonters.

7 (3) In recent years, facilities that seek to prohibit or discourage
8 individuals from having an abortion have become common. These facilities
9 are often referred to as crisis pregnancy centers (CPCs). Although some CPCs
10 are licensed or have a health care provider on staff, most CPCs are not licensed
11 medical clinics and do not employ health care providers for the individuals
12 who come to their facility. New CPCs have opened in recent years, in some
13 cases in the same location, where former licensed medical clinics have closed
14 in Vermont. Vermont currently has eight such facilities, plus a CPC “mobile
15 medical unit” based in Chittenden County.

16 (4) CPCs target individuals with low income by posing as free clinics
17 and advertising services like free ultrasounds, pregnancy tests, and STI testing,
18 although they are not licensed medical providers. CPCs further mislead
19 individuals by paying for search engine optimization to ensure that their
20 websites appear at the top of Internet search results for pregnancy care and
21 abortion clinics, although they do not provide these services.

1 (5) Some CPCs openly acknowledge in their advertising and their
2 facilities that they do not provide abortions or refer individuals to other
3 providers of such services. Many CPCs, however, seek to mislead individuals
4 seeking medical advice on pregnancy or an abortion into believing that their
5 facilities offer unbiased counseling or actual health care, contraception, or
6 abortion services. The counseling provided on abortion and contraception by
7 CPCs falls outside accepted medical standards and guidelines. CPCs suggest a
8 link between abortion and subsequent serious health problems where none
9 exists. CPCs also provide misinformation on sexual health including the
10 efficacy of condom use, hormonal contraception, and causes and consequences
11 of STDs.

12 (6) Many CPCs nationwide, including in Vermont, promote “Abortion
13 Pill Reversal,” the experimental practice of administering high doses of
14 progesterone to pregnant people who have taken the first pill of the two-dose
15 medication abortion regimen. The first randomized study on its efficacy was
16 halted after 25 percent of participants were hospitalized for severe bleeding.

17 (7) Because of the time-sensitive and State constitutionally protected
18 nature of the decision to terminate a pregnancy, false and misleading
19 advertising about the services offered by CPCs is of special concern. CPCs
20 have the constitutional right to say whatever they want against abortion, but it
21 is an entirely different matter to defraud individuals about the services they

1 offer and their status as an unlicensed clinic. Individuals seeking pregnancy
2 confirmation at CPCs not only experience delays in accessing abortion care
3 when desired, but in the case of desired pregnancies, may also experience
4 delayed entry into prenatal care or delayed recognition of pregnancy
5 complications or medical conditions as a result of visiting a nonlicensed clinic.

6 (8) After carefully balancing the State constitutionally protected right of
7 individuals to choose to terminate their pregnancy, the right of individuals to
8 express their religious and ethical beliefs about abortion, the harm to
9 individuals caused by even slight delays that are a result of false advertising for
10 pregnancy or abortion services, and the cost to the government that can accrue
11 from such delay, it is clear that there exists a need to regulate false and
12 misleading advertising by pregnancy facilities offering limited services and to
13 require disclosure of licensing status.

14 (9) Because they are not licensed medical facilities, CPCs are not
15 subject to HIPPA regulations about client privacy and the disclosure of
16 personal information. Yet, CPCs practice extensive personal data collection
17 while impersonating medical facilities. Ninety percent of CPCs are run by
18 three national organizations (CareNet, Heartbeat International, and The
19 National Institute of Family and Life Advocates). Data collected at the local
20 level is recorded in large national content management systems. Their data
21 storage and mining operations create “digital dossiers” on visitors. CPCs also

1 collect data and record conversations through online chat portals. This
2 sensitive data is collected in a deceptive environment with the potential to be
3 used for criminal action against people who seek abortions. This bill seeks to
4 regulate what data CPCs collect, with whom they share it, and how they use it
5 and to require authorization for disclosure of nonpublic medical information.

6 § 2491a. DEFINITIONS

7 As used in this subchapter:

8 (1) “Abortion” means any medical treatment intended to induce the
9 termination of a pregnancy except for the purpose of producing a live birth.

10 (2) “Client” means an individual who is inquiring about or seeking
11 services at a crisis pregnancy center.

