

1 abortion or the provision of such contraception or abortion except in accordance with evidence-
2 based medically appropriate standards that are in compliance with state and federal statutes
3 enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards
4 referenced in subsection (c)(3), and subsection (d).

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

9 (c) Notwithstanding the foregoing, this section shall not be construed to:

10 (1) Abrogate the provisions of §§ 11-9-18 titled "Care of babies born alive during
11 attempted abortions", 11-54-1 titled "Experimentation on human fetuses", 23-4.6-1 titled
12 "Consent to medical and surgical care", 23-4.7-1 through 23-4.7-8 titled "Informed consent for
13 abortion", 23-13-21 titled "Comprehensive reproductive health services", 23-17-11 titled
14 "Abortion and sterilization -- Protection for nonparticipation -- Procedure", or 42-157-3(d) of the
15 section titled "Rhode Island Health Benefit Exchange -- General requirements";

16 (2) Abrogate the provisions of 18 U.S. Code § 1531, titled "Partial-birth abortions
17 prohibited" and cited as the "Partial-Birth Abortion Ban Act of 2003";

18 (3) Prevent the department of health from applying to licensed health care facilities that
19 provide abortion any generally applicable regulations or standards that are in accordance with
20 evidence-based, medically recognized standards for the provision of abortion in compliance with
21 state and federal statutes enumerated in subsections (c)(1) and (c)(2) and with subsection (d),
22 provided that such application, adoption or enforcement is not a pretext for violating subsection
23 (a) of this section.

24 (d) The termination of an individual's pregnancy after fetal viability is expressly
25 prohibited except when necessary, in the medical judgment of the physician, to preserve the life
26 or health of that individual.

27 (1) Any physician who knowingly violates the provisions of this subsection shall be
28 deemed to have engaged in "unprofessional conduct" for the purpose of § 5-37-5.1.

29 (2) A physician who performs a termination after fetal viability shall be required to
30 record in the patient's medical records the basis for the physician's medical judgment that
31 termination was necessary to preserve the live or health of the patient and must comply with all
32 other relevant requirements applicable to physicians in § 23-3-17.

33 (3) The director of the department of health is authorized to deny or revoke any license to
34 practice allopathic or osteopathic medicine or otherwise discipline a licensee upon finding by the

1 [board that the person is guilty of unprofessional conduct under § 5-37-5.1\(31\).](#)

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

4 CHAPTER 3

5 Abortion

6 **11-3-1. Procuring, counseling or attempting miscarriage.**

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

16 **11-3-2. Murder charged in same indictment or information.**

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

22 **11-3-3. Dying declarations admissible.**

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

26 **11-3-4. Construction and application of section 11-3-1.**

27 It shall be conclusively presumed in any action concerning the construction, application
28 or validity of section 11-3-1, that human life commences at the instant of conception and that said
29 human life at said instant of conception is a person within the language and meaning of the
30 fourteenth amendment of the constitution of the United States, and that miscarriage at any time
31 after the instant of conception caused by the administration of any poison or other noxious thing
32 or the use of any instrument or other means shall be a violation of said section 11-3-1, unless the
33 same be necessary to preserve the life of a woman who is pregnant.

34 **11-3-5. Constitutionality.**

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

4 SECTION 3. Section 11-5-2 of the General Laws in Chapter 11-5 entitled "Assaults" is
5 hereby amended to read as follows:

6 **11-5-2. Felony assault.**

7 (a) Every person who shall make an assault or battery, or both, upon the person of
8 another, with a dangerous weapon, or with acid or other dangerous substance, or by fire, or an
9 assault or battery that results in serious bodily injury shall be guilty of a felony assault. If such
10 assault results in serious bodily injury, it shall be punished by imprisonment for not more than
11 twenty (20) years. Every other felony assault which results in bodily injury or no injury shall be
12 punished by imprisonment for not more than six (6) years.

13 (b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title
14 12, are applicable, the penalties for violation of this section shall also include the penalties as
15 provided in § 12-29-5.

