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By: **Delegates Boutin, Aumann, Bartlett, Bates, Cluster, DeBoy, Elliott, Glassman, Hogan, Impallaria, Jennings, Kelly, Krebs, McComas, McDonough, Miller, Myers, O'Donnell, Shank, Shewell, Stocksdale, Stull, Trueschler, and Weldon**

Introduced and read first time: January 31, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Homicide - Victim - Viable Fetus**

3 FOR the purpose of establishing that for certain murder, manslaughter, or other  
4 unlawful homicide prosecutions and under certain conditions the victim may  
5 include a viable fetus; defining a certain term; providing for the construction of  
6 certain provisions of this Act; providing for the application of this Act; and  
7 generally relating to prosecution for murder, manslaughter, or other unlawful  
8 homicide.

9 BY adding to  
10 Article - Criminal Law  
11 Section 2-103  
12 Annotated Code of Maryland  
13 (2002 Volume and 2004 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - Health - General  
16 Section 20-209  
17 Annotated Code of Maryland  
18 (2000 Replacement Volume and 2004 Supplement)

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

21 **Article - Criminal Law**

22 2-103.

23 (A) FOR PURPOSES OF A PROSECUTION UNDER THIS TITLE, "VIABLE" HAS THE  
24 MEANING STATED IN § 20-209 OF THE HEALTH - GENERAL ARTICLE.

1 (B) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION, A  
2 PROSECUTION MAY BE INSTITUTED FOR MURDER, MANSLAUGHTER, OR UNLAWFUL  
3 HOMICIDE, WHETHER AT COMMON LAW OR UNDER THIS TITLE, FOR AN ACT OR  
4 OMISSION THAT:

5 (1) OCCURRED WHILE THE VICTIM WAS A VIABLE FETUS; AND

6 (2) CAUSED THE DEATH OF THE VICTIM.

7 (C) NOTHING IN THIS SECTION APPLIES TO OR INFRINGES ON A WOMAN'S  
8 RIGHT TO TERMINATE A PREGNANCY AS STATED IN § 20-209 OF THE HEALTH -  
9 GENERAL ARTICLE.

10 (D) NOTHING IN THIS SECTION SUBJECTS A PHYSICIAN TO PROSECUTION FOR  
11 A DECISION TO PERFORM AN ABORTION AS STATED IN § 20-209 OF THE HEALTH -  
12 GENERAL ARTICLE.

13 **Article - Health - General**

14 20-209.

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

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

21 (1) Before the fetus is viable; or

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

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

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

27 (c) The Department may adopt regulations that:

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
2 construed to apply only prospectively and may not be applied or interpreted to have  
3 any effect on or application to any crime committed before the effective date of this  
4 Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2005.