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Rhode Island Education Laws and Rules Annotated

CONSTITUTION OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

ARTICLE XII OF EDUCATION

SECTION.

1. Duty of general assembly to promote schools and libraries.
2. Perpetual school fund.
3. Donations.
4. Implementation of article — Diversion of funds prohibited.

Section 1. Duty of general assembly to promote schools and libraries. — The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. License to show movie.
3. Abolition of school districts.
4. Taxation of fraternity houses.
5. Right to strike.
6. Regulation of school committee.
7. Exclusive authority of legislature.
8. Control of city employee.
9. Health benefits.
10. Financing.

1. Construction.

The right of the general assembly to provide for the busing of students is not limited to public school pupils since this section not only provides that the general assembly shall promote public schools but also provides that it shall adopt all means deemed necessary and proper to secure to the people the advantages and opportunities of education. *Members of Jamestown Sch. Comm. v. Schmidt*, 122 R.I. 185, 405 A.2d 16 (1979).

This section confers no fundamental and constitutional right to education, nor does it guarantee an "equal, adequate, and meaningful education." *City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I. 1995).

2. License to Show Movie.

Action of bureau of police and fire under P.L. 1926, ch. 791 [§§ 5-22-5 to 5-22-12] in refusing, without a hearing, license to show movie because held to be against public welfare and morals, was not unconstitutional under this section, since this provision does not prohibit police power or guarantee any rights or liberties to state citizens. *Thayer Amusement Corp. v. Moulton*, 63 R.I. 182, 7 A.2d 682 (1939).

3. Abolition of School Districts.

P.L. 1903, ch. 1101, providing for abolition of school districts and vesting same in the towns, is within the broad power of this article making it the duty of the legislature to promote public schools and to take all steps necessary to effect that purpose. *In re School Comm.*, 26 R.I. 164, 58 A. 628 (1904).

4. Taxation of Fraternity Houses.

Fraternity houses on the campus of Rhode Island University were not being exclusively used in performance of government function of education so as to be entitled to statutory exemption from taxation. *Powers v. Harvey*, 81 R.I. 378, 103 A.2d 551 (1954).

5. Right to Strike.

Education being a state function, school teachers had no right to strike against the school committee of the city. *City of Pawtucket v. Pawtucket Teachers Alliance*, 87 R.I. 364, 141 A.2d 624 (1958).

6. Regulation of School Committee.

A school committee's exercise of its powers cannot be regulated by local legislation whether by ordinance or charter. *Royal v. Barry*, 91 R.I. 24, 160 A.2d 572 (1960).

7. Exclusive Authority of Legislature.

Where the governor issued an executive order purporting to give the commission for human rights jurisdiction over the employment practices of the University of Rhode Island, a nonprofit educational corporation, which order directly conflicted with the pre-1974 provision of § 28-5-6(B) (see now § 28-5-6(7)) which excluded such institutions from the operation of the Fair Employment Practices Act, the governor exceeded his authority, since this article expressly reserves to the legislature sole responsibility in the field of education. *Chang v. University of R.I.*, 118 R.I. 631, 375 A.2d 925 (1977).

8. Control of City Employee.

Although education is a state function under this article, a school teacher employed by the city school committee is a city employee and is thus subject to the provision of the city charter prohibiting city employees from holding elective office. *Cummings v. Godin*, 119 R.I. 325, 377 A.2d 1071 (1977).

9. Health Benefits.

Although the state exercises supreme responsibility in the arena of education, it exceeds constitutional limits by legislatively compelling a separate government employer — the school committee — to exclude abortion benefits. Accordingly, § 36-12-2.1, which prohibits municipalities from providing public employees with health insurance covering induced abortions, is unconstitutional. *National Educ. Ass'n v. Garrahy*, 598 F. Supp. 1374 (D.R.I. 1984), *aff'd*, 779 F.2d 790 (1st Cir. 1986).

10. Financing.

Rhode Island's statutory scheme for financing public education, § 16-7-20 and former § 16-7-20.4, did not violate either this section or the equal protection provision of art. I, § 2 of the R.I. Constitution. *City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I. 1995).

Section 2. Perpetual school fund. — The money which now is or which may hereafter be appropriated by law for the establishment of a permanent fund for the support of public schools, shall be securely invested and remain a perpetual fund for that purpose.

Cross References. Investment and management of permanent fund, § 16-4-1 et seq.

Permanent school fund appropriations, § 35-4-2.

Comparative Provisions. School fund:

Conn. 1965 Const., art. Eighth, § 4.

NOTES TO DECISIONS

1. Other Appropriations.

The legislature can appropriate money into a fund other than the permanent school fund, and therefore a statute authorizing the busing of students to nonpublic schools was not unconstitutional where the costs for busing were not paid out of the permanent school fund. Members of Jamestown Sch. Comm. v. Schmidt, 122 R.I. 185, 405 A.2d 16 (1979).

Section 3. Donations. — All donations for the support of public schools, or for other purposes of education, which may be received by the general assembly, shall be applied according to the terms prescribed by the donors.

Cross References. Handling of school funds generally, § 16-9-1 et seq.

Section 4. Implementation of article — Diversion of funds prohibited. — The general assembly shall make all necessary provisions by law for carrying this article into effect. It shall not divert said money or fund from the aforesaid uses, nor borrow, appropriate, or use the same, or any part thereof, for any other purpose, under any pretence whatsoever.

Comparative Provisions. Diversion of funds: Conn. 1965 Const., art. Eighth, § 4.

NOTES TO DECISIONS

1. Busing Students to Nonpublic Schools.

See note under heading "Construction," R.I. Const., Art. 12, Sec. 1, Notes to Decisions

See note under heading "Other Appropriations," R.I. Const., Art. 12, Sec. 2, Notes to Decisions

TITLE 5

BUSINESSES AND PROFESSIONS

CHAPTER 37.3

CONFIDENTIALITY OF HEALTH CARE COMMUNICATIONS AND INFORMATION ACT

SECTION.

