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By: **Delegates Frank, Amedori, Aumann, Bartlett, Bates, Boteler, Burns, DeBoy, Donoghue, Dwyer, Edwards, Elliott, Glassman, Hogan, Impallaria, Jennings, Kach, Krebs, McComas, McConkey, McDonough, McKee, McMillan, Miller, Minnick, Myers, O'Donnell, Owings, Parrott, Shank, Smigiel, Sossi, Stocksdale, Trueschler, and Weldon**

Introduced and read first time: February 13, 2004  
Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Abortion - The Women's Health Protection Act**

3 FOR the purpose of altering the definition of a "freestanding ambulatory care facility"  
4 to include certain facilities that provide abortion services for the purpose of  
5 certain licensing and regulation requirements; authorizing a certain physician  
6 to perform an abortion under certain circumstances; providing that a certain  
7 physician bears a certain burden of proof under certain circumstances; requiring  
8 certain qualified individuals to screen pregnant women by evaluating the  
9 presence of certain risk factors under certain circumstances; requiring certain  
10 qualified individuals to inform certain women and certain abortion providers of  
11 the results of certain evaluations; requiring certain qualified individuals to  
12 provide certain women with certain information under certain circumstances;  
13 requiring certain qualified individuals to provide certain statements certifying  
14 certain information to certain women and certain abortion providers; requiring  
15 certain abortion providers to carry a certain amount of certain types of  
16 insurance; providing for certain remedies for the violation of certain provisions  
17 of this Act; requiring certain actions to be brought within a certain period of  
18 time; exempting a certain provision from a certain statute of limitations;  
19 requiring certain abortion providers to bear a certain burden of proof under  
20 certain circumstances; creating certain presumptions under certain  
21 circumstances; creating an affirmative defense for a certain violation of a  
22 certain section under certain circumstances; creating a cause of action for the  
23 attempt or completion of a self-induced abortion under certain circumstances;  
24 creating a cause of action for the attempt or completion of an abortion by an  
25 individual who is not a licensed physician; requiring the Department of Health  
26 and Mental Hygiene to maintain an Abortion Information Depository that  
27 contains certain information; requiring the Department to maintain a certain  
28 index; requiring certain documents contained within the Abortion Information  
29 Depository to be available for public inspection during certain hours; requiring  
30 certain documents to be made available to the public at a certain cost; defining  
31 certain terms; making the provisions of this Act severable; and generally

1 relating to The Women's Health Protection Act.

2 BY repealing

3 Article - Health - General

4 The part designation "Part II. Abortion Procedures" immediately preceding

5 Section 20-207, "Part III. Information" following Section 20-209, "Part IV.

6 Effect of Refusal to Participate or Refer" immediately preceding Section

7 20-214; and Section 20-207

8 Annotated Code of Maryland

9 (2000 Replacement Volume and 2003 Supplement)

10 BY renumbering

11 Article - Health - General

12 Section 20-208, 20-209, and 20-214, respectively

13 to be 20-202, 20-204, and 20-208, respectively

14 Annotated Code of Maryland

15 (2000 Replacement Volume and 2003 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article - Courts and Judicial Proceedings

18 Section 3-904(g)(1)

19 Annotated Code of Maryland

20 (2002 Replacement Volume and 2003 Supplement)

21 BY repealing and reenacting, without amendments,

22 Article - Courts and Judicial Proceedings

23 Section 5-109(a)

24 Annotated Code of Maryland

25 (2002 Replacement Volume and 2003 Supplement)

26 BY repealing and reenacting, without amendments,

27 Article - Health - General

28 Section 19-3B-01(a) and 19-3B-02

29 Annotated Code of Maryland

30 (2000 Replacement Volume and 2003 Supplement)

31 BY repealing and reenacting, with amendments,

32 Article - Health - General

33 Section 19-3B-01(b) and 20-103

34 Annotated Code of Maryland

35 (2000 Replacement Volume and 2003 Supplement)

36 BY adding to

37 Article - Health - General

1 Section 20-201, 20-203, 20-205 through 20-207, and 20-209, inclusive, to be  
2 under the amended subtitle "Subtitle 2. The Women's Health Protection  
3 Act"  
4 Annotated Code of Maryland  
5 (2000 Replacement Volume and 2003 Supplement)

