



1 abortion or the provision of such contraception or abortion except in accordance with evidence-  
2 based medically recognized standards that are in compliance with all applicable federal and state  
3 law.

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

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

9 (1) Abrogate the provisions of §§ 11-9-18, 11-54-1, 23-4.6-1, 23-4.7-1 through 23-4.7-8,  
10 23-13-21, 23-17-11, 42-157-3(d), or 18 U.S.C. § 1531.

11 (2) Prevent the department of health from applying to licensed health care facilities that  
12 provide abortion, any generally applicable regulations or standards that are in accordance with  
13 evidence-based, medically recognized standards that are in compliance with all applicable federal  
14 and state law for the provision of abortion and that which comply with the provisions of this  
15 section, provided that such adoption or enforcement is not a pretext for violating subsection (a) of  
16 this section.

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 Chapter 11-3 of the General Laws entitled "Abortion" is hereby repealed in  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

19 ~~CHAPTER 3~~

20 ~~Abortion~~

21 ~~**11-3-1. Procuring, counseling or attempting miscarriage.**~~

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

31 ~~**11-3-2. Murder charged in same indictment or information.**~~

32 ~~Any person who shall be charged with the murder of any infant child, or of any pregnant~~  
33 ~~woman, or of any woman supposed by such person to be or to have been pregnant, may also be~~  
34 ~~charged in the same indictment or information with any or all the offenses mentioned in 11-3-1,~~

1 ~~and if the jury shall acquit such person on the charge of murder and find him guilty of the other~~  
2 ~~offenses or either of them, judgment and sentence may be awarded against him accordingly.~~

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

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

7 ~~**11-3-4. Construction and application of section 11-3-1.**~~

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

15 ~~**11-3-5. Constitutionality.**~~

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

19 SECTION 3. Chapter 23-4.8 of the General Laws entitled "Spousal Notice for Abortion"  
20 is hereby repealed in its entirety.

21 ~~CHAPTER 23-4.8~~

22 ~~Spousal Notice for Abortion~~

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

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

26 ~~**23-4.8-2. Spousal notice requirements.**~~

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

31 ~~**23-4.8-3. Exceptions.**~~

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

33 ~~(1) The woman having the abortion furnishes to the physician who is to perform the~~  
34 ~~abortion or the physician's authorized agent prior to the abortion being performed a written~~

1 ~~statement that she has given notice to her husband of the proposed abortion or a written statement~~  
2 ~~that the fetus was not fathered by her husband;~~

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

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

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

10 **23-4.8-4. Penalties.**

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

15 **23-4.8-5. Severability.**

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

19 SECTION 4. Section 11-23-5 of the General Laws in Chapter 11-23 entitled "Homicide"  
20 is hereby amended to read as follows:

21 **11-23-5. Willful killing of unborn quick child.**

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

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

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

33 SECTION 5. 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 6. 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 7. 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 woman.

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

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

- 31 (1) Ante-partum and postpartum care;  
32 (2) Delivery;  
33 (3) Cesarean section;  
34 (4) Newborn hospital care;

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

3 (6) Prescription medications and laboratory tests;

4 (e) The department of human services shall provide enhanced services, as appropriate, to  
5 pregnant women as defined in subsections (a) and (b), as well as to other pregnant women  
6 eligible for medical assistance. These services shall include: care coordination, nutrition and  
7 social service counseling, high risk obstetrical care, childbirth and parenting preparation  
8 programs, smoking cessation programs, outpatient counseling for drug-alcohol use, interpreter  
9 services, mental health services, and home visitation. The provision of enhanced services is  
10 subject to available appropriations. In the event that appropriations are not adequate for the  
11 provision of these services, the department has the authority to limit the amount, scope and  
12 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 8. Section 23-4.7-6 of the General Laws in Chapter 23-4.7 entitled "Informed  
18 Consent for Abortion" is hereby amended to read as follows:

19 **23-4.7-6. Minors -- Parental consent -- Judicial proceedings.**

20 Except in the case of a minor who has been found by a court of competent jurisdiction to  
21 be emancipated, if a pregnant woman is less than eighteen (18) years of age and has not married,  
22 an abortion shall not be performed upon her unless both the consent of the pregnant woman and  
23 that of at least one of her parents is obtained, except as provided in this section. In deciding  
24 whether to grant consent, a pregnant woman's parents shall consider only their child's best  
25 interests. If both parents have died or are otherwise unavailable to the physician within a  
26 reasonable time and in a reasonable manner, consent of the pregnant woman's legal guardian or  
27 one of her guardians [or a grandparent or adult sibling over the age of twenty-five \(25\)](#) shall be  
28 sufficient. If a pregnant woman less than eighteen (18) years of age has not married and if neither  
29 of her parents or guardians [or a grandparent or adult sibling over the age of twenty-five \(25\)](#) agree  
30 to consent to the performance of an abortion, or if she elects not to seek the consent of either of  
31 her parents or guardians [or a grandparent or adult sibling over the age of twenty-five \(25\)](#), a judge  
32 of the family court shall, upon petition, or motion, and after an appropriate hearing, authorize a  
33 physician to perform the abortion, if the judge determines that the pregnant woman is mature and  
34 capable of giving informed consent to the proposed abortion or if the judge determines that she is

1 not mature, but that the performance of an abortion upon her would be in her best interests. A  
2 pregnant woman less than eighteen (18) years of age may participate in proceedings in the family  
3 court on her own behalf, and she shall be represented in her proceeding by a guardian ad litem.  
4 Proceedings in the family court under this section shall be confidential and shall be given such  
5 precedence over other pending matters that the court may reach a decision promptly and without  
6 delay so as to serve the best interests of the pregnant woman. A judge of the family court who  
7 conducts proceedings under this section shall make in writing specific factual findings and legal  
8 conclusions supporting his or her decision and shall order a record of the evidence to be  
9 maintained including his or her own findings and conclusions.

10 SECTION 9. 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 - THE REPRODUCTIVE PRIVACY ACT

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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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