5-37.3-4. Limitations on and permitted disclosures.

5-37.3-4. Limitations on and permitted disclosures. — (a) Except as provided in subsection (b) or as specifically provided by the law, a patient's

confidential health care information shall not be released or transferred without the written consent of the patient or his or her authorized representative, on a consent form meeting the requirements of subsection (d), a copy of any notice used pursuant to subsection (d), and of any signed consent shall upon request, be provided to the patient prior to his or her signing a consent form. Provided, that any and all managed care entities and managed care contractors writing policies in the state are prohibited from providing any information related to enrollees which is personal in nature and could reasonably lead to identification of an individual and is not essential for the compilation of statistical data related to enrollees, to any international, national, regional, or local medical information data base. Provided, further, that this provision would not restrict or prohibit the transfer of information to the department of health to carry out its statutory duties and responsibilities.

(1) Any person who violates the provisions of this section may be liable for actual and punitive damages.

(2) The court may award a reasonable attorney's fee at its discretion to the prevailing party in any civil action under this section.

(3) Any person who knowingly and intentionally violates the provisions of this section shall upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation, or imprisoned not more than six (6) months for each violation, or both.

(4) Any contract or agreement which purports to waive the provisions of this section is declared null and void as against public policy.

(b) No consent for release or transfer of confidential health care information is required in the following situations:

(1) To a physician, dentist, or other medical personnel who believes in good faith that the information is necessary for diagnosis or treatment of that individual in a medical or dental emergency;

(2) To medical and dental peer review boards, or the board of medical licensure and discipline, or board of examiners in dentistry;

(3) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies, provided that personnel shall not identify, directly or indirectly, any individual patient in any report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

(4) By a health care provider to appropriate law enforcement personnel, or to a person if the health care provider believes that person or his or her family to be in danger from a patient; or to appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs from the health care provider illegally; or to appropriate law enforcement personnel or appropriate child protective agencies if the patient is a minor child who the

health care provider believes, after providing health care services to the patient, to have been physically or psychologically abused; or to law enforcement personnel in the case of a gunshot wound reportable under § 11-47-48;

(5) Between or among qualified personnel and health care providers within the health care system for purposes of coordination of health care services given to the patient and for purposes of education and training within the same health care facility; or

(6) To third party health insurers including to utilization review agents as provided by § 23-17-12-9(11), third party administrators licensed pursuant to chapter 20.7 of title 27 and other entities that provide operational support to adjudicate health insurance claims or administer health benefits;

(7) To a malpractice insurance carrier or lawyer if the health care provider has reason to anticipate a medical liability action; or

(8)(i) To the health care provider's own lawyer or medical liability insurance carrier if the patient whose information is at issue brings a medical liability action against a health care provider.

(ii) Disclosure by a health care provider of a patient's health care information which is relevant to a civil action brought by the patient against any person or persons other than that health care provider may occur only under the discovery methods provided by the applicable rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts and not through informal ex parte contacts with the provider by persons other than the patient or his or her legal representative. Nothing in this section limits the right of a patient or his or her attorney to consult with that patient's own physician and to obtain that patient's own health care information;

(9) To public health authorities in order to carry out their functions as described in this title and titles 21 and 23, and rules promulgated under those titles. These functions include, but are not restricted to, investigations into the causes of disease, the control of public health hazards, enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of health professionals and facilities, review of health care such as that required by the federal government and other governmental agencies;

(10) To the state medical examiner in the event of a fatality that comes under his or her jurisdiction;

(11) In relation to information that is directly related to current claim for workers' compensation benefits or to any proceeding before the workers' compensation commission or before any court proceeding relating to workers' compensation;

(12) To the attorneys for a health care provider whenever that provider considers that release of information to be necessary in order to receive adequate legal representation;

(13) By a health care provider to appropriate school authorities of disease, health screening

and/or immunization information required by the school; or when a school age child transfers from one school or school district to another school or school district;

(14) To a law enforcement authority to protect the legal interest of an insurance institution, agent, or insurance-support organization in preventing and prosecuting the perpetration of fraud upon them;

(15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or subpoena duces tecum when that information is required for the investigation or prosecution of criminal wrongdoing by a health care provider relating to his or her or its provisions of health care services and that information is unavailable from any other source; provided, that any information so obtained is not admissible in any criminal proceeding against the patient to whom that information pertains;

(16) To the state board of elections pursuant to a subpoena or subpoena duces tecum when that information is required to determine the eligibility of a person to vote by mail ballot and/or the legitimacy of a certification by a physician attesting to a voter's illness or disability;

(17) To certify, pursuant to chapter 20 of title 17, the nature and permanency of a person's illness or disability, the date when that person was last examined and that it would be an undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;

(18) To the central cancer registry;

(19) To the medicaid fraud control unit of the attorney general's office for the investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to his or her or its provision of health care services to then medicaid eligible recipients or patients, residents, or former patients or residents of long term residential care facilities; provided, that any information obtained is not admissible in any criminal proceeding against the patient to whom that information pertains;

(20) To the state department of children, youth, and families pertaining to the disclosure of health care records of children in the custody of the department;

(21) To the foster parent or parents pertaining to the disclosure of health care records of children in the custody of the foster parent or parents; provided, that the foster parent or parents receive appropriate training and have ongoing availability of supervisory assistance in the use of sensitive information that may be the source of distress to these children;

(22) A hospital may release the fact of a patient's admission and a general description of a patient's condition to persons representing themselves as relatives or friends of the patient or as a representative of the news media. The access to confidential health care information to persons in accredited educational programs under appropriate provider supervision shall not be deemed subject to release or transfer of that information under subsection (a); or

(23) To the workers' compensation fraud prevention unit for purposes of investigation under §§ 42-16.1-12 — 42-16.1-16. The release or transfer of confidential health care information under any of the above exceptions is not the basis for any legal liability, civil or criminal, nor considered a violation of this chapter.