6 BY repealing and reenacting, without amendments,  
7 Article - Health - General  
8 Section 20-202, 20-204, and 20-208  
9 Annotated Code of Maryland  
10 (2000 Replacement Volume and 2003 Supplement)  
11 (As enacted by Section 2 of this Act)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the part designation "Part II. Abortion Procedures" immediately  
14 preceding Section 20-207 of Article - Health - General of the Annotated Code of  
15 Maryland, "Part III. Information" following Section 20-209 of Article - Health -  
16 General of the Annotated Code of Maryland, "Part IV. Effect of Refusal to Participate  
17 or Refer" immediately preceding Section 20-214 of Article - Health - General of the  
18 Annotated Code of Maryland; and Section 20-207 of Article - Health - General of the  
19 Annotated Code of Maryland be repealed.

20 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 20-208,  
21 20-209, and 20-214, respectively, of Article - Health - General of the Annotated Code  
22 of Maryland be renumbered to be Section(s) 20-202, 20-204, and 20-208,  
23 respectively.

24 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
25 read as follows:

26 **Article - Courts and Judicial Proceedings**

27 3-904.

28 (g) (1) Except as provided in § 20-206(B) OF THE HEALTH - GENERAL  
29 ARTICLE AND IN paragraph (2) of this subsection, an action under this subtitle shall  
30 be filed within three years after the death of the injured person.

31 5-109.

32 (a) An action for damages for an injury arising out of the rendering of or  
33 failure to render professional services by a health care provider, as defined in §  
34 3-2A-01 of this article, shall be filed within the earlier of:

35 (1) Five years of the time the injury was committed; or

36 (2) Three years of the date the injury was discovered.

**Article - Health - General**

1

2 19-3B-01.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) "Freestanding ambulatory care facility" means:

5 (1) An ambulatory surgical facility;

6 (2) A freestanding endoscopy facility;

7 (3) A freestanding facility utilizing major medical equipment;

8 (4) A kidney dialysis center; [or]

9 (5) A freestanding birthing center; OR

10 (6) A FACILITY, NOT INCLUDING A HOSPITAL, THAT PROVIDES ABORTION  
11 SERVICES.

12 19-3B-02.

13 (a) A freestanding ambulatory care facility may not operate in the State  
14 unless the Secretary has granted the facility a license.15 (b) The Secretary shall issue a license to an applicant that meets the  
16 requirements of this subtitle and all applicable regulations adopted by the Secretary.

17 (c) A license issued under this subtitle is not transferable.

18 20-103.

19 (a) Except as provided in subsections (b) and (c) of this section, a physician  
20 may not perform an abortion on an unmarried minor unless the physician first gives  
21 notice to a parent or guardian of the minor.22 (b) The physician may perform the abortion without notice to a parent or  
23 guardian if:

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

25 (2) A reasonable effort to give notice to a parent or guardian is  
26 unsuccessful.27 (c) (1) The physician may perform the abortion, without notice to a parent  
28 or guardian of a minor if, in the professional judgment of the physician:29 (i) Notice to the parent or guardian may lead to physical or  
30 emotional abuse of the minor; OR

1 [(ii) The minor is mature and capable of giving informed consent to  
2 an abortion; or

3 (iii)] (II) Notification would not be in the best interest of the minor.

4 (2) THE PHYSICIAN MAY PERFORM THE ABORTION WITHOUT NOTICE TO  
5 A PARENT OR GUARDIAN OF A MINOR IF, IN THE PROFESSIONAL JUDGMENT OF THE  
6 PHYSICIAN:

7 (I) THE MINOR IS MATURE AND CAPABLE OF INDEPENDENTLY  
8 EVALUATING THE INFORMATION GIVEN TO HER UNDER § 20-203 OF THIS TITLE;

9 (II) THE MINOR IS MATURE AND CAPABLE OF GIVING INFORMED  
10 CONSENT TO A VOLUNTARY ABORTION; AND

11 (III) SECTION 20-203 OF THIS TITLE HAS NOT BEEN VIOLATED.

12 [(2)] (3) (I) The physician is not liable for civil damages or subject to a  
13 criminal penalty for a decision under this subsection not to give notice.

