

# SENATE BILL 749

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CF HB 603

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By: **Senators Ready, Bates, Cassilly, DeGrange, Eckardt, Edwards, Hershey, Hough, Jennings, Norman, Reilly, Salling, Serafini, Simonaire, and Waugh**  
Introduced and read first time: February 5, 2016  
Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Pain-Capable Unborn Child Protection Act**

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

26 BY adding to

27 Article – Health – General

28 Section 20–217 through 20–225 to be under the new part “Part V. Pain-Capable  
29 Unborn Child Protection Act”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2015 Replacement Volume)

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

5 **Article – Health – General**

6 **20–215. RESERVED.**

7 **20–216. RESERVED.**

8 **PART V. PAIN–CAPABLE UNBORN CHILD PROTECTION ACT.**

9 **20–217.**

10 **THE MARYLAND GENERAL ASSEMBLY FINDS THAT:**

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

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

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

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

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

28 **(6) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN**  
29 **UNBORN CHILD IS INCAPABLE OF EXPERIENCING PAIN UNTIL A POINT LATER IN**  
30 **PREGNANCY THAN 20 WEEKS AFTER FERTILIZATION PREDOMINATELY RESTS ON**  
31 **THE ASSUMPTION THAT THE ABILITY TO EXPERIENCE PAIN DEPENDS ON THE**

1 CEREBRAL CORTEX AND REQUIRES NERVE CONNECTIONS BETWEEN THE THALAMUS  
2 AND THE CORTEX, BUT RECENT MEDICAL RESEARCH AND ANALYSIS, ESPECIALLY  
3 SINCE 2007, PROVIDE STRONG EVIDENCE FOR THE CONCLUSION THAT A  
4 FUNCTIONING CORTEX IS NOT NECESSARY TO EXPERIENCE PAIN;

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

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

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

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

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

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

30 (13) THE STATE'S COMPELLING INTEREST IN PROTECTING THE LIVES  
31 OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL MEDICAL  
32 EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN IS INTENDED TO  
33 BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S COMPELLING INTEREST IN  
34 PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE OF VIABILITY,  
35 AND NEITHER STATE INTEREST IS INTENDED TO REPLACE THE OTHER.

36 20-218.

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

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

6           (2) “ABORTION” DOES NOT INCLUDE THE INTENTIONAL  
7 TERMINATION OF A PREGNANCY FOR THE PURPOSE OF:

8                       (I) INCREASING THE PROBABILITY OF A LIVE BIRTH;

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

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

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

20           (D) “FERTILIZATION” MEANS THE FUSION OF A HUMAN SPERMATOZOON  
21 WITH A HUMAN OVUM.

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

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

1 (F) "PHYSICIAN" MEANS ANY INDIVIDUAL LICENSED BY THE STATE BOARD  
2 OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.

3 (G) "POSTFERTILIZATION AGE" MEANS THE AGE OF THE UNBORN CHILD AS  
4 CALCULATED FROM THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN  
5 OVUM.

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

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

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

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

18 20-219.

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

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

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

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

28 (I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND

29 (II) PERFORM OR CAUSE TO BE PERFORMED MEDICAL  
30 EXAMINATIONS AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN,  
31 KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL CONDITIONS INVOLVED,

1 WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE DIAGNOSIS  
2 OF THE POSTFERTILIZATION AGE.

3 (B) THE FAILURE OF A PHYSICIAN TO CONFORM TO THE PROVISIONS OF  
4 SUBSECTION (A) OF THIS SECTION IS DEEMED “UNPROFESSIONAL CONDUCT” UNDER  
5 § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

6 20-220.

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

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

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

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

32 20-221.