(c) Third parties receiving and retaining a patient's confidential health care information must establish at least the following security procedures:

(1) Limit authorized access to personally identifiable confidential health care information to persons having a "need to know" that information; additional employees or agents may have access to that information which does not contain information from which an individual can be identified;

(2) Identify an individual or individuals who have responsibility for maintaining security procedures for confidential health care information;

(3) Provide a written statement to each employee or agent as to the necessity of maintaining the security and confidentiality of confidential health care information, and of the penalties provided for in this chapter for the unauthorized release, use, or disclosure of this information. The receipt of that statement is acknowledged by the employee or agent, who signs and returns the statement to his or her employer or principal, who retains the signed original. The employee or agent is furnished with a copy of the signed statement;

(4) Take no disciplinary or punitive action against any employee or agent solely for bringing evidence of violation of this chapter to the attention of any person.

(d) Consent forms for the release or transfer of confidential health care information shall contain, or in the course of an application or claim for insurance be accompanied by a notice containing, the following information in a clear and conspicuous manner:

(1) A statement of the need for and proposed uses of that information;

(2) A statement that all information is to be released or clearly indicating the extent of the information to be released; and

(3) A statement that the consent for release or transfer of information may be withdrawn at any future time and is subject to revocation, except where an authorization is executed in connection with an application for a life or health insurance policy in which case the authorization expires two (2) years from the issue date of the insurance policy, and when signed in connection with a claim for benefits under any insurance policy the authorization is valid during the pendency of that claim. Any revocation is transmitted in writing.

(e) Except as specifically provided by law an individual's confidential health care information shall not be given, sold, transferred, or in any way relayed to any other person not specified in the consent form or notice meeting the requirements of subsection (d)

without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of this information or the need for its transfer to another person.

(f) Nothing contained in this chapter is construed to limit the permitted disclosure of confidential health care information and communications described in subsection (b) of this section.

History of Section.

P.L. 1978, ch. 297, § 1; P.L. 1979, ch. 221, § 1; P.L. 1981, ch. 283, § 1; P.L. 1983, ch. 172, § 20; P.L. 1985, ch. 402, § 6; P.L. 1989, ch. 502, § 1; P.L. 1992, ch. 427, § 1; P.L. 1993, ch. 281, § 1; P.L. 1996, ch. 248, § 2; P.L. 1996, ch. 266, § 2; P.L. 1996, ch. 343, § 1; P.L. 1996, ch. 401, § 1; P.L. 1997, ch. 326, § 5; P.L. 1998, ch. 180, § 1; P.L. 1998, ch. 420, § 1; P.L. 1999, ch. 216, § 1; P.L. 1999, ch. 384, § 1; P.L. 2003, ch. 42, § 1; P.L. 2003, ch. 281, § 1.

Reenactments. The 1999 Reenactment deleted "as" before "required" in the final clause in subdivision (b)(9).

Compiler's Notes. In 2002, the compiler made minor punctuation changes in subdivision (b)(14).

P.L. 2003, ch. 42, § 1, and P.L. 2003, ch. 281, § 1, enacted identical amendments to this section.

Cross References. Disclosure of confidential health care information to auditor general, § 22-13-7.

Law Reviews. Caselaw Survey Section: Evidence, see Roger Williams Univ. L. Rev. 715 (1999).

NOTES TO DECISIONS

ANALYSIS

1. Retirement proceedings.
2. Rights of criminal defendant.
3. Child abuse.
4. Board of medical review investigation.
5. Report obtained by patient.
6. Third parties.
7. Blood alcohol level test results.
8. Waiver.
9. Causes of action.

1. Retirement Proceedings.

Superior Court justice did not err in ordering that medical records be delivered to an employee retirement investigatory committee in redacted form under subsection (b)(3). Furthermore, because plaintiffs introduced their physical conditions in proceedings before the retirement board, § 5-37.3-6(a)(2) signifies that the medical records need not be provided in redacted form, but may, in fact, be provided to the committee in unedited form identifying the individual plaintiffs. *Fiore v. Lynch*, 637 A.2d 1052 (R.I. 1994).

2. Rights of Criminal Defendant.

Trial court's denial of defendant defense motion to examine and introduce medical records of only surviving eyewitness constituted a denial of his right to confrontation. *State v. Parillo*, 480 A.2d 1349 (R.I. 1984).

3. Child Abuse.

Disclosure of the records of the department for children and their families is not prohibited in cases of known or suspected child abuse. *State v. Anthony*, 440 A.2d 736 (R.I. 1982).

4. Board of Medical Review Investigation.

The Confidentiality of Health Care Information Act does not prevent the subpoenaing of a physician's records of patient treatment during the investigation stages of a board of medical review inquiry into alleged unprofessional conduct. In re Board of Medical Review Investigation, 463 A.2d 1373 (R.I. 1983).

5. Report Obtained by Patient.

Confidential health care information does not include a medical report that a patient directly procures from his own physician and personally delivers to a third-party employer. *Trembley v. City of Central Falls*, 480 A.2d 1359 (R.I. 1984).

6. Third Parties.

A pharmacy is not a "health care provider" since the dispensing of medicines pursuant to prescriptions ordered by licensed health-care providers is not a "health care service"; however, a pharmacy is a "third party" who receives confidential records and is thus subject to this chapter. *Washburn v. Rite Aid Corp.*, 695 A.2d 495 (R.I. 1997).