14 (II) THE PHYSICIAN BEARS THE BURDEN OF PROVING THAT  
15 PARAGRAPH (2) OF THIS SUBSECTION WAS NOT VIOLATED.

16 (d) The postal receipt that shows an article of mail was sent by certified mail,  
17 return receipt requested, bearing a postmark from the United States Postal Service,  
18 to the last known address of a parent or guardian and that is attached to a copy of the  
19 notice letter that was sent in that article of mail shall be conclusive evidence of notice  
20 or a reasonable effort to give notice, as the case may be.

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

23 Subtitle 2. [Abortions; Artificial Insemination; Sterilizations] THE WOMEN'S  
24 HEALTH PROTECTION ACT.

25 20-201.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
27 INDICATED.

28 (B) "ABORTION" MEANS THE USE OR PRESCRIPTION OF AN INSTRUMENT,  
29 MEDICINE, DRUG, OR OTHER SUBSTANCE OR DEVICE TO TERMINATE THE  
30 PREGNANCY OF A WOMAN FOR AN INTENT OTHER THAN:

31 (1) TO INCREASE THE PROBABILITY OF A LIVE BIRTH;

32 (2) TO PRESERVE THE LIFE OR HEALTH OF A CHILD AFTER LIVE BIRTH;  
33 OR

34 (3) TO REMOVE A DEAD FETUS.

1 (C) (1) "ABORTION PROVIDER" MEANS A PHYSICIAN OR ENTITY THAT  
2 PERFORMS OR PROVIDES ABORTIONS.

3 (2) "ABORTION PROVIDER" INCLUDES AN ENTITY THAT REFERS  
4 INDIVIDUALS FOR ABORTIONS AS A NORMAL COURSE OF BUSINESS AT LEAST 10  
5 TIMES PER YEAR.

6 (D) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF  
7 THE ABORTION PROVIDER'S REASONABLE CLINICAL JUDGMENT, SO COMPLICATES  
8 THE MEDICAL CONDITION OF THE PREGNANT WOMAN AS TO NECESSITATE AN  
9 IMMEDIATE ABORTION TO AVERT THE DEATH OF THE WOMAN OR FOR WHICH A  
10 24-HOUR DELAY WILL CREATE GRAVE PERIL OF IMMEDIATE AND IRREVERSIBLE  
11 LOSS OF A MAJOR BODILY FUNCTION.

12 (E) "PHYSICIAN" MEANS AN INDIVIDUAL, INCLUDING A DOCTOR OF  
13 OSTEOPATHY, LICENSED TO PRACTICE MEDICINE IN THE STATE UNDER TITLE 14 OF  
14 THE HEALTH OCCUPATIONS ARTICLE.

15 (F) "QUALIFIED INDIVIDUAL" MEANS A PHYSICIAN OR AN AGENT OF AN  
16 ABORTION PROVIDER WHO IS A LICENSED PSYCHOLOGIST, LICENSED SOCIAL  
17 WORKER, LICENSED PROFESSIONAL COUNSELOR, OR LICENSED REGISTERED NURSE.

18 (G) "RISK FACTOR" MEANS A PHYSICAL, PSYCHOLOGICAL, BEHAVIORAL, OR  
19 SITUATIONAL FACTOR FOR WHICH THERE IS A 5% PROBABILITY OF A HIGHER  
20 INCIDENCE OF ADVERSE EMOTIONAL, BEHAVIORAL, OR PHYSICAL REACTION AS  
21 COMPARED TO INDIVIDUALS WHO DO NOT POSSESS THAT RISK FACTOR.

22 (H) "SELF-INDUCED ABORTION" MEANS AN ABORTION OR MENSTRUAL  
23 EXTRACTION ATTEMPTED OR COMPLETED BY A WOMAN ON HER OWN BODY.

24 20-202.

25 An abortion must be performed by a licensed physician.

26 20-203.

