

SENATE BILL 34

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SB 456/13 – FIN

(PRE-FILED)

4lr0647

By: **Senator Reilly**
Requested: October 11, 2013
Introduced and read first time: January 8, 2014
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Pain-Capable Unborn Child Protection Act

FOR the purpose of prohibiting, except under certain circumstances, the performance or inducement or attempted performance or inducement of an abortion of a pregnant woman unless a certain determination as to the probable age of the unborn child is made by a certain physician; providing that the failure of a physician to perform certain actions is deemed unprofessional conduct; prohibiting the performance or inducement or attempted performance or inducement of an abortion of a pregnant woman if the probable age of an unborn child is a certain number of weeks, except under certain circumstances; requiring an abortion to be performed in a certain manner under certain circumstances; requiring certain physicians to submit a certain report to the Department of Health and Mental Hygiene that includes certain information; requiring the Department to issue a certain public report by a certain date each year that includes certain information; requiring the Department to adopt certain regulations on or before a certain date; establishing certain civil and criminal penalties; authorizing certain persons to bring a civil action under certain circumstances; authorizing certain persons to apply to a certain court for permanent or temporary injunctive relief against a certain person under certain circumstances; providing for the award of certain attorney's fees under certain circumstances; requiring a court to make a certain determination in a certain proceeding; requiring a court to issue certain orders under certain circumstances; requiring certain persons to use a pseudonym to bring a certain action in court under certain circumstances; providing for the construction of various provisions of this Act; stating certain findings of the General Assembly; defining certain terms; and generally relating to the Pain-Capable Unborn Child Protection Act.

BY adding to
Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 20–217 through 20–225 to be under the new part “Part V. Pain–Capable Unborn Child Protection Act”
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

20–215. RESERVED.

20–216. RESERVED.

PART V. PAIN–CAPABLE UNBORN CHILD PROTECTION ACT.

20–217.

THE MARYLAND GENERAL ASSEMBLY FINDS THAT:

(1) PAIN RECEPTORS (NOCICEPTORS) ARE PRESENT THROUGHOUT AN UNBORN CHILD’S ENTIRE BODY AND NERVES LINK THESE RECEPTORS TO THE BRAIN’S THALAMUS AND SUBCORTICAL PLATE BY NO LATER THAN 20 WEEKS;

(2) BY 8 WEEKS AFTER FERTILIZATION, AN UNBORN CHILD REACTS TO TOUCH AND, AFTER 20 WEEKS, AN UNBORN CHILD REACTS TO STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO AN ADULT HUMAN;

(3) IN AN UNBORN CHILD, APPLICATION OF PAINFUL STIMULI IS ASSOCIATED WITH SIGNIFICANT INCREASES IN STRESS HORMONES KNOWN AS THE STRESS RESPONSE;

(4) SUBJECTION TO PAINFUL STIMULI IS ASSOCIATED WITH LONG–TERM HARMFUL NEURODEVELOPMENTAL EFFECTS, INCLUDING ALTERED PAIN SENSITIVITY AND, POSSIBLY, EMOTIONAL, BEHAVIORAL, AND LEARNING DISABILITIES LATER IN LIFE;

(5) FOR THE PURPOSES OF SURGERY ON UNBORN CHILDREN, FETAL ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A DECREASE IN STRESS HORMONES COMPARED TO THEIR LEVEL WHEN PAINFUL STIMULI ARE APPLIED WITHOUT FETAL ANESTHESIA;

(6) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN UNBORN CHILD IS INCAPABLE OF EXPERIENCING PAIN UNTIL A POINT LATER IN PREGNANCY THAN 20 WEEKS AFTER FERTILIZATION PREDOMINATELY RESTS ON THE ASSUMPTION THAT THE ABILITY TO EXPERIENCE PAIN DEPENDS ON THE CEREBRAL CORTEX AND REQUIRES NERVE CONNECTIONS BETWEEN THE THALAMUS AND THE CORTEX, BUT RECENT MEDICAL RESEARCH AND ANALYSIS, ESPECIALLY SINCE 2007, PROVIDE STRONG EVIDENCE FOR THE CONCLUSION THAT A FUNCTIONING CORTEX IS NOT NECESSARY TO EXPERIENCE PAIN;