7. Blood Alcohol Level Test Results.

The consent requirement of § 31-7-2 is within the exception for the release of health care information otherwise provided by law. *State v. Timms*, 505 A.2d 1132 (R.I. 1986).

Results of tests on blood taken from defendant at the hospital after a car accident are not privileged under this section. *State v. Guido*, 698 A.2d 729 (R.I. 1997).

8. Waiver.

The legislature intended that the patient-physician privilege automatically be waived when a patient elects to bring a medical-malpractice claim or otherwise puts his or her medical condition at issue. Accordingly, the defendant's attorney was not prohibited from talking to the plaintiff's subsequent treating physicians in the course of pretrial discovery. *Lewis v. Roderick*, 617 A.2d 119 (R.I. 1992); *Donovan v. Bowling*, 706 A.2d 937 (R.I. 1998).

9. Causes of Action.

The plaintiff's declaratory judgment action for a violation of the Confidentiality of Health Care Information Act was properly dismissed; declaratory judgment is not the proper vehicle to litigate an alleged statutory violation which entails criminal and civil penalties such as this Act. *Chase v. Mousseau*, 448 A.2d 1221 (R.I. 1982).

Collateral References. Discovery, in medical malpractice action, of names and medical records of other patients to whom defendant has given treatment similar to that allegedly injuring plaintiff. 66 A.L.R.5th 591.

Itously renders emergency assistance to a person in need thereof including the administration of life saving treatment to those persons suffering from anaphylactic shock shall be liable for civil damages which result from acts or omissions by such persons rendering the emergency care, which may constitute ordinary negligence. This immunity does not apply to acts or omissions constituting gross negligence or willful or wanton conduct.

History of Section.

P.L. 1984, ch. 194, § 1; P.L. 1995, ch. 51, § 1; P.L. 1995, ch. 160, § 1.

Collateral References. Construction and application of "Good Samaritan" statute. 58 A.L.R.4th 294.

Rescue doctrine: liability of one who negligently causes motor vehicle accident for injuries to person subsequently attempting to rescue persons or property. 73 A.L.R.4th 737.

9-1-28. Action for unauthorized use of name, portrait, or picture. — Any person whose name, portrait, or picture is used within the state for advertising purposes or for the purposes of trade without his or her written consent may bring an action in the superior court against the person so using his or her name, portrait, or picture to prevent and restrain the use thereof, and may recover damages for any injuries sustained by reason of such use. If the defendant shall have knowingly used the person's name, portrait, or picture in such manner as is prohibited or unlawful, the court, in its discretion, may award the plaintiff treble the amount of the damages sustained by him or her. Nothing in this section shall be so construed as to prevent any person practicing the profession of photography from exhibiting in or about his or her or its establishment specimens of the work of the person or establishment, unless the exhibiting of any such specimen is continued after written notice objecting to it has been given by the person portrayed; and nothing in this section shall be so construed as to prevent any person from using the name, portrait, or picture of any manufacturer or dealer in connection with the goods, wares, and merchandise manufactured, produced, or dealt in by the manufacturer or dealer which the person has sold or disposed of with the name, portrait, or picture used in connection therewith, or from using the name, portrait, or picture of any author, composer, or artist in connection with any literary, musical, or artistic production of the author, composer, or artist which the person has sold or disposed of with the name, portrait, or picture used in connection therewith.

History of Section.

P.L. 1972, ch. 281, § 1.

Cross References. Action for deprivation of right to privacy, § 9-1-28.1.

NOTES TO DECISIONS**1. Burden of Proof.**

To make out a violation of this section, the plaintiff must prove three distinct elements: (1) Use of his name, portrait, or picture, (2)

—————

TITLE 9

COURTS AND CIVIL

PROCEDURE—PROCEDURE

GENERALLY

—————

CHAPTER 1

CAUSES OF ACTION

SECTION.

- 9-1-27.1. Good Samaritan — Immunity from liability.
- 9-1-28. Action for unauthorized use of name, portrait, or picture.
- 9-1-28.1. Right to privacy — Action for deprivation of right.
- 9-1-31. Public school teachers, supervisors, and administrators — Immunity from liability — Compensation for certain injuries — Duty upon school committees and board of regents.
- 9-1-31.1. Members of public bodies — Exemption from liability.
- 9-1-44. Civil action for release of names of minors.
- 9-1-48. Immunity from civil liability — Sports teams.

9-1-27.1. Good Samaritan — Immunity from liability. — No person who voluntarily and gratu-

without written permission, (3) for advertising or trade purposes. *Mendonsa v. Time Inc.*, 678 F. Supp. 967 (D.R.I. 1988).

The plaintiff, citing the defendant's 1980 publication of a 1945 photograph of the plaintiff and the defendant's sale of a limited edition of the photograph for \$1,600, adequately alleged that his picture was used for "purposes of trade" and therefore stated a cause of action under this section. *Mendonsa v. Time Inc.*, 678 F. Supp. 967 (D.R.I. 1988).

Collateral References. Liability for false obituary or news report of death. 85 A.L.R.4th 813.

9-1-28.1. Right to privacy — Action for deprivation of right. — (a) *Right to privacy created.* It is the policy of this state that every person in this state shall have a right to privacy which shall be defined to include any of the following rights individually:

(1) The right to be secure from unreasonable intrusion upon one's physical solitude or seclusion;

(i) In order to recover for violation of this right, it must be established that:

(A) It was an invasion of something that is entitled to be private or would be expected to be private;

(B) The invasion was or is offensive or objectionable to a reasonable man; although,

(ii) The person who discloses the information need not benefit from the disclosure.

(2) The right to be secure from an appropriation of one's name or likeness;

(i) In order to recover for violation of this right, it must be established that:

(A) The act was done without permission of the claimant;

(B) The act is of a benefit to someone other than the claimant;

(ii) It need not be established that there was any publication.