27 (A) BEFORE AN ABORTION PROVIDER MAY RECOMMEND OR PERFORM AN  
28 ABORTION, A QUALIFIED INDIVIDUAL SHALL SCREEN THE PREGNANT WOMAN BY  
29 EVALUATING THE PRESENCE OF KNOWN OR SUSPECTED RISK FACTORS INCLUDING:

30 (1) GONORRHEA OR CHLAMYDIA INFECTION;

31 (2) A FAMILY HISTORY OF BREAST CANCER;

32 (3) A PRIOR HISTORY OF GESTATIONAL TROPHOBLASTIC TUMOR;

33 (4) A HISTORY OF CAESAREAN SECTION;

34 (5) A HISTORY OF PRIOR ABORTION;

35 (6) ADOLESCENCE;

- 1 (7) FEELINGS OF BEING PRESSURED TO HAVE AN ABORTION;
- 2 (8) FEELINGS OF EMOTIONAL ATTACHMENT TO THE UNBORN CHILD;
- 3 (9) A HISTORY OF PRIOR PSYCHOLOGICAL ILLNESS OR EMOTIONAL  
4 INSTABILITY;
- 5 (10) A LACK OF SUPPORT FROM A PARTNER OR FROM PARENTS;
- 6 (11) MORAL OR RELIGIOUS CONVICTIONS AGAINST ABORTION;
- 7 (12) A SECOND OR THIRD TRIMESTER PREGNANCY; AND
- 8 (13) LOW EXPECTATIONS OF COPING WELL.

9 (B) THE QUALIFIED INDIVIDUAL SHALL INFORM THE WOMAN AND THE  
10 ABORTION PROVIDER, IN WRITING, OF THE RESULTS OF THE EVALUATION  
11 CONDUCTED UNDER SUBSECTION (A) OF THIS SECTION INCLUDING ANY IDENTIFIED  
12 RISK FACTORS AND THE ASSOCIATED ADVERSE REACTIONS.

13 (C) IF RISK FACTORS ARE IDENTIFIED, THE QUALIFIED INDIVIDUAL SHALL:

14 (1) PROVIDE THE WOMAN WITH DETAILED INFORMATION THAT  
15 EXPLAINS:

16 (I) THAT THESE RISK FACTORS MAY LEAD TO THE OCCURRENCE  
17 OF ADVERSE REACTIONS; AND

18 (II) THE QUANTIFIABLE RISK RATES, IF DATA EXIST, IN THE LEVEL  
19 OF SPECIFICITY THAT A REASONABLE INDIVIDUAL WOULD CONSIDER MATERIAL TO  
20 THE DECISION OF WHETHER TO UNDERGO AN ABORTION; AND

21 (2) PROVIDE A WRITTEN STATEMENT TO THE WOMAN AND THE  
22 ABORTION PROVIDER THAT CERTIFIES, TO THE BEST OF THE QUALIFIED  
23 INDIVIDUAL'S KNOWLEDGE, THAT THE PREGNANT WOMAN FULLY UNDERSTANDS  
24 AND APPRECIATES THE SIGNIFICANCE OF THE RISK FACTORS DISCUSSED AND HER  
25 INCREASED EXPOSURE TO THE RELATED ADVERSE REACTIONS.

26 20-204.

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

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

33 (1) Before the fetus is viable; or

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

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

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

5 (c) The Department may adopt regulations that:

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

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

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

13 20-205.

14 AN ABORTION PROVIDER THAT PROVIDES MORE THAN 10 ABORTIONS PER YEAR  
15 SHALL FILE WITH THE DEPARTMENT PROOF OF INSURANCE COVERAGE OF AT LEAST  
16 \$2,000,000 FOR MALPRACTICE, NEGLIGENCE, AND BATTERY RELATED TO THE  
17 PROVISION OF AN ABORTION.

18 20-206.

19 (A) FOR A VIOLATION OF § 20-202 OR § 20-203 OF THIS SUBTITLE, A WOMAN  
20 MAY RECOVER:

21 (1) ACTUAL DAMAGES; OR

22 (2) \$10,000 FOR EACH VIOLATION, PUNITIVE DAMAGES, AND  
23 REASONABLE ATTORNEY'S FEES AND COSTS.

24 (B) (1) AN INDIVIDUAL MAY RECOVER UNDER TITLE 3, SUBTITLE 9 OF THE  
25 COURTS ARTICLE UPON PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT  
26 THE ABORTION PROVIDER KNEW OR SHOULD HAVE KNOWN THAT THE WOMAN'S  
27 CONSENT TO THE ABORTION EITHER WAS NOT VOLUNTARY OR WAS IN VIOLATION  
28 OF § 20-203 OF THIS SUBTITLE.

