SENATE BILL 511

By: Senators Hough, Bates, Cassilly, DeGrange, Eckardt, Edwards, Hershey, Jennings, Norman, Reilly, Salling, Simonaire, Ready, and Serafini

Introduced and read first time: February 6, 2015
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Women's Late–Term Pregnancy Health Act

FOR the purpose of providing that, 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 a certain physician makes a certain determination; providing that, except in the case of a medical emergency, an individual may not knowingly perform or induce or attempt to perform or induce an abortion if the probable gestational age of an unborn child is a certain number of weeks; requiring certain physicians to submit a certain report to a certain medical facility; requiring certain medical facilities to submit a certain report to the Department of Health and Mental Hygiene; requiring certain physicians to submit a certain report to the Department under certain circumstances; establishing certain penalties for a physician who fails to file a certain report; establishing certain penalties for an individual who intentionally or knowingly performs or induces an abortion in violation of this Act, with a certain result; authorizing certain individuals to bring a certain civil action under certain circumstances; prohibiting certain individuals from bringing a civil action under certain circumstances; providing that the relief provided in a certain civil action shall include certain damages; providing that certain medical facilities are subject to revocation of a certain license and revocation of State funding for a certain time period; providing that certain women may not be subject to certain prosecution; authorizing certain physicians to seek a certain hearing to make a certain determination; providing that certain findings are admissible at certain trials; providing for the construction of various provisions of this Act; defining certain terms; establishing a certain short title; and generally relating to the Women's Late–Term Pregnancy Health Act.

BY adding to

Article – Health – General
Section 20–217 through 20–225 to be under the new part “Part V. Women’s Late–Term Pregnancy Health Act”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
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Annotated Code of Maryland
(2009 Replacement Volume and 2014 Supplement)

Preamble

WHEREAS, Abortion has a higher medical risk when the procedure is performed
later in pregnancy; and

WHEREAS, Compared to an abortion performed at 8 weeks gestation or earlier, the
relative risk increases exponentially at higher gestations and the incidence of major
complications resulting from a pregnancy is highest after 20 weeks gestation; and

WHEREAS, According to the Alan Guttmacher Institute, the risk of death associated
with abortion increases with the length of pregnancy, from one death for every 1,000,000
abortions performed at or before 8 weeks gestation to one death for every 29,000 abortions
performed at 16 to 20 weeks gestation, to one death for every 11,000 abortions performed
at 21 or more weeks gestation; and

WHEREAS, After the first trimester, the risk of hemorrhage from an abortion is
greater and the complications of the hemorrhage may require a hysterectomy, other
reparative surgery, or a blood transfusion; and

WHEREAS, Maryland has a legitimate concern for the health and safety of the
public; and

WHEREAS, Case law supports that Maryland has legitimate interests from the
outset of pregnancy in protecting the health of women and has a legitimate concern with
the health of women who undergo abortions; and

WHEREAS, There is substantial and well–documented evidence that an unborn
child by at least 20 weeks gestation has the capacity to feel pain during an abortion; now,
therefore,

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. WOMEN’S LATE–TERM PREGNANCY HEALTH ACT.

20–217.
(A) In this part the following words have the meanings indicated.

(B) (1) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(2) “Abortion” does not include the intentional termination of a pregnancy to:

   (I) save the life or preserve the health of the unborn child;

   (II) remove a dead unborn child caused by spontaneous abortion; or

   (III) remove an ectopic pregnancy.

(C) “Attempt to perform” 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) “Conception” means the fusion of a human spermatozoon with a human ovum.

(E) “Gestational age” means the time that has elapsed since the first day of a woman’s last menstrual period.

(F) “Major bodily function” includes functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(G) “Medical emergency” means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, or when continuation of the pregnancy will
CREATE A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN.

(H) “MEDICAL FACILITY” MEANS A PUBLIC OR PRIVATE HOSPITAL, CLINIC, CENTER, MEDICAL SCHOOL, MEDICAL TRAINING INSTITUTION, HEALTHCARE FACILITY, PHYSICIAN’S OFFICE, INFIRMARY, DISPENSARY, AMBULATORY SURGICAL TREATMENT CENTER, OR OTHER INSTITUTION OR LOCATION WHERE MEDICAL CARE IS PROVIDED TO ANY INDIVIDUAL.