(3) The right to be secure from unreasonable publicity given to one's private life;

(i) In order to recover for violation of this right, it must be established that:

(A) There has been some publication of a private fact;

(B) The fact which has been made public must be one which would be offensive or objectionable to a reasonable man of ordinary sensibilities;

(ii) The fact which has been disclosed need not be of any benefit to the discloser of the fact.

(4) The right to be secure from publicity that reasonably places another in a false light before the public;

(i) In order to recover for violation of this right, it must be established that:

(A) There has been some publication of a false or fictitious fact which implies an association which does not exist;

(B) The association which has been published or implied would be objectionable to the ordinary reasonable man under the circumstances;

(ii) The fact which was disclosed need not be of any benefit to the discloser.

(b) *Right of action.* Every person who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to a deprivation and/or violation of his or her right to privacy shall be liable to the party injured in an action at law, suit in equity, or any other appropriate proceedings for redress in either the superior court or district court of this state. The court having jurisdiction of an action brought pursuant to this section may award reasonable attorneys' fees and court costs to the prevailing party.

(c) *Right of access.* Nothing in this section shall be construed to limit or abridge any existing right of access at law or in equity of any party to the records kept by any agency of state or municipal government.

History of Section.

P.L. 1980, ch. 403, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions, inserted the head in subsection (c), made several substitutions for "such", and made minor punctuation changes throughout the section.

Cross References. Action for unauthorized use of name, portrait or picture, § 9-1-28.

Comparative Legislation. Right to privacy:

Mass. Ann. Laws, ch. 214, § 1B.

NOTES TO DECISIONS

ANALYSIS

0.5. Elements of claim.

1. College students.
2. Misappropriation of likeness.
- 2.5. Videotape.
3. False light claim.
4. Public records.
5. Divorce records.
6. Suicide.
7. Financial information.
8. Zoning inspections.
9. Public activity not covered.
10. Searches.

0.5. Elements of Claim.

For a right to privacy action in tort to lie, plaintiffs must demonstrate that they actually expected a disclosed fact to remain private, and that society would recognize this expectation of privacy as reasonable and be willing to respect it. *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997).

Subsection (a)(1) only protects against an invasion of "one's solitude or seclusion," neither of which is present when activity takes place outside one's house in public view. *Swerdlick v. Koch*, 721 A.2d 849 (R.I. 1998).

Summary judgment for the defendant was denied where the plaintiff alleged that the defendant burst into her apartment and raped her, since such behavior could qualify as an "invasion of something that is entitled to be private or would be expected to be private," and as "offensive or objectionable to a reasonable man," thus satisfying the statutory test for a violation of the state privacy act. *Liu v. Striuli*, 36 F. Supp. 2d 452 (D.R.I. 1999).

1. College Students.

A private college's continual inquiry into the progress of a student's diet and scrutiny of her personal weight-loss records constituted conduct which a trier of fact could reasonably find offensive or objectionable, and the college was therefore not entitled to summary judgment in the student's action for invasion of privacy. *Russell v. Salve Regina College*, 649 F. Supp. 391 (D.R.I.

1986), *aff'd*, 890 F.2d 484 (1st Cir. 1989), *rev'd* on other grounds, 499 U.S. 225, 111 S. Ct. 1217, 113 L. Ed. 2d 190 (1991).

A private college's conduct toward an overweight student, including a request that she withdraw from a college nursing program, did not constitute an invasion of privacy, where the student's obesity was a public fact, and the only area "invaded" was her psyche. *Russell v. Salve Regina College*, 890 F.2d 484 (1st Cir. 1989), *rev'd* on other grounds, 499 U.S. 225, 111 S. Ct. 1217, 113 L. Ed. 2d 190 (1991).

2. Misappropriation of Likeness.

In enacting subsection (a)(2) the legislature intended only to prohibit the misappropriation of likeness for noncommercial purposes, in view of the fact that § 9-1-28 already creates a cause of action for unauthorized uses for commercial purposes. *Mendonsa v. Time Inc.*, 678 F. Supp. 967 (D.R.I. 1988).

2.5. Videotape.

The trial justice properly admitted a videotape into evidence since it contained probative evidence that the defendant "willfully" intercepted the audio portion of the tape for the purpose of committing a tortious act, and where the tape was not so shocking as to inflame the jurors to the point where they would be unable to weigh the evidence and reach a verdict in a rational and thoughtful manner. *State v. O'Brien*, 774 A.2d 89 (R.I. 2001).

3. False Light Claim.

A magazine photograph and a narrative describing schoolgirls as "amazons" who attacked boys did not support a false light claim against the magazine publishers. *Fudge v. Penthouse Int'l, Ltd.*, 840 F.2d 1012 (1st Cir. 1988), *cert. denied*, 488 U.S. 821, 109 S. Ct. 65, 102 L. Ed. 2d 42 (1988).

Where the defendant's statements regarding the plaintiff's alleged zoning violations, while sometimes overstated or slightly off the mark in one factual detail or another, nonetheless were based on substantially true facts, there was no basis for an action for false light. *Swerdlick v. Koch*, 721 A.2d 849 (R.I. 1998).

Given the respect which the state courts accord the restatement of torts on matters of privacy law otherwise unresolved by state law, the district court concluded that state courts would adopt the restatement's rule that corporations do not enjoy privacy rights, and that the false light action filed by the plaintiff failed as a matter of law. *Intercity Maintenance Co. v. Local 254 Serv. Employees Int'l Union*, 62 F. Supp. 2d 483 (D.R.I. 1999), *aff'd*, 241 F.3d 82 (1st Cir. 2001).

