

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO HEALTH AND SAFETY - BORN-ALIVE INFANT PROTECTION ACT

Introduced By: Representatives Perez, Williams, Lancia, Chippendale, and Slater

Date Introduced: February 09, 2017

Referred To: House 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 94

4 BORN-ALIVE INFANT PROTECTION ACT

5 **23-94-1. Short title.**

6 This chapter shall be known and may be cited as the "Born-Alive Infant Protection Act."

7 **23-94-2. Legislative findings and purpose.**

8 (a) The general assembly of the state of Rhode Island finds that:

9 (1) The state of Rhode Island has a paramount interest in protecting all human life.

10 (2) If an attempted abortion results in the live birth of an infant, the infant is a legal
11 person for all purposes under the laws of this state.

12 (3) It is not an infringement on a woman's right to terminate her pregnancy for this state
13 to assert its interest in protecting an infant whose live birth occurred as the result of an attempted
14 abortion.

15 (4) Without proper legal protection, newly born infants who have survived attempted
16 abortions have been denied appropriate life-saving or life-sustaining medical care and treatment
17 and have been left to die.

18 (b) Based on the findings in subsection (a) of this section, it is the purpose of this chapter
19 is to:

1 (1) Ensure the protection and promotion of the health and well-being of all infants born
2 alive in this state; and

3 (2) Mandate that health care providers give medically appropriate and reasonable life-
4 saving and life-sustaining medical care and treatment to all born-alive infants.

5 **23-94-3. Definitions.**

6 As used in this chapter:

7 (1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or
8 any other substance, device, or means with the intent to terminate the clinically diagnosable
9 pregnancy of a woman with knowledge that the termination by those means will, with reasonable
10 likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion
11 if done with the intent to:

12 (i) Save the life or preserve the health of the unborn child;

13 (ii) Remove a dead unborn child caused by spontaneous abortion; or

14 (iii) Remove an ectopic pregnancy.

15 (2) "Born-alive" or "live birth" means the complete expulsion or extraction of an infant
16 from their mother, regardless of the state of gestational development, that, after expulsion or
17 extraction, whether or not the umbilical cord has been cut or the placenta is attached, and
18 regardless of whether the expulsion or extraction occurs as a result of natural or induced labor,
19 cesarean section, or induced abortion, shows any evidence of life, including, but not limited to,
20 one or more of the following:

21 (i) Breathing;

22 (ii) A heartbeat;

23 (iii) Umbilical cord pulsation; or

24 (iv) Definite movement of voluntary muscles.

25 (3) "Consent" means the voluntary agreement or acquiescence by a person of age and
26 with the requisite mental capacity who is not under duress or coercion and who has knowledge or
27 understanding of the act or action to which they have agreed or acquiesced.

28 (4) "Facility" or "medical facility" means any public or private hospital, clinic, center,
29 medical school, medical training institution, health care facility, physician's office, infirmary,
30 dispensary, ambulatory surgical treatment center, or other institution or location wherein medical
31 care is provided to any person.

32 (5) "Infant" means a child of the species homo sapiens who has been completely
33 expulsed or extracted from their mother, regardless of the stage of gestational development, until
34 the age of thirty (30) days post birth.

1 (6) "Physician" means a person licensed to practice medicine in the state of Rhode Island.
2 This term includes medical doctors and doctors of osteopathy.

3 (7) "Premature" or "preterm" means occurring prior to the thirty-seventh week of
4 gestation.

5 **23-94-4. Requirements and responsibilities.**

6 (a) A person shall not deny or deprive an infant of nourishment with the intent to cause or
7 allow the death of the infant for any reason, including, but not limited to:

8 (1) The infant was born with a handicap;

9 (2) The infant is not wanted by the parent(s) or guardian(s); or

10 (3) The infant is born alive by natural or artificial means.

11 (b) A person shall not deprive an infant of medically appropriate and reasonable medical
12 care and treatment or surgical care.

13 (c) The requirements of this section shall not be construed to prevent an infant's parent(s)
14 or guardian(s) from refusing to give consent to medical treatment or surgical care which is not
15 medically necessary or reasonable, including care or treatment which either:

16 (1) Is not necessary to save the life of the infant;

17 (2) Has a potential risk to the infant's life or health that outweighs the potential benefit to
18 the infant of the treatment or care; or

19 (3) Is treatment that will do no more than temporarily prolong the act of dying when
20 death is imminent.

21 (d)(1) The physician performing an abortion must take all medically appropriate and
22 reasonable steps to preserve the life and health of a born-alive infant. If an abortion performed in
23 a hospital results in a live birth, the physician attending the abortion shall provide immediate
24 medical care to the infant, inform the mother of the live birth, and request transfer of the infant to
25 an on-duty resident or emergency care physician who shall provide medically appropriate and
26 reasonable medical care and treatment to the infant.

