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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**

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House action: Adopted

Read second time: March 25, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Homicide Murder and Manslaughter - Victim-- Viable Fetus**

3 FOR the purpose of establishing that a prosecution may be instituted for certain  
4 ~~murder, manslaughter, or murder or manslaughter of a viable fetus other~~  
5 ~~unlawful homicide prosecutions and under certain conditions the victim may~~  
6 ~~include for an act or failure to act that cause the death of a viable fetus;~~ defining  
7 a certain term; providing for the construction of certain provisions of this Act;  
8 providing that the commission of certain acts under certain circumstances shall  
9 not constitute a certain aggravating circumstance; providing for the application  
10 of this Act; and generally relating to prosecution for ~~murder, manslaughter, or~~  
11 ~~murder or manslaughter, other unlawful homicide.~~

12 BY adding to

13 Article - Criminal Law

14 Section 2-103

15 Annotated Code of Maryland

16 (2002 Volume and 2004 Supplement)

17 BY repealing and reenacting, without amendments,

18 Article - Health - General

1 Section 20-209  
2 Annotated Code of Maryland  
3 (2000 Replacement Volume and 2004 Supplement)

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

6 **Article - Criminal Law**

7 2-103.

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

10 (B) EXCEPT AS PROVIDED IN SUBSECTIONS ~~(C) AND (D)~~ (D) THROUGH (F) OF  
11 THIS SECTION, A PROSECUTION MAY BE INSTITUTED FOR ~~MURDER, MANSLAUGHTER,~~  
12 ~~OR UNLAWFUL HOMICIDE OF A FETUS, WHETHER AT COMMON LAW OR UNDER THIS~~  
13 ~~TITLE, FOR AN ACT OR OMISSION FAILURE TO ACT THAT:~~

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

15 (2) ~~CAUSED THE DEATH OF THE VICTIM VIABLE FETUS MURDER OR~~  
16 ~~MANSLAUGHTER OF A VIABLE FETUS.~~

17 (C) ~~A PERSON PROSECUTED FOR MURDER, MANSLAUGHTER, OR UNLAWFUL~~  
18 ~~HOMICIDE MURDER OR MANSLAUGHTER AS PROVIDED IN SUBSECTION (B) OF THIS~~  
19 ~~SECTION MUST HAVE:~~

20 (1) ~~INTENDED TO CAUSE THE DEATH OF THE VIABLE FETUS OR~~  
21 ~~PREGNANT WOMAN;~~

22 (2) ~~INTENDED TO CAUSE SERIOUS PHYSICAL INJURY TO THE VIABLE~~  
23 ~~FETUS OR PREGNANT WOMAN; OR~~

24 (3) ~~WILLFULLY WANTONLY OR RECKLESSLY DISREGARDED THE~~  
25 ~~LIKELIHOOD THAT THE ACT OR FAILURE TO ACT THE PERSON'S ACTIONS WOULD~~  
26 ~~CAUSE THE DEATH OF OR SERIOUS PHYSICAL INJURY TO THE VIABLE FETUS OR THE~~  
27 ~~PREGNANT WOMAN.~~

28 ~~(C)~~ (D) NOTHING IN THIS SECTION APPLIES TO OR INFRINGES ON A  
29 WOMAN'S RIGHT TO TERMINATE A PREGNANCY AS STATED IN § 20-209 OF THE  
30 HEALTH - GENERAL ARTICLE.

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

34 (E) NOTHING IN THIS SECTION SUBJECTS A PHYSICIAN OR OTHER LICENSED  
35 MEDICAL PROFESSIONAL TO LIABILITY FOR FETAL DEATH THAT OCCURS IN THE  
36 COURSE OF ADMINISTERING REASONABLE LAWFUL MEDICAL CARE.

1 (F) NOTHING IN THIS SECTION APPLIES TO AN ACT OR FAILURE TO ACT OF A  
 2 PREGNANT WOMAN WITH REGARD TO HER OWN FETUS.

3 (G) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CONFER  
 4 PERSONHOOD OR ANY RIGHTS ON THE FETUS.

5 (H) THE COMMISSION OF FIRST DEGREE MURDER OF A VIABLE FETUS UNDER  
 6 THIS SECTION, IN CONJUNCTION WITH THE COMMISSION OF ANOTHER FIRST  
 7 DEGREE MURDER ARISING OUT OF THE SAME INCIDENT, DOES NOT CONSTITUTE AN  
 8 AGGRAVATING CIRCUMSTANCE SUBJECTING A DEFENDANT TO THE DEATH PENALTY  
 9 UNDER § 2-303(G)(IX) OF THIS ARTICLE.

10 **Article - Health - General**

11 20-209.

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

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

18 (1) Before the fetus is viable; or

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

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

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

24 (c) The Department may adopt regulations that:

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

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

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

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

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