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

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

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

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

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

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

15           **(II) MANUAL VACUUM ASPIRATION;**

16           **(III) ELECTRICAL VACUUM ASPIRATION;**

17           **(IV) DILATION AND EVACUATION;**

18           **(V) COMBINED INDUCTION ABORTION AND DILATION AND**  
19 **EVACUATION;**

20           **(VI) INDUCTION ABORTION WITH PROSTAGLANDINS;**

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

23           **(VIII) INDUCTION ABORTION;**

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

25           **(X) ANY OTHER METHOD USED;**

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

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

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

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

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

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

20           **(I) MAY NOT INCLUDE:**

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

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

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

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

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



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

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

5                   **2. ON A COURT ORDER.**

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

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

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

17           **(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT**  
18 **THE PROVISIONS OF THIS SECTION ON OR BEFORE JANUARY 1, 2017.**

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

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

25           **(2) ANY PHYSICIAN WHO FAILS TO SUBMIT A REPORT REQUIRED**  
26 **UNDER SUBSECTION (A) OF THIS SECTION WITHIN 30 DAYS AFTER THE REPORTING**  
27 **DEADLINE IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF**  
28 **\$1,000 FOR EACH 30-DAY PERIOD OR PORTION OF A 30-DAY PERIOD THE REPORT IS**  
29 **OVERDUE.**

30           **(3) (I) A PHYSICIAN WHO FAILS TO FILE A REPORT OR KNOWINGLY**  
31 **FILES AN INCOMPLETE REPORT MORE THAN 6 MONTHS AFTER JUNE 30 OF THE**  
32 **REPORTING YEAR MAY, IN AN ACTION BROUGHT BY THE DEPARTMENT, BE**

1 DIRECTED BY A COURT OF COMPETENT JURISDICTION TO SUBMIT A COMPLETE  
2 REPORT WITHIN A PERIOD STATED BY COURT ORDER OR BE SUBJECT TO CIVIL  
3 CONTEMPT.

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

8 (III) A WILLFUL FAILURE BY ANY PHYSICIAN TO SUBMIT A  
9 COMPLETE REPORT IN ACCORDANCE WITH A COURT ORDER UNDER SUBPARAGRAPH  
10 (I) OF THIS PARAGRAPH SHALL BE DEEMED “UNPROFESSIONAL CONDUCT” UNDER  
11 § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

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

14 (II) A PHYSICIAN WHO VIOLATES THIS PARAGRAPH IS GUILTY  
15 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING  
16 \$1,000.

17 20-222.

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

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

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

1           **(1) WHETHER OR NOT AN ADEQUATE REMEDY AT LAW EXISTS;**

2           **(2) IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW; AND**

3           **(3) NOTWITHSTANDING ANY OTHER LAW.**

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

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

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

15 **20–223.**

16           **(A) IN A CIVIL ACTION OR CRIMINAL PROCEEDING BROUGHT UNDER THIS**  
17 **PART, THE COURT SHALL DETERMINE WHETHER THE ANONYMITY OF A WOMAN ON**  
18 **WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR ATTEMPTED TO BE**  
19 **PERFORMED OR INDUCED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF SHE**  
20 **DOES NOT GIVE HER CONSENT TO DISCLOSURE.**

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

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

25                   **(II) SEAL THE RECORD; AND**

26                   **(III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM**  
27 **COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD THE**  
28 **WOMAN’S IDENTITY FROM PUBLIC DISCLOSURE.**

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

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

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

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

7 (IV) WHY NO REASONABLE LESS RESTRICTIVE ALTERNATIVE  
8 EXISTS.

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

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

18 20-224.

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

22 (B) (1) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF  
23 §§ 20-219 AND 20-220 OF THIS PART BUT VIOLATES THE PROVISIONS OF  
24 § 20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW  
25 SHALL BE DEEMED UNLAWFUL AS PROVIDED IN THE APPLICABLE PROVISION OF  
26 LAW.

27 (2) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF  
28 § 20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW  
29 REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS OF THIS  
30 PART SHALL BE DEEMED UNLAWFUL.

31 (3) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE  
32 TEMPORARILY OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL ORDER,  
33 ALL OTHER PROVISIONS OF LAW REGULATING OR RESTRICTING ABORTION SHALL

1 BE ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED PROVISIONS HAD NOT  
2 BEEN ADOPTED, EXCEPT THAT WHENEVER THE TEMPORARY OR PERMANENT  
3 RESTRAINING ORDER OR INJUNCTION IS STAYED OR DISSOLVED, OR OTHERWISE  
4 CEASES TO HAVE EFFECT, THE AFFECTED PROVISIONS SHALL HAVE FULL FORCE  
5 AND EFFECT.

6 **20-225.**

7 **THIS PART MAY BE CITED AS THE MARYLAND PAIN-CAPABLE UNBORN CHILD**  
8 **PROTECTION ACT.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2016.