Where the chairman made statements to local newspapers regarding the member's attempt to oust the chairman and the member's behavior at the town meeting, such subjective estimations combined with underlying non-defamatory and accurate facts did not form the basis of a meritorious false-light claim under R.I. Gen. Laws § 9-1-28.1(a)(4). *Cullen v. Auclair*, 809 A.2d 1107 (R.I. 2002).

4. Public Records.

The statutory right to privacy in Rhode Island does not extend to those records deemed public. *Doe v. Sherman*, 593 A.2d 457 (R.I. 1991).

Police officer was entitled to qualified immunity from an individual's claim under R.I. Gen. Laws § 9-1-28.1(b) based on the release the individual's mug shot and excerpts of a son's statements to police where the contradictory language in R.I. Gen. Laws §§ 38-2-2(4)(i)(D) and 40-11-13(a) could have been read to both allow the release of the records and prohibit a release; thus, the individual's right to privacy was not clearly established at the time of the release. *Hatch v. Town of Middletown*, 311 F.3d 83 (1st Cir. 2002).

District court's order dismissing an individual's claim under R.I. Gen. Laws § 9-1-28.1(b) against a police officer who embellished an arrest report and released it to a tabloid was upheld where the officer's embellishments did not add any new information and another police officer had already disclosed the same information by releasing the individual's mug shot and excerpts of a statement that the individual's son had made to the police. *Hatch v. Town of Middletown*, 311 F.3d 83 (1st Cir. 2002).

5. Divorce Records.

Rhode Island's Privacy Act should not be interpreted to apply to the records of the family court concerning divorce. *Doe v. Sherman*, 593 A.2d 457 (R.I. 1991).

6. Suicide.

The right of privacy dies when the person who could claim it dies. *Cliff v. Narragansett Television*, 688 A.2d 805 (R.I. 1996).

7. Financial Information.

Since bank-deposit records possessed by the Governor were not acquired through any wrongful or improper means, plaintiffs did not state a cause of action under subsection (a)(1) even though their names, Social Security numbers, and deposit amounts were distributed to newspapers by the Governor's office. *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997).

8. Zoning Inspections.

There was no invasion of privacy where zoning officials had a legitimate reason to inspect a home because the owners had been and were alleged to be still violating the zoning ordinance, and where the owners permitted entry for purposes of inspection on more than one occasion. *Swerdlick v. Koch*, 721 A.2d 849 (R.I. 1998).

9. Public Activity Not Covered.

The plain meaning of the privacy statute does not cover alleged psychological invasions of privacy caused by mere observations of public activity that do not also involve the requisite physical invasion. *Swerdlick v. Koch*, 721 A.2d 849 (R.I. 1998).

Where the complained of activity consisted of the photographing and recording of the arrival and departure times of delivery trucks, the cataloguing of vehicle registration numbers, and the describing of those persons observed at the plaintiffs' home, all of which related to the plaintiff's ongoing business activities, there were no "private facts" to be published and no violation of the privacy statute. *Swerdlick v. Koch*, 721 A.2d 849 (R.I. 1998).

10. Searches.

This section confers a cause of action only for unreasonable invasions of privacy and does not impose liability for constitutionally permissible searches by government officials. *Brousseau v. Town of Westerly*, 11 F. Supp.2d 177 (D.R.I. 1998).

Collateral References. "Caller ID" system, allowing telephone call recipient to ascertain number to telephone from which call originated, as violation of right to privacy, wiretapping statute, or similar protections. 9 A.L.R.5th 553.

Free exercise of religion clause of First Amendment as defense to tort liability. 93 A.L.R. Fed. 754.

Invasion of right of privacy. 33 A.L.R.4th 479.

What is "agency" subject to Privacy Act provisions (5 USCA § 552a). 150 A.L.R. Fed. 521.

What is "record" within meaning of Privacy Act of 1974 (5 USCS § 552a). 121 A.L.R. Fed. 465.

9-1-31. Public school teachers, supervisors, and administrators — Immunity from liability — Compensation for certain injuries — Duty upon school committees and board of regents. — (a) Each school committee and the board of regents shall protect and save harmless

- (1) any public school teacher
- (2) any supervisor, administrator, or licensed professional employee
- (3) any employee whose position requires a certificate from the department of education or board of regents for elementary and secondary education
- (4) any employee whose position directly involves work with students
- (5) any employee of the board of regents from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for actions resulting in accidental bodily injury

to or death of any person, or in accidental damage to or destruction of property, within or without the school building, or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not wanton, reckless, malicious, or grossly negligent, as determined by a court of competent jurisdiction, provided the teacher, supervisor, or administrator, at the time of the acts resulting in the injury, death, damages, or destruction, was acting in the discharge of his or her duties or within the scope of his or her employment or under the direction of the school committee or the board of regents.

(b) For the purpose of this section, the term "teacher" shall include any student teacher doing practice teaching under the direction of a teacher employed by a school committee or the board of regents.

(c) Each school committee and the board of regents shall protect and save harmless any teacher or any supervisor or administrator from financial loss and expense, including payment of expenses reasonably incurred for medical or other service, necessary as a result of an assault upon the teacher, supervisor, or administrator while the person was acting in the discharge of his or her duties within the scope of his or her employment or under the direction of the school committee or the board of regents, which expenses are not paid by the individual teacher's, supervisor's, or administrator's workers' compensation.

(d) Any teacher, supervisor, or administrator absent from his or her employment as a result of injury sustained during an assault upon the teacher, supervisor, or administrator that occurred while the teacher, supervisor, or administrator was discharging his or her duties within the scope of his or her employment or under the direction of the school committee or the board of regents, or for a court appearance in connection with the assault, shall continue to receive his or her full salary, while so absent, except that the amount of any workers' compensation award may be deducted from his or her salary payments during the absence. The time of the absence shall not be charged against the teacher's, supervisor's, or administrator's sick leave, vacation time, or personal leave days.

