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Introduced and read first time: February 8, 2019
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 Abortion – Detection of Fetal Heartbeat

3 FOR the purpose of repealing certain provisions of law related to prohibiting the State from interfering with the decision of a woman to terminate a pregnancy under certain circumstances, authorizing the Maryland Department of Health to adopt certain regulations, and limiting the liability for civil damages or criminal penalties for physicians under certain circumstances; prohibiting a physician, except under certain circumstances, from performing or inducing an abortion on a pregnant woman under certain circumstances; requiring a physician to use a certain method for detecting a fetal heartbeat under certain circumstances; authorizing the Department to adopt certain regulations; requiring a physician, under certain circumstances, to inform a certain woman of her right to hear the fetal heartbeat and allow the woman to hear the fetal heartbeat; requiring a physician to include certain information in a patient’s medical record under certain circumstances; requiring a physician to maintain certain records for a certain time period; establishing certain penalties for a certain violation of this Act; authorizing certain individuals to recover civil damages from a certain individual under certain circumstances; and generally relating to fetal heartbeats and performing or inducing an abortion.

19 BY repealing
20 Article – Health – General
21 Section 20–209
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2018 Supplement)

24 BY adding to
25 Article – Health – General
26 Section 20–209
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Health – General**

20–209.

(a) In this section, “viable” means that stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus’s sustained survival outside the womb.

(b) Except as otherwise provided in this subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy:

(1) Before the fetus is viable; or

(2) At any time during the woman’s pregnancy, if:

(i) The termination procedure is necessary to protect the life or health of the woman; or

(ii) The fetus is affected by genetic defect or serious deformity or abnormality.

(c) The Department may adopt regulations that:

(1) Are both necessary and the least intrusive method to protect the life or health of the woman; and

(2) Are not inconsistent with established medical practice.

(d) The physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the physician’s best medical judgment in accordance with accepted standards of medical practice.

20–209.

(A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A PHYSICIAN MAY NOT PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN:

(1) BEFORE DETERMINING WHETHER THE FETUS HAS A DETECTABLE HEARTBEAT; OR
(2) If the physician determines that the fetus has a detectable heartbeat.

(B) (1) Except as provided in paragraph (2) of this subsection, a physician who attempts to detect a fetal heartbeat before performing an abortion as required by subsection (A) of this section shall use a method to detect the heartbeat that is consistent with the standard of care.

(2) (I) The Department may adopt regulations for the method to be used by a physician to detect a fetal heartbeat.

(II) If the Department adopts regulations under subparagraph (i) of this paragraph, a physician shall use the method for detecting a fetal heartbeat that is required by the regulations.

(3) If a physician detects a fetal heartbeat under paragraph (1) of this subsection, the physician shall:

(I) Inform the woman of her right to hear the heartbeat; and

(II) If the woman requests, allow her to hear the heartbeat.

(C) (1) A physician may perform or induce an abortion if the physician:

(I) Believes that a medical emergency exists; or

(II) Determines that there is no detectable fetal heartbeat.

(2) If a physician performs an abortion because of a medical emergency under paragraph (1) of this subsection, the physician shall include in the patient’s medical record:

(I) The physician’s belief that a medical emergency existed and the reasons for that belief; and

(II) The medical condition that caused the emergency.

(3) If a physician performs an abortion under paragraph (1)
OF THIS SUBSECTION BECAUSE THE PHYSICIAN DETERMINED THAT A FETAL
HEARTBEAT WAS NOT DETECTED, THE PHYSICIAN SHALL INCLUDE THAT
DETERMINATION IN THE PATIENT’S MEDICAL RECORD.

(4) A PHYSICIAN SHALL MAINTAIN A COPY OF THE MEDICAL RECORDS
CREATED UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION FOR AT LEAST 7
YEARS.

(D) (1) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION:

(i) IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO
IMPRISONMENT OF UP TO 12 MONTHS AND A FINE OF UP TO $2,500; AND

(ii) MAY BE SUBJECT TO DISCIPLINARY ACTION.

(2) IN ADDITION TO THE PENALTY ESTABLISHED UNDER PARAGRAPH
(1) OF THIS SUBSECTION, AN INDIVIDUAL WHO RECEIVED AN ABORTION IN
VIOLATION OF THIS SECTION MAY RECOVER CIVIL DAMAGES FROM THE PHYSICIAN
WHO PERFORMED THE ABORTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
October 1, 2019.