16 (c) "Serious bodily injury" means physical injury that:

17 (1) Creates a substantial risk of death;

18 (2) Causes protracted loss or impairment of the function of any bodily part, member, or
19 organ; ~~or~~

20 (3) Causes serious permanent disfigurement or circumcises, excises, or infibulates the
21 whole or any part of the labia majora or labia minora or clitoris of a person; ~~or~~

22 (4) Results in the termination of a pregnancy where the person making the assault or
23 battery is someone other than the pregnant person and knows or has reason to know that the
24 person upon whom the assault or battery is made is pregnant.

25 (d) This section shall not apply to acts committed by:

26 (1) Any person relating to the performance of an abortion pursuant to chapter 4.13 of title
27 23, the Reproductive Privacy Act, for which the consent of the pregnant person, or a person
28 authorized by law on her behalf, has been obtained or for which such consent is implied by law;
29 or

30 (2) Any person for any medical treatment of the pregnant person or the fetus.

31 ~~(d)~~(e) "Bodily injury" means physical injury that causes physical pain, illness, or any
32 impairment of physical condition.

33 SECTION 4. Section 11-23-5 of the General Laws in Chapter 11-23 entitled "Homicide"
34 is hereby repealed.

1 **11-23-5. Willful killing of unborn quick child.**

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

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

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

13 SECTION 5. Chapter 23-4.8 of the General Laws entitled "Spousal Notice for Abortion"
14 is hereby repealed in its entirety.

15 CHAPTER 23-4.8

16 Spousal Notice for Abortion

17 **23-4.8-1. Declaration of purpose.**

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

20 **23-4.8-2. Spousal notice requirements.**

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

25 **23-4.8-3. Exceptions.**

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

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

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

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

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

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

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

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

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

16 **23-4.12-5. Penalty.**

17 ~~(a) Performance of a partial birth abortion deliberately and intentionally is a violation of~~
18 ~~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.**

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

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

33 **SECTION 7. Section 27-18-28 of the General Laws in Chapter 27-18 entitled "Accident**
34 **and Sickness Insurance Policies" is hereby repealed.**

1 **27-18-28. Health insurance contracts -- Abortion.**

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

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

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

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

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

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

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

16 SECTION 8. Section 36-12-2.1 of the General Laws in Chapter 36-12 entitled "Insurance
17 Benefits" is hereby amended to read as follows:

18 **36-12-2.1. Health insurance benefits -- Coverage for abortions excluded.**

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

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

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

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

27 (4) All health maintenance organizations; and

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

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

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

1 SECTION 9. Section 42-12.3-3 of the General Laws in Chapter 42-12.3 entitled "Health
2 Care for Children and Pregnant Women" is hereby amended to read as follows:

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

4 (a) The director of the department of human services is authorized to amend its title XIX
5 state plan pursuant to title XIX of the Social Security Act to provide Medicaid coverage and to
6 amend its title XXI state plan pursuant to Title XXI of the Social Security Act to provide medical
7 assistance coverage through expanded family income disregards for pregnant women whose
8 family income levels are between one hundred eighty-five percent (185%) and two hundred fifty
9 percent (250%) of the federal poverty level. The department is further authorized to promulgate
10 any regulations necessary and in accord with title XIX [42 U.S.C. § 1396 et seq.] and title XXI
11 [42 U.S.C. § 1397 et seq.] of the Social Security Act necessary in order to implement said state
12 plan amendment. The services provided shall be in accord with title XIX [42 U.S.C. § 1396 et
13 seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

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

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

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

32 (1) Ante-partum and postpartum care;

33 (2) Delivery;

34 (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
7 eligible for medical assistance. These services shall include: care coordination, nutrition and
8 social service counseling, high risk obstetrical care, childbirth and parenting preparation
9 programs, smoking cessation programs, outpatient counseling for drug-alcohol use, interpreter
10 services, mental health services, and home visitation. The provision of enhanced services is
11 subject to available appropriations. In the event that appropriations are not adequate for the
12 provision of these services, the department has the authority to limit the amount, scope and
13 duration of these enhanced services.