(7) SUBSTANTIAL EVIDENCE INDICATES THAT CHILDREN BORN MISSING THE BULK OF THE CEREBRAL CORTEX, THOSE WITH HYDRANENCEPHALY, NEVERTHELESS EXPERIENCE PAIN;

(8) IN ADULTS, STIMULATION OR ABLATION OF THE CEREBRAL CORTEX DOES NOT ALTER PAIN PERCEPTION, WHILE STIMULATION OR ABLATION OF THE THALAMUS DOES;

(9) SUBSTANTIAL EVIDENCE INDICATES THAT STRUCTURES USED FOR PAIN PROCESSING IN EARLY DEVELOPMENT DIFFER FROM THOSE OF ADULTS, USING DIFFERENT NEURAL ELEMENTS AVAILABLE AT SPECIFIC TIMES DURING DEVELOPMENT, INCLUDING THE SUBCORTICAL PLATE, TO FULFILL THE ROLE OF PAIN PROCESSING;

(10) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN UNBORN CHILD REMAINS IN A COMA-LIKE SLEEP STATE THAT PRECLUDES AN UNBORN CHILD EXPERIENCING PAIN IS INCONSISTENT WITH THE DOCUMENTED REACTION OF UNBORN CHILDREN TO PAINFUL STIMULI AND WITH THE EXPERIENCE OF FETAL SURGEONS WHO HAVE FOUND IT NECESSARY TO SEDATE AN UNBORN CHILD WITH ANESTHESIA TO PREVENT THE UNBORN CHILD FROM THRASHING ABOUT IN REACTION TO INVASIVE SURGERY;

(11) CONSEQUENTLY, THERE IS SUBSTANTIAL MEDICAL EVIDENCE THAT AN UNBORN CHILD IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS AFTER FERTILIZATION;

(12) IT IS THE DUTY OF THE STATE TO ASSERT A COMPELLING STATE INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL MEDICAL EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN; AND

(13) THE STATE'S COMPELLING INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL MEDICAL EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN IS INTENDED TO BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S

COMPELLING INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE OF VIABILITY, AND NEITHER STATE INTEREST IS INTENDED TO REPLACE THE OTHER.

20-218.

(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) "ABORTION" MEANS THE INTENTIONAL USE OF ANY INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE OR DEVICE TO TERMINATE THE PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT.

(2) "ABORTION" DOES NOT INCLUDE THE INTENTIONAL TERMINATION OF A PREGNANCY FOR THE PURPOSE OF:

(I) INCREASING THE PROBABILITY OF A LIVE BIRTH;

(II) PRESERVATION OF THE LIFE OR HEALTH OF THE CHILD AFTER LIVE BIRTH; OR

(III) REMOVING A DEAD UNBORN CHILD WHO DIED IN UTERO AS THE RESULT OF NATURAL CAUSES, ACCIDENTAL TRAUMA, OR A CRIMINAL ASSAULT ON THE PREGNANT WOMAN OR HER UNBORN CHILD THAT CAUSES THE PREMATURE TERMINATION OF A PREGNANCY.

(C) "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS AN ACT, OR AN OMISSION OF A STATUTORILY REQUIRED ACT, THAT, UNDER THE CIRCUMSTANCES AS THE ACTOR BELIEVES THEM TO BE, CONSTITUTES A SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR INDUCTION OF AN ABORTION.

(D) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN OVUM.

(E) (1) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, IN REASONABLE MEDICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF THE PREGNANT WOMAN THAT IT NECESSITATES THE IMMEDIATE ABORTION OF HER PREGNANCY WITHOUT FIRST DETERMINING POSTFERTILIZATION AGE TO AVERT THE WOMAN'S DEATH OR FOR WHICH THE DELAY NECESSARY TO DETERMINE POSTFERTILIZATION AGE WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

(2) “MEDICAL EMERGENCY” DOES NOT INCLUDE A CONDITION BASED ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL ENGAGE IN CONDUCT WHICH SHE INTENDS TO RESULT IN HER DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

(F) “PHYSICIAN” MEANS ANY INDIVIDUAL LICENSED BY THE STATE BOARD OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.