29 (2) NOTWITHSTANDING § 3-904(G) OF THE COURTS ARTICLE, AN ACTION  
30 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE FILED WITHIN 4 YEARS  
31 AFTER THE DEATH OF THE INJURED WOMAN.

32 (C) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY OTHER CAUSE OF  
33 ACTION A WOMAN MAY HAVE ARISING OUT OF THE PERFORMANCE OF THE  
34 ABORTION.

35 (D) IF AN ABORTION PROVIDER ALLOWED LESS THAN 24 HOURS FOR THE  
36 WOMAN TO REFLECT, COMPREHEND, AND CONSIDER ALL OF THE INFORMATION



1 PRESENTED UNDER § 20-203 OF THIS SUBTITLE, THE BURDEN OF PROOF THAT THE  
2 WOMAN HAD SUFFICIENT TIME, GIVEN HER AGE, LEVEL OF MATURITY, EMOTIONAL  
3 STATE, AND MENTAL CAPACITY IS ON THE ABORTION PROVIDER.

4 (E) IN A CIVIL ACTION UNDER THIS SECTION:

5 (1) IN DETERMINING LIABILITY, A VIOLATION OF § 20-203 SHALL CREATE  
6 THE PRESUMPTION THAT THE WOMAN WOULD NOT HAVE UNDERTAKEN THE  
7 ABORTION IF § 20-203 HAD NOT BEEN VIOLATED;

8 (2) THE ABSENCE OF PHYSICAL INJURY MAY NOT PRECLUDE AN AWARD  
9 OF DAMAGES FOR EMOTIONAL HARM;

10 (3) (I) THE FACT THAT AN ABORTION PROVIDER DOES NOT PERFORM  
11 ELECTIVE ABORTIONS, OR HAS NOT IN THE PAST, MAY NOT AUTOMATICALLY  
12 DISQUALIFY THAT ABORTION PROVIDER FROM BEING AN EXPERT WITNESS; AND

13 (II) A LICENSED OBSTETRICIAN OR FAMILY PRACTITIONER WHO  
14 REGULARLY HELPS WOMEN IN RESOLVING PREGNANCY-RELATED MEDICAL  
15 MATTERS SHALL PRESUMPTIVELY BE QUALIFIED TO TESTIFY AS AN EXPERT ON THE  
16 SCREENING, COUNSELING, MANAGEMENT, AND TREATMENT OF UNWANTED OR  
17 PROBLEM PREGNANCIES; AND

18 (4) AN ABORTION PROVIDER THAT MAKES REFERRALS TO AN ABORTION  
19 PROVIDER WHOSE PRACTICE IS LOCATED OUTSIDE OF THIS STATE SHALL BE LIABLE  
20 FOR ENSURING THAT THE PERSON TO WHOM THE ABORTION PROVIDER REFERS THE  
21 WOMAN PROVIDES A STANDARD OF CARE EQUAL TO OR BETTER THAN THE  
22 STANDARD IN THIS STATE.

23 (F) AN AFFIRMATIVE DEFENSE EXISTS IF THE ABORTION PROVIDER  
24 VIOLATED § 20-203 BECAUSE:

25 (1) STATISTICALLY VALIDATED SURVEYS OF THE GENERAL  
26 POPULATION OF WOMEN OF REPRODUCTIVE AGE, CONDUCTED WITHIN 3 YEARS  
27 BEFORE OR AFTER THE ABORTION, DEMONSTRATE THAT FEWER THAN 5% OF  
28 WOMEN WOULD CONSIDER THE INFORMATION THAT THE WOMAN ALLEGES THE  
29 ABORTION PROVIDER FAILED TO PROVIDE TO BE RELEVANT TO AN ABORTION  
30 DECISION; OR

31 (2) IN THE REASONABLE MEDICAL JUDGMENT OF A LICENSED  
32 PSYCHIATRIST WHO EXAMINED THE WOMAN BEFORE THE ABORTION, DISCLOSURE  
33 OF THE INFORMATION THAT THE WOMAN ALLEGES THE ABORTION PROVIDER  
34 FAILED TO PROVIDE WOULD MOST LIKELY HAVE BEEN THE IMMEDIATE AND DIRECT  
35 CAUSE OF A SEVERE ADVERSE EFFECT ON THE PHYSICAL HEALTH OF THE WOMAN.

