

HOUSE BILL 997

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11r2541
CF 11r2816

By: **Delegate Metzgar**

Introduced and read first time: February 5, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Equal Protection for Unborn Human Life Act**

3 FOR the purpose of repealing provisions of law providing for the prosecution for murder or
4 manslaughter of a viable fetus under certain circumstances; declaring the intent of
5 the General Assembly regarding the provision of equal protection for all unborn
6 human beings within the State; providing that the General Assembly acknowledges
7 that certain federal or State laws, regulations, executive orders, or court opinions
8 contrary to certain findings are void; requiring certain executive, legislative, and
9 judicial officers in the State to fulfill a certain duty to support the United States
10 Constitution and the Maryland Constitution for a certain purpose; requiring the
11 Attorney General to monitor the enforcement of certain provisions of law; prohibiting
12 the State, certain political subdivisions of the State, and certain agents from entering
13 an appearance in certain federal lawsuits; providing that certain persons are subject
14 to prosecution for murder or manslaughter for providing or procuring an abortion
15 except under certain circumstances; requiring both a mother and embryo or fetus to
16 be treated as patients for certain purposes; prohibiting the Maryland Medical
17 Assistance Program from providing certain services to certain women that cause or
18 attempt to cause an abortion; repealing certain provisions of law relating to the
19 provision of abortion services; defining certain terms; declaring that the provisions
20 of this Act are not severable; and generally relating to the protection of and provision
21 of services for unborn human beings.

22 BY repealing
23 Article – Criminal Law
24 Section 2–103
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2020 Supplement)

27 BY adding to
28 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2A–101 through 2A–103 to be under the new title “Title 2A. Equal Protection
2 of Unborn Human Beings”
3 Annotated Code of Maryland
4 (2012 Replacement Volume and 2020 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article – Health – General
7 Section 15–103(a)(1)
8 Annotated Code of Maryland
9 (2019 Replacement Volume and 2020 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 15–103(a)(2)(iv)
13 Annotated Code of Maryland
14 (2019 Replacement Volume and 2020 Supplement)

15 BY repealing
16 Article – Health – General
17 Section 20–103, 20–208, and 20–209
18 Annotated Code of Maryland
19 (2019 Replacement Volume and 2020 Supplement)

20 Preamble

21 WHEREAS, The Declaration of Independence states, “We hold these truths to be
22 self–evident, that all men are created equal, that they are endowed by their Creator with
23 certain unalienable Rights, that among these are Life... That to secure these rights,
24 Governments are instituted among Men ...” and government has a duty to protect and
25 defend the right to life that is the natural right of all human beings; and

26 WHEREAS, To secure the natural right to life of all human persons, government
27 must recognize the right to life of all human persons, without discrimination because of
28 age, race, religion, size, sex, color, ancestry, location, disability, deformity, stage of
29 development, life expectancy, or condition of dependency; and

30 WHEREAS, Article 24 of the Declaration of Rights states, “That no man ought to be
31 taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or
32 exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the
33 judgment of his peers, or by the Law of the land;”; and

34 WHEREAS, Article 8 of the Declaration of Rights states “the Legislative, Executive,
35 and Judicial powers of Government ought to be forever separate and distinct from each
36 other, and no person exercising the functions of one of said Departments shall assume or
37 discharge the duties of any other;”; and

38 WHEREAS, The enactment of State law protecting the right to life of all human

1 persons is the constitutional responsibility of the legislative branch, not the judicial branch;
2 and

3 WHEREAS, The right to equal protection under the law, which is guaranteed to all
4 human persons by the United States Constitution and the Maryland Constitution, is vested
5 in each human being within the jurisdiction of the State; and

6 WHEREAS, Any statute, regulation, rule, or order that has the purpose, intent, or
7 effect of allowing any abortion in the State infringes on an unborn human person's right to
8 life in violation of the Fourteenth Amendment to the United States Constitution and,
9 therefore, is not made in pursuance of the United States Constitution as is required in
10 Article 6, Section 2: "This Constitution, and the Laws of the United States which shall be
11 made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in
12 every State shall be bound thereby, any Thing in the Constitution or Laws of any State to
13 the Contrary notwithstanding;"; and

14 WHEREAS, Abortion is not the supreme law of the land, and consequently is not
15 valid therefore, any law, statute, or court opinion permitting abortion, is contrary to the
16 supreme law of the land and consequently invalid; now, therefore,

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

19 **Article – Criminal Law**

20 [2–103.

21 (a) For purposes of a prosecution under this title, "viable" has the meaning stated
22 in § 20–209 of the Health – General Article.

