

2016 -- S 2216

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

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

Introduced By: Senators DiPalma, Ruggiero, Goodwin, McCaffrey, and Lombardi

Date Introduced: January 27, 2016

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 13.7

4 THE RHODE ISLAND UNBORN CHILD PROTECTION FROM DISMEMBERMENT

5 ABORTION ACT

6 **23-13.7-1. Definitions.** -- For purposes of this chapter:

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

13 (2)(i) "Dismemberment abortion" means, with the purpose of causing the death of an
14 unborn child, knowingly dismembering a living unborn child and extracting such unborn child
15 one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or
16 similar instruments that, through the convergence of two (2) rigid levers, slice, crush or grasp a
17 portion of the unborn child's body in order to cut or rip it off.

18 (ii) The term "dismemberment abortion" does not include an abortion which uses suction

1 to dismember the body of the unborn child by sucking fetal parts into a collection container,
2 although it does include an abortion in which a dismemberment abortion, as defined in subsection
3 (2)(i) of this section, is used to cause the death of an unborn child but suction is subsequently
4 used to extract fetal parts after the death of the unborn child.

5 (3) "Medical emergency" means a condition that, in reasonable medical judgment, so
6 complicates the medical condition of the pregnant woman as to necessitate the immediate
7 abortion of her pregnancy to avert the death of the woman or for which a delay necessary to
8 comply with the applicable statutory requirements will create serious risk of substantial and
9 irreversible physical impairment of a major bodily function. No condition shall be deemed a
10 medical emergency if based on a claim or diagnosis that the woman will engage in conduct which
11 would result in her death or in substantial and irreversible physical impairment of a major bodily
12 function.

13 **23-13.7-2. Prohibition of dismemberment abortions.** -- (a) No person shall perform, or
14 attempt to perform, a dismemberment abortion on a living unborn child unless:

15 (1) The dismemberment abortion is necessary to preserve the life of the pregnant woman;
16 or

17 (2) A continuation of the pregnancy will cause a substantial and irreversible physical
18 impairment of a major bodily function of the pregnant woman; or

19 (3) No condition shall be deemed to exist if it is based on a claim or diagnosis that the
20 woman will engage in conduct that would result in her death or in substantial and irreversible
21 physical impairment of a major bodily function.

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

25 (c) No woman upon whom an abortion is performed or attempted shall be liable for
26 performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary,
27 receptionist or other employee or agent who is not a physician, but who acts at the direction of a
28 physician, and no pharmacist or other individual who is not a physician, but who fills a
29 prescription or provides instruments or materials used in an abortion at the direction of or to a
30 physician shall be liable for performing or attempting to perform a dismemberment abortion.

31 **23-13.7-3. Injunctive relief.** -- A cause of action for injunctive relief against any person
32 who has knowingly violated the provisions of this chapter may be maintained by the woman upon
33 whom the dismemberment abortion was performed or attempted in violation of §23-13.7-2; any
34 person who is the spouse, parent, guardian, conservator, or a current or former licensed health

1 care provider of the woman upon whom a dismemberment abortion has been performed or
2 attempted in violation of §23-13.7-2; or by the office of the attorney general. The injunction shall
3 prevent the abortion provider from performing further dismemberment abortions in violation of
4 §23-13.7-2.

5 **23-13.7-4. Civil remedies. --** (a) A cause of action for civil damages against a person
6 who has performed a dismemberment abortion in violation of §23-13.7-2, and amendments
7 thereto, may be maintained by the following persons, unless, in a case where the plaintiff is not
8 the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's
9 criminal conduct:

10 (1) A woman upon whom a dismemberment abortion has been performed in violation of
11 §23-13.7-2, and amendments thereto;

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

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

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

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

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

20 (3) Injunctive relief; and

21 (4) Reasonable attorney's fees.

22 (c) No person is estopped from recovery in such a suit on the ground that either the
23 plaintiff or the person upon whom the partial-birth abortion was performed gave consent to the
24 abortion. Any contract of indemnification for such damages is void.

25 (d) No attorney's fees shall be assessed against the woman upon whom a dismemberment
26 abortion was performed or attempted.

27 **23-13.7-5. Provision for anonymity of female. --** In every proceeding or action pursuant
28 to this chapter, the court shall rule whether the anonymity of any female upon whom a
29 dismemberment abortion is performed or attempted should be preserved from public disclosure if
30 she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall
31 make such a ruling and, upon determining that her anonymity should be preserved, shall issue
32 orders to the parties, witnesses and counsel, and shall direct the sealing of the record and
33 exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard
34 her identity from public disclosure. Each such order shall be accompanied by a specific written

1 findings explaining why the anonymity of the female should be preserved from public disclosure,
2 why the order is essential to that end, how the order is narrowly tailored to serve that interest, and
3 why no reasonable less restrictive alternative exists. In the absence of written consent of the
4 female upon whom a dismemberment abortion has been performed or attempted, anyone, other
5 than a public official, who brings an action under this section shall do so under a pseudonym.
6 This section may not be construed to conceal the identity of the plaintiff or of witnesses from the
7 defendant.

8 **23-13.7-6. Construction.** -- (a) Nothing in this chapter shall be construed as creating or
9 recognizing a right to abortion, nor a right to a particular method of abortion.

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

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

14 **23-13.7-7. Severability.** -- If any provision of this chapter or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect the provisions for
16 applications of this chapter which can be given effect without the invalid provision or application
17 and to this end, the provisions of this chapter are severable.

18 SECTION 2. 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 -- ABORTION -- THE RHODE ISLAND UNBORN
CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT

- 1 This act would define and would regulate, and in some cases, would prohibit
- 2 dismemberment abortions.
- 3 This act would take effect upon passage.

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