

RHODE ISLAND

R.I. Const. Art. I, § 2. Laws for good of whole — Burdens to be equally distributed — Due process — Equal protection — Discrimination — No right to abortion granted.

All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof.

[*Benson v. McKee*, 273 A.3d 121 \(R.I. 2022\)](#), Rhode Island Supreme Court dismissed challenge to the Rhode Island General Assembly's authority to enact the Rhode Island Reproductive Privacy Act (RPA), R.I. Gen. Laws 23- 4.13.

"Reproductive Privacy Act." (signed by the Governor 6/19/2019)

§ 23-4.13-2. Noninterference in reproductive health care.

(a) Neither the state, nor any of its agencies, or political subdivisions shall:

- (1) Restrict an individual person from preventing, commencing, continuing, or terminating that individual's pregnancy prior to fetal viability;
- (2) Interfere with an individual person's decision to continue that individual's pregnancy after fetal viability;
- (3) Restrict an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve the health or life of that individual;
- (4) Restrict the use of evidence-based, medically recognized methods of contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d); or
- (5) Restrict access to evidence-based, medically recognized methods of contraception or abortion or the provision of such contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d).

(b) For purposes of this section, "fetal viability" means that stage of gestation where the attending physician, taking into account the particular facts of the case, has determined

that there is a reasonable likelihood of the fetus' sustained survival outside of the womb with or without artificial support.

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

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

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

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

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

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

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

(3) The director of the department of health is authorized to deny or revoke any license to practice allopathic or osteopathic medicine or otherwise discipline a licensee upon finding by the board that the person is guilty of unprofessional conduct under § 5-37-5.1(31).

History of Section.

P.L. 2019, ch. 27, § 1.

R.I. Gen. Laws § 23-4.7-1. "Abortion" defined.

"Abortion" for the purpose of this chapter means administering to a woman, known to be pregnant, any medicine, drug, substance, or thing whatever, or the employment upon her of any instrument or means whatever, with intent to terminate a pregnancy. The term shall not include

the administering of any medicine, drug, substance, or thing or the employment of any instrument or means for the purpose of completing an incomplete, spontaneous miscarriage.

R.I. Gen. Laws § 23-4.7-2. Informed written consent required.

In order to insure that a woman's consent to abortion is truly informed consent, an abortion shall be performed only after the woman has given her consent, in writing, in a form satisfying the provisions of § 23-4.7-5.

R.I. Gen. Laws § 23-4.7-3. Required disclosures.

(a) Either the physician who is to perform the abortion or his or her authorized agent or another physician or his or her authorized agent shall:

- (1) Inform the woman that she is pregnant and inform her of the estimated gestational age of the fetus at the time of the disclosure.
- (2) Explain to the woman the medical nature of an abortion, including the probable gestational age of the fetus at the time the abortion is to be performed.
- (3) Explain to the woman the medical or surgical procedure to be employed to perform the abortion.
- (4) Explain to the woman all known material medical risks associated with the particular abortion procedure to be employed. In the event a physician or his or her authorized agent determines that the disclosure of a known material risk should not be made, that risk need not be disclosed, provided the medical basis for the nondisclosure is certified in writing in the patient's medical record.

(b) In addition, a physician or his or her authorized agent may inform the woman of any other material facts or opinions or otherwise state anything with respect to the disclosures required in this section which, in the exercise of his or her best medical judgment, is reasonably necessary to enable the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

R.I. Gen. Laws § 23-4.7-4. Emergency requiring immediate action.

Where there is an emergency requiring immediate action, the requirements of this chapter may be waived. The woman's attending physician shall certify in writing in the patient's medical record that an emergency exists and the medical basis for his or her opinion.

R.I. Gen. Laws § 23-4.7-5. Consent form.

(a) The woman's written consent required by § 23-4.7-2 shall be on a form provided by the physician or facility and containing:

- (1) The disclosures required by § 23-4.7-3; and
- (2) The woman's acknowledgment that either the physician who is to perform the abortion or his or her authorized agent or another physician or his or her authorized agent has provided her with the information required by § 23-4.7-3.

(b)

(1) The form shall in addition include the following statement: "If you decide to carry your pregnancy to term but not to keep the child, you may be able to place the child with either a relative, or with another family through foster care or adoption."

(2) The person making the disclosures required under § 23-4.7-3 shall not be required to

state anything with respect to the contents of subdivision (1) of this subsection.