27 (2) If an abortion performed in a facility other than a hospital results in a live birth, a
28 physician attending the abortion shall provide immediate medical care to the infant and call 9-1-1
29 for an emergency transfer of the infant to a hospital that shall provide medically appropriate and
30 reasonable care and treatment to the infant.

31 (e) If the physician described in subsection (d) of this section is unable to perform the
32 duties in that subsection because they are assisting the woman on whom the abortion was
33 performed, then an attending physician's assistant, nurse, or other health care provider must
34 assume the duties outlined in subsection (d) of this section.

1 (f) Any born-alive infant including one born in the course of an abortion procedure shall
2 be treated as a legal person under the laws of this state, with the same rights to medically
3 appropriate and reasonable care and treatment, and birth and death (if death occurs) certificates
4 shall be issued accordingly.

5 (g) If, before the abortion, the mother, and if married, her husband, has or have stated in
6 writing that she, or they, do not wish to keep the infant in the event that the abortion results in a
7 live birth, and this writing is not retracted before the attempted abortion, the infant, if born alive,
8 shall immediately upon birth become a ward of the department of children, youth and families.

9 (h) No person may use any born-alive infant for any type of scientific research or other
10 kind of experimentation except as necessary to protect or preserve the life and health of the born-
11 alive infant.

12 **23-94-5. Exceptions.**

13 The parent(s) or guardian(s) of a born-alive infant will not be held criminally or civilly
14 liable for the actions of a physician, nurse, or other health care provider that are in violation of
15 this act and to which the parent(s) or guardian(s) did not give consent.

16 **23-94-6. Criminal penalties.**

17 (a) Any physician, nurse, or other health care provider who intentionally, knowingly, or
18 negligently fails to provide medically appropriate and reasonable care and treatment to a born-
19 alive infant in the course of an attempted abortion shall be guilty of a felony and upon conviction
20 shall be subject to imprisonment for a period of up to ten (10) years, or a fine of up to twenty-five
21 thousand dollars (\$25,000), or both.

22 (b) Any violation of §23-94-4(h) concerning the research use of a born-alive infant is a
23 felony and upon conviction shall be subject to imprisonment for a period of up to ten (10) years,
24 or a fine of up to twenty-five thousand dollars (\$25,000), or both.

25 **23-94-7. Civil and administrative action.**

26 In addition to whatever remedies are available under the statutory or common law of this
27 state, failure to comply with the requirements of this chapter shall:

28 (1) Provide a basis for a civil action for compensatory and punitive damages. Any
29 conviction under this act shall be admissible in a civil suit as prima facie evidence of a failure to
30 provide medically appropriate and reasonable care and treatment to a born-alive infant. Any civil
31 action may be based on a claim that the death of or injury to the born-alive infant was a result of
32 simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another
33 violation of the legal standard of care.

34 (2) Provide a basis for professional disciplinary action under chapter 37 of title 5 for the

1 suspension or revocation of any license for physicians, licensed and registered nurses, or other
2 licensed or regulated persons. Any conviction of any person for any failure to comply with the
3 requirements of this chapter shall result in the automatic suspension of their license for a period
4 of at least one year and said license shall be reinstated after that time only under such conditions
5 as the board of licensure and discipline shall require to ensure compliance with this chapter.

6 (3) Provide a basis for recovery for the parent(s) of the infant or the parent(s) or
7 guardian(s) of the mother, if the mother is a minor, for the wrongful death of the infant, whether
8 or not the infant was viable at the time the attempted abortion was performed.

9 **23-94-8. Construction.**

10 (a) Nothing in this chapter shall be construed to affirm, deny, expand, or contract any
11 legal status or legal right applicable to any member of the species homo sapiens at any point prior
12 to being born-alive, as defined in this chapter.

13 (b) Nothing in this chapter shall be construed to affect existing federal or state law
14 regarding abortion.

15 (c) Nothing in this chapter shall be construed as creating or recognizing a right to
16 abortion.

17 (d) Nothing in this chapter shall be construed to alter generally accepted medical
18 standards.

19 **23-94-9. Severability.**

20 Any provision of this chapter held to be invalid or unenforceable by its terms, or as
21 applied to any person or circumstance, shall be construed so as to give it the maximum effect
22 permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in
23 which event such provision shall be deemed severable and shall not affect the remainder or the
24 application of such provision to other persons not similarly situated or to other dissimilar
25 circumstances.

26 **23-94-10. Right of intervention.**

27 The general assembly, by joint resolution, may appoint one or more of its members, who
28 sponsored or cosponsored this chapter in the member's official capacity, to intervene as a matter
29 of right in any case in which the constitutionality of this law is challenged.

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

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY - BORN-ALIVE INFANT PROTECTION ACT

1 This act would enact the Born-Alive Infant Protection Act and provide for the duties and
2 obligations of medical personnel in certain circumstances.

3 This act would take effect upon passage.

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