

2020 -- S 2821

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LC004781
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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 -- ESTABLISHING PROTECTION FROM
PARTIAL BIRTH ABORTION

Introduced By: Senators Lombardi, Morgan, Ciccone, Lombardo, and de la Cruz

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 PARTIAL BIRTH

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 Partial Birth Abortion Act".

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

10 As used in this chapter:

11 (1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

12 (i) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a
13 head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of
14 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for
15 the purpose of performing an overt act that the person knows will kill the partially delivered living
16 fetus; and

17 (ii) Performs the overt act, other than completion of delivery, that kills the partially
18 delivered living fetus.

1 (2) "Physician" means a doctor of medicine or osteopathy legally authorized to practice
2 medicine and surgery in the state, or any other individual legally authorized by the state to perform
3 abortions; provided, however, that any individual who is not a physician or not otherwise legally
4 authorized by the state to perform abortions, but who nevertheless directly performs a partial-birth
5 abortion, shall be subject to the provisions of this chapter.

6 **23-4.14-3. Prohibition of partial-birth abortions.**

7 Any physician or person who knowingly performs a partial-birth abortion and thereby kills
8 a human fetus is guilty of a felony and subject to imprisonment of not more than ten (10) years or
9 punishable by a fine of not more than five thousand dollars (\$5,000), or both. This subsection does
10 not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is
11 endangered by a physical disorder, physical illness, or physical injury, including a life-endangering
12 physical condition caused by or arising from the pregnancy itself. A female upon whom a partial-
13 birth abortion is performed may not be prosecuted under this chapter.

14 **23-4.14-4. Review by state medical board.**

15 (a) A defendant physician or licensed medical care professional accused of an offense
16 under this chapter may seek a hearing before the state board of medical licensure and discipline on
17 whether the physician's or licensed medical care professional's conduct was necessary to save the
18 life of the mother whose life was endangered by a physical disorder, physical illness, or physical
19 injury, including a life-endangering physical condition caused by or arising from the pregnancy
20 itself.

21 (b) The findings on the issue of whether the physician's conduct was necessary to save the
22 life of the mother shall be admissible on that issue at the trial of the defendant for violating § 23-
23 4.14-3. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more
24 than thirty (30) days to permit such a hearing to take place.

25 **23-4.14-5. Injunctive relief.**

26 The attorney general may bring a cause of action for injunctive relief against a person who
27 has performed a partial-birth abortion in violation of § 23-4.14-3. The injunction shall prevent the
28 defendant from performing or attempting to perform partial birth abortions in this state in violation
29 of § 23-4.14-3.

30 **23-4.14-6. Civil remedies.**

31 (a) A cause of action for civil damages against a person who has performed a partial-birth
32 abortion in violation of § 23-4.14-3 may be maintained by the following persons:

33 (1) Any woman upon whom a partial-birth abortion has been performed in violation of §
34 23-4.14-3;

1 (2) The father of the unborn child, if married to the woman at the time the partial birth
2 abortion was performed; or

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

5 (b) No cause of action may be maintained by a plaintiff who is not the woman upon whom
6 the abortion was performed and the pregnancy resulted from the plaintiff's criminal conduct.

7 (c) Damages awarded in such an action shall include:

8 (1) Money damages for all injuries, psychological and physical, occasioned by the partial-
9 birth abortion;

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

11 (3) Injunctive relief; and

12 (4) Reasonable attorneys' fees.

13 (d) In a civil action filed pursuant to the provisions of this section, no person shall be
14 estopped from recovery in such a suit on the ground that either the plaintiff or the person upon
15 whom the partial-birth abortion was performed gave consent to the abortion. Any contract of
16 indemnification for such damages is void as against public policy.

17 (e) No attorneys' fees shall be assessed against the woman upon whom a partial birth
18 abortion was performed or attempted.

19 **23-4.14-7. Protection of privacy in court proceedings.**

20 In every proceeding or action pursuant to this chapter, the court shall rule whether the
21 anonymity of any woman upon whom a partial-birth abortion is performed or attempted should be
22 preserved from public disclosure if she does not give her consent to such disclosure. The court,
23 upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity
24 should be preserved, shall issue orders to the parties, witnesses and counsel, and shall direct the
25 sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent
26 necessary to safeguard her identity from public disclosure. Each such order shall be accompanied
27 by specific written findings explaining why the anonymity of the female should be preserved from
28 public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
29 that interest, and why no reasonable less restrictive alternative exists. In the absence of written
30 consent of the female upon whom a partial-birth abortion has been performed or attempted, anyone,
31 other than a public official, who brings an action under this chapter shall do so under a pseudonym.
32 This section may not be construed to conceal the identity of the plaintiff or of witnesses from the
33 defendant.

34 **23-4.14-8. Construction.**

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

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

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

7 **23-4.14-9. Severability.**

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

12 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 -- ESTABLISHING PROTECTION FROM
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1 This act would prohibit partial-birth abortions except to save the life of the mother.
2 Physicians violating the prohibition would be guilty of a felony punishable by imprisonment of not
3 more than ten (10) years or by a fine of not more than five thousand dollars (\$5,000), or both. The
4 act would also provide for a private cause of action for violation of the prohibition.

5 This act would take effect upon passage.

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