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

(J) “PREGNANT” OR “PREGNANCY” MEANS THE FEMALE REPRODUCTIVE CONDITION OF HAVING AN UNBORN CHILD IN THE UTERUS.

(K) “PROBABLE GESTATIONAL AGE” MEANS THE AGE THAT, IN REASONABLE MEDICAL JUDGMENT, WILL WITH REASONABLE PROBABILITY BE THE GESTATIONAL AGE OF AN UNBORN CHILD AT THE TIME AN ABORTION IS CONSIDERED, PERFORMED, OR ATTEMPTED.

(L) “UNBORN CHILD” MEANS THE OFFSPRING OF HUMAN BEINGS FROM CONCEPTION UNTIL BIRTH.

20–218.

(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 HAS MADE A DETERMINATION OF THE PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD.

(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 THE MEDICAL EXAMINATIONS, IMAGING STUDIES, AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN, KNOWLEDGEABLE ABOUT THE MEDICAL FACTS AND CONDITIONS OF THE WOMAN AND THE UNBORN CHILD INVOLVED, WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE DIAGNOSIS OF THE GESTATIONAL AGE.
(B) Except in the case of a medical emergency, an individual may not knowingly perform or induce or attempt to perform or induce an abortion on a pregnant woman if the probable gestational age of the woman's unborn child has been determined by a physician to be 20 weeks or more.

20–219.

(A) (1) Except as provided in paragraph (3) of this subsection, a physician who performs or induces or attempts to perform or induce an abortion due to a medical emergency shall submit a written report to the medical facility in which the abortion was performed, induced, or attempted, indicating the reason for the determination that a medical emergency existed.

(2) The medical facility in which the abortion was performed, induced, or attempted, after receiving a report under paragraph (1) of this subsection, shall submit the written report to the Department.

(3) If a physician performs or induces or attempts to perform or induce an abortion due to a medical emergency in a location other than a medical facility, the physician shall submit a written report to the Department indicating the reason for the determination that a medical emergency existed.

(B) A physician who fails to file a report under this subsection:

(1) Is not subject to the criminal or civil penalties provided in §§ 20–220 and 20–221 of this part; but

(2) Is subject to sanctions, disciplinary action, or any other appropriate action by the State Board of Physicians.

20–220.

An individual who intentionally or knowingly performs or induces an abortion in violation of this part resulting in the death of an unborn child is guilty of a felony and on conviction is subject to a fine not exceeding $100,000 and imprisonment not exceeding 10 years or both.

20–221.
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(A) (1) Except as provided in paragraph (2) of this subsection, a woman on whom an abortion is performed or induced in violation of this part, the father of the unborn child if married to the mother at the time she received the abortion, and the maternal grandparents of the unborn child if the mother is a minor when the abortion is performed or induced, may bring a civil action against the individual who performed or induced the abortion unless the pregnancy resulted from the plaintiff’s criminal conduct.

(2) The maternal grandparents of the unborn child may not bring a civil action under paragraph (1) of this subsection if the maternal grandparents consented to the abortion.

(B) The relief provided under subsection (A) of this section shall include:

(1) Damages for psychological and physical injuries resulting from the violation of this part; and

(2) Damages equal to three times the cost of the abortion performed or induced in violation of this part.

20–222.

(A) A medical facility in which an abortion is performed or induced in violation of this part is subject to immediate revocation of the facility’s license by the Department and revocation of state funding for 5 years.

(B) A woman on whom an abortion is performed or induced in violation of this part may not be prosecuted for a conspiracy to violate this part.

20–223.

(A) A physician accused of violating this part may seek a hearing before the State Board of Physicians to determine whether:

(1) The physician’s conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy; or
(2) The continuation of the pregnancy would have created a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

(B) Any findings made at the hearing held under subsection (A) of this section are admissible at any trial related to a violation of this part in which the physician is a defendant.

20–224.

(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) An abortion that complies with the provisions of § 20–218 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.

(C) 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.

(D) 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 Women’s Late–Term Pregnancy Health Act.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.