(c) In cases where the woman does not understand English, either the consent form shall be written in a language understood by her, or the person informing her shall certify on the consent form that in his or her opinion, the information required to be given by § 23-4.7-3 has been given in a manner as to be understandable by her; if an interpreter is used, the interpreter shall be named and reference to that use shall be made on the consent form.

(d) A copy of the form shall be made available to the woman upon her request.

R.I. Gen. Laws § 23-4.7-6. Minors — Parental consent — Judicial proceedings.

Except in the case of a minor who has been found by a court of competent jurisdiction to be emancipated, if a pregnant woman is less than eighteen (18) years of age and has not married, an abortion shall not be performed upon her unless both the consent of the pregnant woman and that of at least one of her parents is obtained, except as provided in this section. In deciding whether to grant consent, a pregnant woman's parents shall consider only their child's best interests. If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman's legal guardian or one of her guardians shall be sufficient. If a pregnant woman less than eighteen (18) years of age has not married and if neither of her parents or guardians agree to consent to the performance of an abortion, or if she elects not to seek the consent of either of her parents or guardians, a judge of the family court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion, if the judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion or if the judge determines that she is not mature, but that the performance of an abortion upon her would be in her best interests. A pregnant woman less than eighteen (18) years of age may participate in proceedings in the family court on her own behalf, and she shall be represented in her proceeding by a guardian ad litem. Proceedings in the family court under this section shall be confidential and shall be given such precedence over other pending matters that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the family court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his or her decision and shall order a record of the evidence to be maintained including his or her own findings and conclusions.

R.I. Gen. Laws 23-4.13-2. Noninterference in reproductive health care.

(a) Neither the state, nor any of its agencies, or political subdivisions shall:

- (1) Restrict an individual person from preventing, commencing, continuing, or terminating that individual's pregnancy prior to fetal viability;
- (2) Interfere with an individual person's decision to continue that individual's pregnancy after fetal viability;
- (3) Restrict an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve the health or life of that individual;
- (4) Restrict the use of evidence-based, medically recognized methods of contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and

subsection (d); or

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

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

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

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

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

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

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

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

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

(3) The director of the department of health is authorized to deny or revoke any license to practice allopathic or osteopathic medicine or otherwise discipline a licensee upon finding by the board that the person is guilty of unprofessional conduct under § 5-37-5.1(31).

R.I. Gen. Laws § 11-9-18. Care of babies born alive during attempted abortions.

Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion

shall be guilty of a felony and upon conviction shall be fined not exceeding five thousand dollars (\$5,000), or imprisoned not exceeding five (5) years, or both. Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion, and, as a result of that failure, the infant dies, shall be guilty of the crime of manslaughter.

History of Section.

P.L. 1981, ch. 280, § 1.

R.I. Gen. Laws § 11-54-1. Experimentation on human fetuses.

(a) No person shall use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory research, or other kind of experimentation. This section shall not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgment of the physician, made at the time of the study, the procedures do not substantially jeopardize the life or health of the fetus, and provided the fetus is not the subject of a planned abortion. In any criminal proceeding the fetus shall be conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study that she was not planning an abortion.

(b) This section shall not prohibit or regulate diagnostic or remedial procedures, the purpose of which is to determine or to preserve the life or health of the fetus involved or the mother involved.

(c) A fetus is a live fetus for purposes of this section when, in the best medical judgment of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.

(d) No experimentation may knowingly be performed upon a dead fetus unless the consent of its mother has first been obtained, provided, that such consent shall not be required in the case of a routine pathological study. In any criminal proceeding, consent shall be conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother, who is at least eighteen (18) years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research, or other kind of experimentation or study; that written consent shall constitute lawful authorization for the transfer of the dead fetus.

(e) No person shall perform or offer to perform an abortion where part or all of the consideration for the performance is that the fetal remains may be used for experimentation or other kinds of research or study.

(f) No person shall knowingly sell, transfer, distribute, or give away any fetus for a use which is in violation of the provisions of this section. For purposes of this section, the word "fetus" includes an embryo or neonate.

History of Section.

P.L. 1981, ch. 231, § 1

R.I. Gen. Laws § 11-54-2. Penalties.

Any person who performs any of the acts prohibited by this chapter shall be guilty of a felony and shall be punished by a fine of at least one thousand dollars (\$1,000) or shall be imprisoned for a period of at least one year, or both.

History of Section.

P.L. 1981, ch. 231, § 1