(G) “POSTFERTILIZATION AGE” MEANS THE AGE OF THE UNBORN CHILD AS CALCULATED FROM THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN OVUM.

(H) “PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD” MEANS THE AGE THAT, IN REASONABLE MEDICAL JUDGMENT, WILL WITH REASONABLE PROBABILITY BE THE POSTFERTILIZATION AGE OF THE UNBORN CHILD AT THE TIME THE ABORTION IS PLANNED TO BE PERFORMED OR INDUCED.

(I) “REASONABLE MEDICAL JUDGMENT” MEANS A MEDICAL JUDGMENT THAT WOULD BE MADE BY A REASONABLY PRUDENT PHYSICIAN WHO IS KNOWLEDGEABLE ABOUT THE CASE AND THE TREATMENT POSSIBILITIES WITH RESPECT TO THE MEDICAL CONDITIONS INVOLVED.

(J) “UNBORN CHILD” OR “FETUS” MEANS AN INDIVIDUAL ORGANISM OF THE SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.

(K) “WOMAN” MEANS A FEMALE HUMAN BEING WHETHER OR NOT SHE HAS REACHED THE AGE OF MAJORITY.

20-219.

(A) (1) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN ABORTION MAY NOT BE PERFORMED OR INDUCED OR BE ATTEMPTED TO BE PERFORMED OR INDUCED UNLESS THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION:

(I) HAS MADE A DETERMINATION OF THE PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD; OR

(II) IS RELYING ON THE DETERMINATION OF THE PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD MADE BY ANOTHER PHYSICIAN.

(2) IN MAKING A DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PHYSICIAN SHALL:

(I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND

(II) PERFORM OR CAUSE TO BE PERFORMED MEDICAL EXAMINATIONS AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN, KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL CONDITIONS INVOLVED, WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE DIAGNOSIS OF THE POSTFERTILIZATION AGE.

(B) THE FAILURE OF A PHYSICIAN TO CONFORM TO THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION IS DEEMED “UNPROFESSIONAL CONDUCT” UNDER § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

20-220.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN INDIVIDUAL MAY NOT PERFORM OR INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN IF THE PROBABLE POSTFERTILIZATION AGE OF THE WOMAN’S UNBORN CHILD HAS BEEN DETERMINED BY A PHYSICIAN TO BE 20 WEEKS OR MORE.

(2) IF, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN, THE PREGNANT WOMAN HAS A MEDICAL EMERGENCY, A PHYSICIAN MAY PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN WHOSE UNBORN CHILD HAS A PROBABLE POSTFERTILIZATION AGE OF 20 WEEKS OR MORE AS DETERMINED BY A PHYSICIAN.

(B) (1) WHEN AN ABORTION IS PERFORMED OR INDUCED ON A PREGNANT WOMAN UNDER SUBSECTION (A)(2) OF THIS SECTION, THE PHYSICIAN SHALL TERMINATE THE PREGNANCY IN THE MANNER THAT, IN THE PHYSICIAN’S REASONABLE MEDICAL JUDGMENT, PROVIDES THE BEST OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE, UNLESS USING THAT METHOD WOULD, IN THE PHYSICIAN’S REASONABLE MEDICAL JUDGMENT, POSE A GREATER RISK OF THE DEATH OR OF THE SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

(2) A MANNER OF ABORTION DOES NOT INCLUDE A GREATER RISK OF DEATH OR SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION IF IT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL ENGAGE IN CONDUCT WHICH SHE INTENDS TO RESULT IN HER

DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

20-221.

