

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1227 (Delegate Boteler, *et al.*)  
Health and Government Operations

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Abortion - Ultrasound Requirement

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This bill requires a physician or a “qualified technician” to perform a specified obstetric ultrasound on a pregnant woman and auscultate the fetal heartbeat before the woman provides informed consent to having any part of an abortion performed or induced. Violators are subject to a civil penalty of \$100,000 for a first offense and \$250,000 for a second or subsequent offense.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** Local government revenues may increase to the extent fines are imposed in circuit courts. The bill is not anticipated to materially affect local government expenditures.

**Small Business Effect:** Meaningful.

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Analysis

**Bill Summary:** “Qualified technician” means a registered diagnostic medical sonographer, as specified; a licensed nurse or certified nurse midwife; or a licensed advanced practice nurse with certification in obstetrical ultrasonography.

Before a woman provides informed consent to having any part of an abortion performed or induced, the physician or a qualified technician must:

- perform an obstetric ultrasound on the pregnant woman;

- during the ultrasound, provide a verbal explanation of what the ultrasound is depicting;
- inform the woman if the fetus is not alive;
- display the ultrasound images so that the pregnant woman may view them;
- auscultate the fetal heartbeat so that the pregnant woman may hear it if it is audible; and
- provide a medical description of the ultrasound images.

The pregnant woman may avert her eyes from any ultrasound images, choose not to listen to the fetal heartbeat, or request that the volume be turned down or off if the fetal heartbeat is audible. The woman and the physician are not subject to any penalty for her doing so.

### *Certification*

Before the abortion is performed or induced, the physician must obtain written certification on a form prescribed by the Maryland Department of Health (MDH) that the bill's provisions related to the performance of an obstetric ultrasound have been met and (1) the woman has viewed the ultrasound images and listened to the fetal heartbeat, if it was audible or (2) the woman declined to view the ultrasound images or listen to the fetal heartbeat, if it was audible. The physician must place a copy of the written certification in the woman's medical record.

### *Exception*

A physician may perform or induce an abortion without meeting the requirements of the bill if (1) a medical emergency or medical necessity compels the performance or inducement of an abortion and (2) the physician informs the woman, before performing or inducing the abortion if possible, of the medical indication supporting the physician's judgment that an abortion is necessary. The physician must record the reasons for the physician's conclusion that a medical emergency or medical necessity existed in the woman's medical record.

### *Penalties*

If a court imposes a fine on a physician, the court must report the violation to the State Board of Physicians.

**Current Law:** The State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the

U.S. Supreme Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. MDH may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

**Background:** According to the Guttmacher Institute, three states (Louisiana, Texas, and Wisconsin) mandate that an abortion provider perform an ultrasound on each woman seeking an abortion and requires the provider to show and describe the image. All three states also allow for a woman to look away from the image. Louisiana and Texas further allow a woman to decline to listen to the description provided, under certain circumstances.

Three other states have enacted similar legislation, however, enforcement is permanently enjoined by a court order in those states (Kentucky, North Carolina, and Oklahoma).

**Small Business Effect:** Meaningful for physicians whose practices currently encompass performing abortions to comply with the bill. Physicians and qualified technicians also face significant fines for violations of the bill's provisions.

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### Additional Information

**Prior Introductions:** HB 1075 of 2019, a bill with similar provisions, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Guttmacher Institute; Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2020  
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