23 (b) Except as provided in subsections (d) through (f) of this section, a prosecution
24 may be instituted for murder or manslaughter of a viable fetus.

25 (c) A person prosecuted for murder or manslaughter as provided in subsection (b)
26 of this section must have:

27 (1) intended to cause the death of the viable fetus;

28 (2) intended to cause serious physical injury to the viable fetus; or

29 (3) wantonly or recklessly disregarded the likelihood that the person's
30 actions would cause the death of or serious physical injury to the viable fetus.

31 (d) Nothing in this section applies to or infringes on a woman's right to terminate
32 a pregnancy as stated in § 20–209 of the Health – General Article.

33 (e) Nothing in this section subjects a physician or other licensed medical

1 professional to liability for fetal death that occurs in the course of administering lawful
2 medical care.

3 (f) Nothing in this section applies to an act or failure to act of a pregnant woman
4 with regard to her own fetus.

5 (g) Nothing in this section shall be construed to confer personhood or any rights
6 on the fetus.]

7 **TITLE 2A. EQUAL PROTECTION OF UNBORN HUMAN BEINGS.**

8 **2A-101.**

9 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) "ABORTION" MEANS THE INTENTIONAL KILLING OF AN UNBORN HUMAN
12 BEING BY USE OR PRESCRIPTION OF ANY PROCEDURE, INSTRUMENT, OR DRUG OR
13 ANY OTHER SUBSTANCE, DEVICE, OR MEANS TO CAUSE OR INTEND TO CAUSE THE
14 DEATH OF AN UNBORN HUMAN BEING.

15 (C) "UNBORN HUMAN BEING" MEANS A LIVING HUMAN ZYGOTE, EMBRYO,
16 OR FETUS, BEGINNING THE MOMENT OF FERTILIZATION UPON THE FUSION OF A
17 HUMAN SPERMATOZOON WITH A HUMAN OVUM, OR IN THE CASE OF ASEXUAL
18 REPRODUCTION, AT THE EQUIVALENT STAGE WHEN A NEW HUMAN ORGANISM IS
19 PRESENT, AND CONTINUING UNTIL BIRTH.

20 **2A-102.**

21 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY, IN ACCORDANCE WITH
22 ITS OBLIGATIONS UNDER THE UNITED STATES CONSTITUTION AND THE MARYLAND
23 CONSTITUTION:

24 (1) TO PROVIDE FOR THE EQUAL PROTECTION OF ALL UNBORN
25 HUMAN BEINGS WITHIN THE STATE; AND

26 (2) TO RECOGNIZE THAT A LIVING HUMAN CHILD, FROM THE MOMENT
27 OF FERTILIZATION ON THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN
28 OVUM, OR IN THE CASE OF ASEXUAL REPRODUCTION, AT THE EQUIVALENT STAGE
29 OF DEVELOPMENT WHEN A NEW HUMAN ORGANISM IS PRESENT, IS A PERSON AND IS
30 ENTITLED TO THE SAME PROTECTION OF THE LAWS OF THIS STATE AS ANY OTHER
31 HUMAN BEING.

32 (B) (1) BASED ON THE FINDINGS UNDER SUBSECTION (A) OF THIS

1 SECTION, THE GENERAL ASSEMBLY ACKNOWLEDGES AS VOID AND OF NO EFFECT
2 ANY AND ALL FEDERAL OR STATE COURT OPINIONS THAT WOULD DEPRIVE AN
3 UNBORN HUMAN PERSON OF THE UNBORN HUMAN PERSON'S UNALIENABLE RIGHT
4 TO LIFE AS PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE
5 UNITED STATES CONSTITUTION.

6 (2) ANY FEDERAL REGULATION, EXECUTIVE ORDER, OR COURT
7 DECISION THAT PURPORTS TO SUPERSEDE, STAY, OR OVERRULE THE PROVISIONS
8 OF THIS TITLE IS IN VIOLATION OF THE UNITED STATES CONSTITUTION AND THE
9 MARYLAND CONSTITUTION AND IS THEREFORE NULL AND VOID.

10 (C) (1) EACH EXECUTIVE, LEGISLATIVE, AND JUDICIAL OFFICER IN THE
11 STATE SHALL FULFILL THEIR SWORN DUTY TO SUPPORT THE UNITED STATES
12 CONSTITUTION IN ACCORDANCE WITH ARTICLE VI OF THE UNITED STATES
13 CONSTITUTION, AND SHALL, THEREFORE, AS EXPLICITLY REQUIRED BY THE
14 UNITED STATES CONSTITUTION, USE ALL LAWFUL MEANS TO PROTECT THE LIFE OF
15 EACH UNBORN HUMAN BEING WITHIN THEIR JURISDICTION.

