

2020 -- S 2823

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO HEALTH AND SAFETY -- THE RHODE ISLAND UNBORN CHILD
PROTECTION FROM DISMEMBERMENT ABORTION ACT

Introduced By: Senators Ciccone, Lombardo, Lombardi, and Morgan

Date Introduced: March 12, 2020

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 4.14

4 THE RHODE ISLAND UNBORN CHILD PROTECTION FROM DISMEMBERMENT

5 ABORTION ACT

6 **23-4.14-1. Short title.**

7 This chapter shall be known and may be cited as the "Rhode Island Unborn Child
8 Protection from Dismemberment Abortion Act."

9 **23-4.14-2. Definitions.**

10 For purposes of this chapter:

11 (1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any
12 other substance or device to intentionally kill the unborn child of a woman known to be pregnant,
13 or to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention
14 other than after viability to increase the probability of a live birth and preserve the life and health
15 of the child born alive, or to remove a dead unborn child who died as the result of natural causes in
16 utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and
17 which causes the premature termination of the pregnancy.

18 (2)(i) "Dismemberment abortion" means, with the intention of causing the death of an

1 unborn child, knowingly to dismember a living unborn child and extract him or her one piece at a
2 time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar
3 instruments that, through the convergence of two rigid levers, slice, crush and/or grasp a portion of
4 the unborn child's body in order to cut or rip it off.

5 (ii) The term "dismemberment abortion" does not include an abortion which uses suction
6 to dismember the body of the developing unborn child by sucking fetal parts into a collection
7 container, although it does include an abortion in which a dismemberment abortion, as defined in
8 subsection (b)(1) of this section, is used to cause the death of an unborn child but suction is
9 subsequently used to extract fetal parts after the death of the unborn child.

10 (3) "Serious health risk to the unborn child's mother" means that in reasonable medical
11 judgment she has a condition that so complicates her medical condition that it necessitates the
12 immediate abortion of her pregnancy to avert her death or for which a delay necessary to comply
13 with the applicable statutory requirements will create serious risk of substantial and irreversible
14 physical impairment of a major bodily function, not including psychological or emotional
15 conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that
16 the woman will engage in conduct which she intends to result in her death or in substantial and
17 irreversible physical impairment of a major bodily function.

18 (4) "Woman" means a female human being whether or not she has reached the age of
19 majority.

20 **23-4.14-3. Prohibition of dismemberment abortions.**

21 (a) No person shall perform or attempt to perform a dismemberment abortion and thereby
22 kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

23 (b) Upon a first conviction of a violation of this chapter, a person shall be guilty of a
24 misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall
25 be guilty of a felony.

26 (c) A person accused in any proceeding of unlawful conduct under subsection (a) of this
27 section may seek a hearing before the state medical board on whether the dismemberment abortion
28 was necessary to prevent serious health risk to the unborn child's mother. The board's findings are
29 admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of
30 the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days
31 to permit such a hearing to take place.

32 (d) No woman upon whom an abortion is performed or attempted shall be liable for
33 performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary,
34 receptionist or other employee or agent who is not a physician, but who acts at the direction of a

1 physician, and no pharmacist or other individual who is not a physician, but who fills a prescription
2 or provides instruments or materials used in an abortion at the direction of or to a physician shall
3 be liable for performing or attempting to perform a dismemberment abortion.

4 **23-4.14-4. Injunctive relief.**

5 The attorney general may bring a cause of action for injunctive relief against a person who
6 has performed a dismemberment abortion in violation of this chapter. The injunction shall prevent
7 the defendant from performing or attempting to perform any other dismemberment abortions in this
8 state in violation of this chapter.

9 **23-4.14-5. Civil remedies.**

10 (a) A cause of action for civil damages against a person who has performed a
11 dismemberment abortion in violation of this chapter, may be maintained by the following persons,
12 unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the
13 pregnancy resulted from the plaintiff's criminal conduct:

14 (1) Any woman upon whom a dismemberment abortion has been performed in violation of
15 this chapter, and amendments thereto;

16 (2) The father of the unborn child, if married to the woman at the time the dismemberment
17 abortion was performed; or

18 (3) The parents or custodial guardians of the woman, if the woman has not attained the age
19 of eighteen (18) years of age at the time of the abortion or has died as a result of the abortion.

20 (b) Damages awarded in such an action shall include:

21 (1) Money damages for all injuries, psychological and physical, occasioned by the
22 dismemberment abortion;

23 (2) Statutory damages equal to three (3) times the cost of the dismemberment abortion;

24 (3) Injunctive relief; and

25 (4) Reasonable attorneys' fees.

26 (c) No person is estopped from recovery in such a suit on the ground that either the plaintiff
27 or the person upon whom the dismemberment abortion was performed gave consent to the abortion.

28 Any contract of indemnification for such damages is void.

29 (d) No attorneys' fees shall be assessed against the woman upon whom a dismemberment
30 abortion was performed or attempted.

31 **23-4.14-6. Protection of privacy in court proceedings.**

32 In every proceeding or action pursuant to this chapter, the court shall rule whether the
33 anonymity of any woman upon whom a dismemberment abortion is performed or attempted should
34 be preserved from public disclosure if she does not give her consent to such disclosure. The court,

1 upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity
2 should be preserved, shall issue orders to the parties, witnesses and counsel, and shall direct the
3 sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent
4 necessary to safeguard her identity from public disclosure. Each such order shall be accompanied
5 by specific written findings explaining why the anonymity of the female should be preserved from
6 public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
7 that interest, and why no reasonable less restrictive alternative exists. In the absence of written
8 consent of the female upon whom a dismemberment abortion has been performed or attempted,
9 anyone, other than a public official, who brings an action under this section shall do so under a
10 pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses
11 from the defendant.

12 **23-4.14-7. Construction.**

13 (a) Nothing in this chapter shall be construed as creating or recognizing a right to abortion,
14 nor a right to a particular method of abortion.

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

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

19 **23-4.14-8. Severability.**

20 If any provision of this chapter or the application thereof to any person or circumstance is
21 held invalid, such invalidity does not affect the provisions for applications of this chapter which
22 can be given effect without the invalid provision or application and to this end, the provisions of
23 this chapter are severable.

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO HEALTH AND SAFETY -- THE RHODE ISLAND UNBORN CHILD
PROTECTION FROM DISMEMBERMENT ABORTION ACT

1 This act would prohibit any person from performing or attempting to perform a
2 "dismemberment abortion" unless this procedure is necessary to prevent serious health risk to the
3 unborn child's mother. Further, this act would provide for injunctive relief, criminal penalties and
4 civil remedies against a person performing a dismemberment abortion.

5 This act would take effect upon passage.

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