12 (3) “Crisis pregnancy center” means a facility, including a mobile
13 facility, where the primary purpose is to provide services to individuals who
14 are or may be pregnant and that either offers obstetric ultrasounds, obstetric
15 sonograms, or prenatal care to pregnant individuals or has the appearance of a
16 medical facility. A crisis pregnancy center has the appearance of a medical
17 facility if two or more of the following factors are present:

18 (A) the facility offers pregnancy testing or pregnancy diagnosis, or
19 both;

20 (B) the facility has staff or volunteers who wear medical attire or
21 uniforms;

1 (C) the facility contains one or more examination tables;

2 (D) the facility contains a private or semiprivate room or area
3 containing medical supplies or medical instruments;

4 (E) the facility has staff or volunteers who collect health information
5 from clients; or

6 (F) the facility is located on the same premises as a State-licensed
7 medical facility or provider or shares facility space with a State-licensed
8 medical provider.

9 (4) “Emergency contraception” means any drug or device approved by
10 the U.S. Food and Drug Administration that prevents pregnancy after sexual
11 intercourse.

12 (5) “Health information” means any oral or written information in any
13 form or medium that relates to health insurance or the past, present, or future
14 physical or mental health or condition of a client.

15 (6) “Limited services crisis pregnancy center” means a crisis pregnancy
16 center that does not directly provide, or provide referrals to clients, for
17 abortions or emergency contraception.

18 (7) “Premises” means land and improvements or appurtenances or any
19 part thereof.

1 § 2491b. DISCLOSURE REQUIREMENTS

2 (a)(1) A crisis pregnancy center shall not disseminate or cause to be
3 disseminated to the public any information or advertisement about the services
4 or proposed services performed at that center if the management of the center
5 knows or, by the exercise of reasonable care, ought to know it is untrue or
6 clearly designed to mislead the public about the nature of services provided.

7 (2) Advertisement includes representations made directly to consumers;
8 marketing practices; communication in any print medium, such as newspapers,
9 magazines, mailers, or handouts; and any broadcast medium, such as television
10 or radio, telephone marketing, or advertising over the Internet such as through
11 websites and web ads.

12 (b) In any advertisement, a crisis pregnancy center shall disclose in gender-
13 neutral wording:

14 (1) whether it is a licensed medical facility;

15 (2) whether abortion services are offered at the facility;

16 (3) whether licensed medical professionals are employed by the facility;

17 (4) whether contraception or pregnancy medical services are offered at
18 the facility; and

19 (5) each funding source of the facility.

20 (c) A crisis pregnancy center shall provide written notice at its physical
21 site, on its website, and on any forms, that specifies:

1 (1) whether it is a licensed medical facility;

2 (2) whether licensed medical professionals are employed at the facility;

3 and

4 (3) what services the facility provides.

5 (d) A crisis pregnancy center shall disclose upon first communication or

6 first contact with a prospective client, either in a written statement or oral

7 communication by staff assisting the client, that the center will not provide

8 abortion or birth control services or make a referral for such services and that

9 the center is not a licensed medical provider, as applicable.

10 § 2491c. DATA PRIVACY

11 (a) A crisis pregnancy center shall not collect, store, disclose, or transfer to

12 another person any nonpublic personal health information about a client

13 without first obtaining written consent on a separate form specific to that

14 information and, with respect to such information, shall comply with the

15 standards for privacy of individually identifiable health information and the

16 security standards for the protection of electronic health information as

17 provided in the Health Insurance Portability and Accountability Act of 1996

18 and rules adopted pursuant to that Act.

19 (b) A crisis pregnancy center shall not target potential clients for services

20 due to the potential client's online data or geolocation.

1 § 2491d. UNFAIR AND DECEPTIVE ACTS

2 (a) A person who violates this section commits an unfair and deceptive act
3 and practice in commerce in violation of section 2453 of this title.

4 (b) The Attorney General or State's Attorney has the same authority to
5 make rules, conduct civil investigations, and bring civil actions with respect to
6 violations of subsection (a) of this section as provided under subchapter 1 of
7 this chapter.

8 Sec. 2. EFFECTIVE DATE

9 This act shall take effect on July 1, 2023.