16 (2) THE ATTORNEY GENERAL SHALL MONITOR THE ENFORCEMENT
17 OF THIS TITLE AND DIRECT STATE AGENCIES TO ADHERE TO THE REQUIREMENTS
18 OF THIS TITLE REGARDLESS OF ANY CONTRARY OR CONFLICTING FEDERAL COURT
19 OPINIONS.

20 (3) THE STATE OR ITS POLITICAL SUBDIVISIONS, AND AGENTS OF THE
21 STATE OR ITS POLITICAL SUBDIVISIONS, MAY NOT ENTER AN APPEARANCE, SPECIAL
22 OR OTHERWISE, IN ANY FEDERAL SUIT CHALLENGING THIS TITLE.

23 2A-103.

24 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY
25 PERSON WHO PROVIDES OR PROCURES AN ABORTION BY ANY MEANS, WHETHER
26 CHEMICAL, SURGICAL, OR BY ANY OTHER INTENTIONAL ACT, OR WHO
27 INTENTIONALLY DESTROYS A LIVING HUMAN ZYGOTE, EMBRYO, OR FETUS FOR ANY
28 REASON IS SUBJECT TO PROSECUTION FOR MURDER OR MANSLAUGHTER UNDER
29 TITLE 2 OF THIS ARTICLE.

30 (B) (1) IN ANY CASE OF A PREGNANCY THAT PRESENTS A CLEAR AND
31 IMMEDIATE OR PROXIMATE THREAT TO THE LIFE OF THE MOTHER, A MEDICAL
32 PROFESSIONAL SHALL USE ALL MEANS TO EXHAUST ALL MEDICAL RESOURCES TO
33 SAVE THE LIVES OF THE WOMAN AND THE EMBRYO OR FETUS, AND THE MEDICAL
34 PROFESSIONAL MAY NOT BE SUBJECT TO PROSECUTION UNDER THIS SECTION IF
35 THE MEDICAL PROFESSIONAL PROVIDES DOCUMENTATION OF THEIR EFFORTS.

36 (2) BOTH THE MOTHER AND EMBRYO OR FETUS SHALL BE TREATED

1 AS PATIENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.

2 **Article – Health – General**

3 15–103.

4 (a) (1) The Secretary shall administer the Maryland Medical Assistance
5 Program.

6 (2) The Program:

7 (iv) Beginning on January 1, 2012, shall provide, subject to the
8 limitations of the State budget, family planning services, **EXCEPT FOR THE PROVISION**
9 **OF ANY DEVICE, PROCEDURE, OR DRUG TO CAUSE OR ATTEMPT TO CAUSE AN**
10 **ABORTION**, to all women whose family income is at or below 200 percent of the poverty
11 level, as permitted by federal law;

12 [20–103.

13 (a) Except as provided in subsections (b) and (c) of this section, a physician may
14 not perform an abortion on an unmarried minor unless the physician first gives notice to a
15 parent or guardian of the minor.

16 (b) The physician may perform the abortion without notice to a parent or
17 guardian if:

18 (1) The minor does not live with a parent or guardian; and

19 (2) A reasonable effort to give notice to a parent or guardian is
20 unsuccessful.

21 (c) (1) The physician may perform the abortion, without notice to a parent or
22 guardian of a minor if, in the professional judgment of the physician:

23 (i) Notice to the parent or guardian may lead to physical or
24 emotional abuse of the minor;

25 (ii) The minor is mature and capable of giving informed consent to
26 an abortion; or

27 (iii) Notification would not be in the best interest of the minor.

28 (2) The physician is not liable for civil damages or subject to a criminal
29 penalty for a decision under this subsection not to give notice.

30 (d) The postal receipt that shows an article of mail was sent by certified mail,

1 return receipt requested, bearing a postmark from the United States Postal Service, to the
2 last known address of a parent or guardian and that is attached to a copy of the notice letter
3 that was sent in that article of mail shall be conclusive evidence of notice or a reasonable
4 effort to give notice, as the case may be.

5 (e) A physician may not provide notice to a parent or guardian if the minor decides
6 not to have the abortion.】

7 [20–208.

8 An abortion must be performed by a licensed physician.】

9 [20–209.

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

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

15 (1) Before the fetus is viable; or

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

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

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

21 (c) The Department may adopt regulations that:

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

24 (2) Are not inconsistent with established medical practice.

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the
30 provisions of § 1–210 of the General Provisions Article, the provisions of this Act are not
31 severable, and if any provision of this Act or the application thereof to any person or
32 circumstance is held invalid for any reason in a court of competent jurisdiction, no other

1 provision or application of this Act may be given effect.

2 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2021.