(A) A PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO PERFORM OR INDUCE AN ABORTION SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT INCLUDES INFORMATION ON:

(1) THE POSTFERTILIZATION AGE OF THE UNBORN CHILD OF THE PREGNANT WOMAN:

(I) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION AGE WAS MADE, WHETHER ULTRASOUND WAS EMPLOYED IN MAKING THE DETERMINATION, AND THE WEEK OF PROBABLE POSTFERTILIZATION AGE DETERMINED; AND

(II) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION AGE WAS NOT MADE, THE BASIS OF THE DETERMINATION THAT A MEDICAL EMERGENCY EXISTED;

(2) THE METHOD OF ABORTION PERFORMED OR INDUCED, INCLUDING:

(I) MEDICATION ABORTION, INCLUDING MIFEPRISTONE/MISOPROSTOL, METHOTREXATE/MISOPROSTOL, OR ANY OTHER MEDICATION USED;

(II) MANUAL VACUUM ASPIRATION;

(III) ELECTRICAL VACUUM ASPIRATION;

(IV) DILATION AND EVACUATION;

(V) COMBINED INDUCTION ABORTION AND DILATION AND EVACUATION;

(VI) INDUCTION ABORTION WITH PROSTAGLANDINS;

(VII) INDUCTION ABORTION WITH INTRAAMNIOTIC INSTILLATION, INCLUDING SALINE OR UREA;

(VIII) INDUCTION ABORTION;

(IX) INTACT DILATION AND EXTRACTION (PARTIAL-BIRTH);
OR

(X) ANY OTHER METHOD USED;

(3) WHETHER AN INTRAFETAL INJECTION WAS USED IN AN ATTEMPT TO INDUCE FETAL DEMISE, INCLUDING THE USE OF INTRAFETAL POTASSIUM CHLORIDE OR DIGOXIN;

(4) THE AGE AND RACE OF THE PREGNANT WOMAN; AND

(5) IF THE PROBABLE POSTFERTILIZATION AGE WAS DETERMINED TO BE 20 OR MORE WEEKS:

(i) THE BASIS OF THE PHYSICIAN'S DETERMINATION THAT THE PREGNANT WOMAN HAD A CONDITION THAT SO COMPLICATED HER MEDICAL CONDITION AS TO NECESSITATE THE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR TO AVERT SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS; AND

(ii) WHETHER OR NOT THE METHOD OF ABORTION USED WAS ONE THAT, IN REASONABLE MEDICAL JUDGMENT, PROVIDED THE BEST OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE AND, IF SUCH A METHOD WAS NOT USED, THE BASIS OF THE DETERMINATION THAT TERMINATION OF THE PREGNANCY IN THAT MANNER WOULD POSE A GREATER RISK OF THE DEATH OF THE PREGNANT WOMAN OR OF THE SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS, OF THE WOMAN THAN OTHER AVAILABLE METHODS OF ABORTION.

(B) (1) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION:

(i) MAY NOT INCLUDE:

1. THE NAME OR THE ADDRESS OF THE WOMAN WHOSE PREGNANCY WAS TERMINATED; OR

2. ANY OTHER PERSONAL INFORMATION THAT COULD IDENTIFY THE PREGNANT WOMAN; AND

(II) SHALL INCLUDE A UNIQUE MEDICAL RECORD IDENTIFYING NUMBER TO ENABLE MATCHING THE PHYSICIAN'S REPORT TO THE INDIVIDUAL'S MEDICAL RECORDS.

(2) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE SUBMITTED ON THE FORMS AND ON A SCHEDULE REQUIRED BY THE DEPARTMENT IN REGULATION.

(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE CONFIDENTIAL AND NOT AVAILABLE FOR PUBLIC INSPECTION.

(II) ON REQUEST, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE MADE AVAILABLE:

1. TO THE ATTORNEY GENERAL OR A STATE'S ATTORNEY PURSUANT TO A CRIMINAL OR CIVIL INVESTIGATION; OR

2. ON A COURT ORDER.

(C) (1) ON OR BEFORE JUNE 30 OF EACH YEAR, THE DEPARTMENT SHALL ISSUE A PUBLIC REPORT PROVIDING STATISTICS FOR THE PREVIOUS CALENDAR YEAR COMPILED FROM ALL OF THE REPORTS COVERING THAT YEAR SUBMITTED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION FOR EACH OF THE ITEMS LISTED IN SUBSECTION (A) OF THIS SECTION.