36 (G) (1) THERE IS A PRESUMPTION THAT THE ABORTION PROVIDER HAS  
37 KNOWLEDGE OF ANY INFORMATION REGARDING POTENTIAL RISKS, PREDISPOSING  
38 RISK FACTORS, AND CRISIS PREGNANCY MANAGEMENT ALTERNATIVES CONTAINED  
39 WITHIN THE ABORTION INFORMATION DEPOSITORY UNDER § 20-207 OF THIS  
40 SUBTITLE WITHIN 3 MONTHS BEFORE THE DATE OF THE ABORTION.

1           (2)       NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, A WOMAN  
2 MAY RECOVER DAMAGES UPON PROVING BY A PREPONDERANCE OF THE EVIDENCE  
3 THAT THE ABORTION PROVIDER HAD OR SHOULD HAVE HAD KNOWLEDGE OF  
4 INFORMATION THAT WAS NOT IN THE ABORTION INFORMATION DEPOSITORY UNDER  
5 § 20-207 OF THIS SUBTITLE WITHIN 3 MONTHS PRIOR TO THE ABORTION.

6           (3)       THE DETERMINATION OF WHETHER INFORMATION CONTAINED  
7 WITHIN THE ABORTION INFORMATION DEPOSITORY UNDER § 20-207 OF THIS  
8 SUBTITLE IS CREDIBLE AND SHOULD BE USED BY AN ABORTION PROVIDER OR A  
9 QUALIFIED INDIVIDUAL IS A QUESTION OF FACT FOR THE JURY.

10       (H)       (1)       IN ADDITION TO OTHER AVAILABLE REMEDIES, EXCEPT FOR ADVICE  
11 LEGALLY PROVIDED BY AN ABORTION PROVIDER, A WOMAN WHO ATTEMPTED OR  
12 COMPLETED A SELF-INDUCED ABORTION OR HER SURVIVORS HAS A CAUSE OF  
13 ACTION FOR BATTERY OR RECKLESS ENDANGERMENT AGAINST AN INDIVIDUAL  
14 WHO PROVIDED, DISTRIBUTED, OR SOLD MEDICAL ADVICE TO HER WITH THE INTENT  
15 TO ASSIST OR ENCOURAGE A SELF-INDUCED ABORTION.

16           (2)       UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE  
17 THAT AN INDIVIDUAL WHO IS NOT A LICENSED PHYSICIAN PROVIDED, DISTRIBUTED,  
18 OR SOLD MEDICAL ADVICE WITH THE INTENT TO ASSIST OTHERS TO PERFORM  
19 ILLEGAL OR SELF-INDUCED ABORTIONS, THE WOMAN OR HER SURVIVORS IS  
20 ENTITLED TO LIQUIDATED DAMAGES OF AT LEAST \$400,000 FOR BATTERY OR  
21 RECKLESS ENDANGERMENT.

22           (3)       PROOF OF INJURY MAY NOT BE REQUIRED TO RECOVER DAMAGES  
23 FOR BATTERY OR RECKLESS ENDANGERMENT UNDER THIS SUBSECTION.

24       (I)       (1)       UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE  
25 THAT AN INDIVIDUAL WHO HAS ATTEMPTED OR COMPLETED AN ABORTION ON A  
26 WOMAN WAS NOT A LICENSED PHYSICIAN, THE WOMAN IS ENTITLED TO AT LEAST  
27 \$800,000 FOR BATTERY OR RECKLESS ENDANGERMENT.

28           (2)       PROOF OF INJURY MAY NOT BE REQUIRED TO RECOVER DAMAGES  
29 FOR BATTERY OR RECKLESS ENDANGERMENT UNDER THIS SUBSECTION.

30 20-207.