(e) A person so injured in accordance with subdivision (d) above and who receives a disability therefrom, which renders them unable to fully perform their normal duties, shall, if the disability continues for a period of one year, apply to the Rhode Island employees retirement system for appropriate benefits for which that person is entitled.

History of Section.

P.L. 1978, ch. 221, § 1; P.L. 1980, ch. 48, § 1; P.L. 1988, ch. 136, § 1; P.L. 1990, ch. 341, § 1; P.L. 1997, ch. 212, § 1.

NOTES TO DECISIONS

ANALYSIS

1. Legislative intent.

2. Compensation benefits.
3. — Failure to comply.

1. Legislative Intent.

The legislature, by limiting its reference to the indemnification of financial losses and legal expenses to those that arise out of any claim, demand, or suit intended that subsection (a) was to be applied only to civil proceedings. *Monti v. Warwick Sch. Comm.*, 554 A.2d 638 (R.I. 1989).

2. Compensation Benefits.

A teacher's receipt of the full-salary benefit provided for by subsection (d) was burdened by the condition of applying to the retirement system in a timely manner for the appropriate benefits to which that teacher may be entitled. *Woonsocket Teachers' Guild Local Union 951 v. Woonsocket Sch. Comm.*, 694 A.2d 727 (R.I. 1997).

After suffering for a year under a disability sustained in accordance with subsection (d) of this section, the teacher was required by law to apply to the retirement system pursuant to subsection (e) as a condition to her receipt of the full-salary benefits provided for by subsection (d). *Woonsocket Teachers' Guild Local Union 951 v. Woonsocket Sch. Comm.*, 694 A.2d 727 (R.I. 1997).

3. — Failure to Comply.

Because the teacher failed to comply with the requirement of applying to the retirement system for whatever benefits may be appropriate for a teacher in her situation, the teacher thereby precluded herself from receiving the full-salary payment provided for by subsection (d). Accordingly, the teacher was required to reimburse the school committee for all amounts paid to her after the one-year anniversary date of her injury, in excess of that amount required to be paid to her by the collective-bargaining agreement, together with interest thereon at the legal rate from the date such payments were made. *Woonsocket Teachers' Guild Local Union 951 v. Woonsocket Sch. Comm.*, 694 A.2d 727 (R.I. 1997).

Collateral References. Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCS § 1983 or Bivens action for damages where claim for equitable relief is also pending — post-Harlow cases. 105 A.L.R. Fed. 851.

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 A.L.R.5th 784.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events. 68 A.L.R.5th 663.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 66 A.L.R.5th 1.

Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program. 33 A.L.R.4th 1166.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events. 35 A.L.R.3d 725.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school. 72 A.L.R.5th 469.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip. 68 A.L.R.5th 519.

9-1-31.1. Members of public bodies — Exemption from liability. — (a) *Definitions.* The following words and terms shall have the following respective meanings, unless the context clearly indicates a different meaning:

(1) "Public body" means any branch, department, division, agency, commission, committee, board, council, bureau, authority, or any subdivision thereof of state government or any other public

agency or public body corporate of the state of Rhode Island or any political subdivision thereof.

(2) “Qualified member” means an individual who serves without monetary or other compensation as a member of a public body for the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of the public body. As used in this section, “compensation” does not include a per diem or per meeting allowance, health insurance benefits, or reimbursement for out-of-pocket costs and expenses incurred in the service.

(b) *Limitation of liability.* Notwithstanding any other law, a qualified member of a public body shall not be held civilly liable for any breach of his or her duties as such member, provided that nothing herein contained shall eliminate or limit the liability of a qualified member:

(1) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(2) For any transaction from which such member derived an improper personal benefit; or

(3) For any malicious, willful or wanton act.

History of Section.

P.L. 1987, ch. 522, § 5.

Collateral References. Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCS § 1983 or Bivens action for damages where claim for equitable relief is also pending — post-Harlow cases. 105 A.L.R. Fed. 851.

9-1-44. Civil action for release of names of minors. — (a) No member of any municipal or state agency shall release the identity of any minor who is believed to be a victim of a violation of any law except with the consent of his or her parent or guardian. This section shall not prevent the release of the identity of minors involved in a violation of a motor vehicle law or involved in a motor vehicle accident.

(b) Any person found to be in violation of the provisions of this section shall be liable to the minor in a civil action brought on behalf of the minor for compensatory damages and court costs.

History of Section.

P.L. 1985, ch. 384, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) designated the subsections.

NOTES TO DECISIONS

1. Evidence Sufficient.

Minor, who was the victim of a strong-arm-robbery, was properly awarded judgment and damages under R.I. Gen. Laws § 9-1-44 where the police department had filed the police report of the incident in a media-accessible box, resulting in publication of the minor's identity and loitering and disturbances around the minor's home by gang members who had strong-armed him. Plaintiff's emotional injuries were sufficiently supported by a showing of physical manifestations such as loss of appetite and sleep. *Grieco v. Napolitano*, 813 A.2d 994 (R.I. 2003).

9-1-48. Immunity from civil liability — Sports teams. — (a) Notwithstanding any provi-

sions of law to the contrary, except as otherwise provided in subsection (c) of this section, no person who, without compensation and as a volunteer, renders services as a manager, coach, instructor, umpire, referee, or official or who, without compensation and as a volunteer, assists a manager, coach, instructor, umpire, referee, or official in a youth sports program organized and conducted by or under the auspices of a nonprofit corporation, and no director, trustee, officer, or employee of a nonprofit corporation which organizes, conducts, or sponsors a youth sports program, shall be liable to any person for any civil damages as a result of any acts or omissions in the rendering of such services or assistance or in the organization, conduct, or sponsorship of the youth sports program unless the acts or omissions of the person were committed in willful, wanton, or reckless disregard for the safety of the participants in the youth sports program. It shall be insufficient to impose liability upon any such person to establish only that the conduct of the person fell below ordinary standards of care.