(2) THE REPORT SHALL INCLUDE THE STATISTICS FOR ALL PREVIOUS CALENDAR YEARS, ADJUSTED TO REFLECT ANY ADDITIONAL INFORMATION FROM LATE OR CORRECTED REPORTS.

(3) THE REPORT MAY NOT INCLUDE PERSONAL IDENTIFYING INFORMATION OF ANY PREGNANT WOMAN ON WHOM AN ABORTION WAS PERFORMED, INDUCED, OR ATTEMPTED.

(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION ON OR BEFORE JANUARY 1, 2015.

(2) THE REGULATIONS SHALL REQUIRE THAT THE REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION INCLUDE ALL ABORTIONS PERFORMED OR INDUCED ON AND AFTER THE FIRST DAY OF THE FIRST CALENDAR MONTH FOLLOWING THE DATE THE REGULATIONS ARE ADOPTED.

(E) (1) A PHYSICIAN MAY NOT KNOWINGLY FAIL TO FILE OR LATE FILE A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(2) ANY PHYSICIAN WHO FAILS TO SUBMIT A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION WITHIN 30 DAYS AFTER THE REPORTING DEADLINE IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF \$1,000 FOR EACH 30-DAY PERIOD OR PORTION OF A 30-DAY PERIOD THE REPORT IS OVERDUE.

(3) (I) A PHYSICIAN WHO FAILS TO FILE A REPORT OR KNOWINGLY FILES AN INCOMPLETE REPORT MORE THAN 6 MONTHS AFTER JUNE 30 OF THE REPORTING YEAR MAY, IN AN ACTION BROUGHT BY THE DEPARTMENT, BE DIRECTED BY A COURT OF COMPETENT JURISDICTION TO SUBMIT A COMPLETE REPORT WITHIN A PERIOD STATED BY COURT ORDER OR BE SUBJECT TO CIVIL CONTEMPT.

(II) A WILLFUL FAILURE BY ANY PHYSICIAN TO CONFORM TO ANY REQUIREMENT OF THIS SECTION, OTHER THAN LATE FILING OF A REPORT, SHALL BE DEEMED "UNPROFESSIONAL CONDUCT" UNDER § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

(III) A WILLFUL FAILURE BY ANY PHYSICIAN TO SUBMIT A COMPLETE REPORT IN ACCORDANCE WITH A COURT ORDER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE DEEMED "UNPROFESSIONAL CONDUCT" UNDER § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

(4) (I) A PHYSICIAN MAY NOT WILLFULLY FALSIFY A REPORT REQUIRED UNDER THIS SECTION.

(II) A PHYSICIAN WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

20-222.

(A) (1) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED OR THE FATHER OF THE UNBORN CHILD WHO WAS THE SUBJECT OF AN ABORTION PERFORMED IN VIOLATION OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE PERSON WHO PERFORMED OR INDUCED THE ABORTION IN INTENTIONAL OR RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY AND PUNITIVE DAMAGES.

(2) A WOMAN ON WHOM AN ABORTION WAS ATTEMPTED IN VIOLATION OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE PERSON WHO ATTEMPTED TO PERFORM OR INDUCE THE ABORTION IN INTENTIONAL OR RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY AND PUNITIVE DAMAGES.

(B) A WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS PART, THE WOMAN'S SPOUSE, PARENT, GUARDIAN, OR SIBLING, OR THE WOMAN'S CURRENT OR FORMER LICENSED HEALTH CARE PROVIDER, THE DEPARTMENT, THE ATTORNEY GENERAL, OR THE STATE'S ATTORNEY FOR THE COUNTY WHERE THE ABORTION WAS PERFORMED MAY APPLY TO THE APPROPRIATE COURT FOR A TEMPORARY OR PERMANENT INJUNCTION TO RESTRAIN THE PERSON THAT PERFORMED OR INDUCED THE ABORTION OR ATTEMPTED TO PERFORM OR INDUCE AN ABORTION ON THE WOMAN FOR VIOLATING THIS PART:

- (1) WHETHER OR NOT AN ADEQUATE REMEDY AT LAW EXISTS;
- (2) IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW; AND
- (3) NOTWITHSTANDING ANY OTHER LAW.