31       (A)       THE DEPARTMENT SHALL MAINTAIN AN ABORTION INFORMATION  
32 DEPOSITORY THAT CONTAINS:

33           (1)       PROOF OF INSURANCE CERTIFICATES FILED UNDER § 20-205 OF THIS  
34 SUBTITLE;

35           (2)       AT LEAST ONE COPY OF EACH EDITION OF ANY DOCUMENT  
36 SUBMITTED BY AN INDIVIDUAL, ORGANIZATION, OR OTHER ENTITY REGARDING:

37           (I)       KNOWN OR CLAIMED ADVERSE EFFECTS OF ABORTION;

- 1 (II) PREDISPOSING RISK FACTORS TO POST-ABORTION  
2 OCCURRENCES;
- 3 (III) ALTERNATIVE MANAGEMENT TECHNIQUES FOR CRISIS  
4 PREGNANCIES;
- 5 (IV) REPORTS OF MONETARY AWARDS AND SETTLEMENTS IN CIVIL  
6 ACTIONS AGAINST ABORTION PROVIDERS, WHICH SHALL BE USED AS A BASIS FOR  
7 THE DETERMINATION OF ADEQUATE PROOF OF INSURANCE; AND
- 8 (V) OTHER INFORMATION THAT WOULD BE RELEVANT TO A  
9 REASONABLE WOMAN OR TO THE STANDARD OF CARE OFFERED BY ABORTION  
10 PROVIDERS.

11 (B) THE DEPARTMENT SHALL MAINTAIN AN INDEX OF THE DOCUMENTS  
12 WITHIN THE ABORTION INFORMATION DEPOSITORY INCLUDING THE DATE OF  
13 SUBMISSION.

14 (C) ALL OF THE DOCUMENTS DESCRIBED IN THIS SECTION SHALL BE  
15 AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL BUSINESS HOURS.

16 (D) COPIES OF A DOCUMENT FILED WITHIN THE ABORTION INFORMATION  
17 DEPOSITORY SHALL BE MADE AVAILABLE TO THE PUBLIC AT ACTUAL COST.

18 20-208.

19 (a) (1) A person may not be required to perform or participate in, or refer to  
20 any source for, any medical procedure that results in artificial insemination,  
21 sterilization, or termination of pregnancy.

22 (2) The refusal of a person to perform or participate in, or refer to a  
23 source for, these medical procedures may not be a basis for:

24 (i) Civil liability to another person; or

25 (ii) Disciplinary or other recriminatory action against the person.

26 (b) (1) A licensed hospital, hospital director, or hospital governing board  
27 may not be required:

28 (i) To permit, within the hospital, the performance of any medical  
29 procedure that results in artificial insemination, sterilization, or termination of  
30 pregnancy; or

31 (ii) To refer to any source for these medical procedures.

32 (2) The refusal to permit or to refer to a source for these procedures may  
33 not be grounds for:

34 (i) Civil liability to another person; or

1                   (ii)     Disciplinary or other recriminatory action against the person by  
2 this State or any person.

3       (c)     (1)     The refusal of an individual to submit to or give consent for an  
4 abortion or sterilization may not be grounds for loss of any privileges or immunities to  
5 which the individual otherwise would be entitled.

6                   (2)     Submitting to or granting consent for an abortion or sterilization may  
7 not be a condition precedent to the receipt of any public benefits.

8       (d)     Notwithstanding any other provision of this section, a health care provider,  
9 a licensed hospital, a hospital director, or a hospital governing board is not immune  
10 from civil damages, if available at law, or from disciplinary or other recriminatory  
11 action, if the failure to refer a patient to a source for any medical procedure that  
12 results in sterilization or termination of pregnancy would reasonably be determined  
13 as:

14                  (1)     The cause of death or serious physical injury or serious long-lasting  
15 injury to the patient; and

16                  (2)     Otherwise contrary to the standards of medical care.

17 20-209.

18     THIS SUBTITLE MAY BE CITED AS "THE WOMEN'S HEALTH PROTECTION ACT".

19     SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
20 Act or the application thereof to any person or circumstance is held invalid for any  
21 reason in a court of competent jurisdiction, the invalidity does not affect other  
22 provisions or any other application of this Act which can be given effect without the  
23 invalid provision or application, and for this purpose the provisions of this Act are  
24 declared severable.

25     SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2004.