14 (f) The department of human services shall provide for extended family planning services
15 for up to twenty-four (24) months postpartum. These services shall be available to women who
16 have been determined eligible for RItE Start or for medical assistance under title XIX [42 U.S.C.
17 § 1396 et seq.] or title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

18 SECTION 10. Section 5-37-5.1 of the General Laws in Chapter 5-37 entitled "Board of
19 Medical Licensure and Discipline" is hereby amended to read as follows:

20 **5-37-5.1. Unprofessional conduct.**

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

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

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

27 (3) Conviction of a crime involving moral turpitude; conviction of a felony; conviction of
28 a crime arising out of the practice of medicine;

29 (4) Abandoning a patient;

30 (5) Dependence upon controlled substances, habitual drunkenness, or rendering
31 professional services to a patient while the physician or limited registrant is intoxicated or
32 incapacitated by the use of drugs;

33 (6) Promotion by a physician or limited registrant of the sale of drugs, devices,
34 appliances, or goods or services provided for a patient in a manner as to exploit the patient for the

- 1 financial gain of the physician or limited registrant;
- 2 (7) Immoral conduct of a physician or limited registrant in the practice of medicine;
- 3 (8) Willfully making and filing false reports or records in the practice of medicine;
- 4 (9) Willfully omitting to file or record, or willfully impeding or obstructing a filing or
5 recording, or inducing another person to omit to file or record, medical or other reports as
6 required by law;
- 7 (10) Failing to furnish details of a patient's medical record to succeeding physicians,
8 health care facility, or other health care providers upon proper request pursuant to § 5-37.3-4;
- 9 (11) Soliciting professional patronage by agents or persons or profiting from acts of those
10 representing themselves to be agents of the licensed physician or limited registrants;
- 11 (12) Dividing fees or agreeing to split or divide the fees received for professional services
12 for any person for bringing to or referring a patient;
- 13 (13) Agreeing with clinical or bioanalytical laboratories to accept payments from these
14 laboratories for individual tests or test series for patients;
- 15 (14) Making willful misrepresentations in treatments;
- 16 (15) Practicing medicine with an unlicensed physician except in an accredited
17 preceptorship or residency training program, or aiding or abetting unlicensed persons in the
18 practice of medicine;
- 19 (16) Gross and willful overcharging for professional services; including filing of false
20 statements for collection of fees for which services are not rendered, or willfully making or
21 assisting in making a false claim or deceptive claim or misrepresenting a material fact for use in
22 determining rights to health care or other benefits;
- 23 (17) Offering, undertaking, or agreeing to cure or treat disease by a secret method,
24 procedure, treatment or medicine;
- 25 (18) Professional or mental incompetency;
- 26 (19) Incompetent, negligent, or willful misconduct in the practice of medicine which
27 includes the rendering of medically unnecessary services, and any departure from, or the failure
28 to conform to, the minimal standards of acceptable and prevailing medical practice in his or her
29 area of expertise as is determined by the board. The board does not need to establish actual injury
30 to the patient in order to adjudge a physician or limited registrant guilty of the unacceptable
31 medical practice in this subdivision;
- 32 (20) Failing to comply with the provisions of chapter 4.7 of title 23;
- 33 (21) Surrender, revocation, suspension, limitation of privilege based on quality of care
34 provided, or any other disciplinary action against a license or authorization to practice medicine

1 in another state or jurisdiction; or surrender, revocation, suspension, or any other disciplinary
2 action relating to a membership on any medical staff or in any medical or professional association
3 or society while under disciplinary investigation by any of those authorities or bodies for acts or
4 conduct similar to acts or conduct which would constitute grounds for action as described in this
5 chapter;

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

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

11 (24) Violating any provision or provisions of this chapter or the rules and regulations of
12 the board or any rules or regulations promulgated by the director or of an action, stipulation, or
13 agreement of the board;

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

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

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

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

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

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

27 (31) Knowingly violating the provisions of subsection 23-4.13-2(d).

28 **SECTION 11. This act shall take effect upon passage.**

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LC000518/SUB B/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - THE REPRODUCTIVE PRIVACY ACT

1 This act would serve to codify the privacy rights guaranteed by the decision reached in
2 the 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.

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LC000518/SUB B/2
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A N A C T

RELATING TO HEALTH AND SAFETY - THE REPRODUCTIVE PRIVACY ACT

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LC000518/SUB B/2
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Presented by

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