(C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN AN ACTION TAKEN UNDER THIS SECTION, THE COURT ALSO SHALL RENDER JUDGMENT FOR REASONABLE ATTORNEY'S FEES IN FAVOR OF THE PLAINTIFF AGAINST THE DEFENDANT.

(2) IF JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT AND THE COURT FINDS THAT THE PLAINTIFF'S ACTION WAS FRIVOLOUS AND BROUGHT IN BAD FAITH, THE COURT SHALL RENDER JUDGMENT FOR REASONABLE ATTORNEY'S FEES IN FAVOR OF THE DEFENDANT AGAINST THE PLAINTIFF.

(D) NO DAMAGES OR ATTORNEY'S FEES MAY BE ASSESSED AGAINST THE WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED EXCEPT UNDER SUBSECTION (C)(2) OF THIS SECTION.

20-223.

(A) IN A CIVIL ACTION OR CRIMINAL PROCEEDING BROUGHT UNDER THIS PART, THE COURT SHALL DETERMINE WHETHER THE ANONYMITY OF A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR

ATTEMPTED TO BE PERFORMED OR INDUCED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF SHE DOES NOT GIVE HER CONSENT TO DISCLOSURE.

(B) (1) IF A COURT FINDS THAT A WOMAN'S ANONYMITY SHOULD BE PRESERVED UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL:

(I) ISSUE A GAG ORDER TO THE PARTIES, WITNESSES, AND COUNSEL;

(II) SEAL THE RECORD; AND

(III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD THE WOMAN'S IDENTITY FROM PUBLIC DISCLOSURE.

(2) EACH ORDER ISSUED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ACCOMPANIED BY A SPECIFIC WRITTEN FINDING EXPLAINING:

(I) WHY THE ANONYMITY OF THE WOMAN SHOULD BE PRESERVED FROM PUBLIC DISCLOSURE;

(II) WHY THE ORDER IS ESSENTIAL TO PRESERVING THE WOMAN'S ANONYMITY;

(III) HOW THE ORDER IS NARROWLY TAILORED TO SERVE THE WOMAN'S INTERESTS; AND

(IV) WHY NO REASONABLE LESS RESTRICTIVE ALTERNATIVE EXISTS.

(C) IF A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED REFUSES TO CONSENT TO DISCLOSURE OF HER NAME IN A COURT PROCEEDING UNDER SUBSECTION (A) OF THIS SECTION, ANY PERSON LISTED IN § 20-222 OF THIS PART, OTHER THAN A PUBLIC OFFICIAL, WHO BRINGS AN ACTION UNDER THIS PART SHALL USE A PSEUDONYM.

(D) THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE THE CONCEALMENT OF THE IDENTITY OF THE PLAINTIFF OR OF A WITNESS FROM THE DEFENDANT OR FROM AN ATTORNEY FOR THE DEFENDANT.

(A) THIS PART MAY NOT BE CONSTRUED TO REPEAL § 20–209 OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF STATE LAW REGULATING OR RESTRICTING ABORTION.

(B) (1) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §§ 20–219 AND 20–220 OF THIS PART BUT VIOLATES THE PROVISIONS OF § 20–209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW SHALL BE DEEMED UNLAWFUL AS PROVIDED IN THE APPLICABLE PROVISION OF LAW.

(2) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF § 20–209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS OF THIS PART SHALL BE DEEMED UNLAWFUL.

(3) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE TEMPORARILY OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL ORDER, ALL OTHER PROVISIONS OF LAW REGULATING OR RESTRICTING ABORTION SHALL BE ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED PROVISIONS HAD NOT BEEN ADOPTED, EXCEPT THAT WHENEVER THE TEMPORARY OR PERMANENT RESTRAINING ORDER OR INJUNCTION IS STAYED OR DISSOLVED, OR OTHERWISE CEASES TO HAVE EFFECT, THE AFFECTED PROVISIONS SHALL HAVE FULL FORCE AND EFFECT.

20–225.

THIS PART MAY BE CITED AS THE “MARYLAND PAIN–CAPABLE UNBORN CHILD PROTECTION ACT”.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.