(b) Notwithstanding any provisions of law to the contrary, except as otherwise provided in subsection (c) of this section, no person who renders services as a manager, coach, instructor, umpire, referee, or official or who assists a manager, coach, instructor, umpire, referee, or official in an interscholastic or intramural sports program organized and conducted in accordance with and subject to the rules, regulations, and jurisdiction of the Rhode Island interscholastic league, the committee on junior high school athletics, and/or the board of regents for elementary and secondary education shall be liable to any person for any civil damages as a result of any acts or omissions in the rendering of such services or assistance unless the acts or omissions of the person were committed in willful, wanton, or reckless disregard for the safety of the participants in the interscholastic or intramural sports program.

(c) Nothing in this section shall be deemed to grant immunity to any person, corporation, or other entity who or which causes injury or damage as the result of the negligent operation of a motor vehicle.

(d) For purposes of this section:

(1) “Youth sports program” shall include any program organized for recreational athletic competition, and/or instruction and whose participants are nineteen (19) years of age or younger or physically or mentally disabled regardless of age.

(2) “Compensation” shall not include reimbursement for reasonable expenses actually incurred or to be incurred or, solely in the case of umpires, referees, or other game officials, a modest honorarium.

(3) “Nonprofit corporation” shall include any nonprofit corporation or nonprofit association organized under the law of this state, or of any other state, or of the United States, which is authorized to do business in this state.

History of Section.

P.L. 1987, ch. 307, § 1; P.L. 1988, ch. 311, § 1; P.L. 1999, ch. 83, § 7; P.L. 1999, ch. 130, § 7.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions in subsection (d), made several substitutions for “such”, and made minor punctuation, capitalization and stylistic changes throughout the section.

Compiler’s Notes. P.L. 1999, ch. 83, § 7, and P.L. 1999, ch. 130, § 7, enacted identical amendments to this section.

NOTES TO DECISIONS

1. Summary Judgment Improper.

Summary judgment was inappropriate where a cheerleader’s injury was sufficiently foreseeable to trigger the special-duty doctrine and ultimate liability on the part of the school district. *Schultz v. Foster-Glocester Regional Sch. Dist.*, 755 A.2d 153 (R.I. 2000).

Collateral References. Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 A.L.R.5th 784.

TITLE 11

CRIMINAL OFFENSES

CHAPTER 5

ASSAULTS

SECTION.

- 11-5-7. Assault of schoolteachers, school officials or other school department employees.
11-5-8.1. Assault with bodily fluid.

11-5-7. Assault of schoolteachers, school officials or other school department employees. — Any person who shall knowingly and willfully strike a schoolteacher, student teacher, school security officer or school administrator, causing bodily injury, while the teacher, student teacher, security officer, administrator, or school department employee is engaged in the performance of his or her duty, shall be deemed to have committed a felony, and shall be imprisoned not exceeding three (3) years, or fined not exceeding fifteen hundred dollars (\$1,500), or both.

History of Section.

P.L. 1972, ch. 208, § 1; P.L. 1984, ch. 70, § 1; P.L. 1997, ch. 203, § 1.

11-5-8.1. Assault with bodily fluid. — Any person incarcerated or in custody at a state correctional facility including the juvenile training school who shall knowingly and willfully commit an assault upon a correctional officer or any other employee of the department of corrections with any bodily fluid, while the employee is engaged in the performance of his or her duty, shall be imprisoned not exceeding five (5) years, or fined not less than five hundred

dollars (\$500) nor more than five thousand dollars (\$5,000), or both.

History of Section.

P.L. 1997, ch. 35, § 1.

CHAPTER 9

CHILDREN

SECTION.

- 11-9-13. Purchase, sale or delivery of tobacco products to persons under eighteen — Posting notice of law.

11-9-13. Purchase, sale or delivery of tobacco products to persons under eighteen — Posting notice of law. — No person under eighteen (18) years of age shall purchase, nor shall any person sell, give or deliver to any person under eighteen (18) years of age, any tobacco in the form of cigarettes, bidi cigarettes, cigars, pipe tobacco, chewing tobacco, or snuff. Any person, firm, or corporation that owns, manages, or operates a place of business in which tobacco products are sold, including sales through cigarette vending machines, shall post notice of this law conspicuously in the place of business in letters at least three-eighths of an inch ($\frac{3}{8}$ ”) high.

History of Section.

G.L. 1896, ch. 281, § 28; G.L. 1909, ch. 347, § 29; G.L. 1923, ch. 399, § 28; G.L. 1938, ch. 610, § 28; G.L. 1956, § 11-9-13; P.L. 1987, ch. 84, § 1; P.L. 1988, ch. 159, § 1; P.L. 1996, ch. 321, § 2; P.L. 2001, ch. 124, § 1; P.L. 2001, ch. 149, § 1.

Collateral References. Constitutionality of anti-cigarette legislation. 20 A.L.R. 926.

CHAPTER 15

FLAGS AND EMBLEMS

SECTION.

- 11-15-7. Display of foreign flags on public buildings.

11-15-7. Display of foreign flags on public buildings. — It shall be unlawful to display the flag or emblem of any foreign country upon the flagstaff of any state, county, city or town building or public schoolhouse within this state; provided, that when any foreigner shall become the guest of the United States, or of this state, the flag of the country of which the public guest shall be a citizen or subject may be displayed upon public buildings, except public schoolhouses. Every person who shall violate the provisions of this section shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

History of Section.

G.L. 1896, ch. 283, § 29; G.L. 1909, ch. 349, § 38; G.L. 1923, ch. 401, § 38; G.L. 1938, ch. 612, § 37; G.L. 1956, § 11-15-7.