

SENATE BILL 456

J1

3lr1611
CF 3lr0933

By: **Senators Reilly and Jacobs**

Introduced and read first time: January 30, 2013

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Pain-Capable Unborn Child Protection Act**

3 FOR the purpose of prohibiting, except under certain circumstances, the performance
4 or inducement or attempted performance or inducement of an abortion of a
5 pregnant woman unless a certain determination as to the probable age of the
6 unborn child is made by a certain physician; providing that the failure of a
7 physician to perform certain actions is deemed unprofessional conduct;
8 prohibiting the performance or inducement or attempted performance or
9 inducement of an abortion of a pregnant woman if the probable age of an
10 unborn child is a certain number of weeks, except under certain circumstances;
11 requiring an abortion to be performed in a certain manner under certain
12 circumstances; requiring certain physicians to submit a certain report to the
13 Department of Health and Mental Hygiene that includes certain information;
14 requiring the Department to issue a certain public report by a certain date each
15 year that includes certain information; requiring the Department to adopt
16 certain regulations on or before a certain date; establishing certain civil and
17 criminal penalties; authorizing certain persons to bring a civil action under
18 certain circumstances; authorizing certain persons to apply to a certain court for
19 permanent or temporary injunctive relief against a certain person under certain
20 circumstances; providing for the award of certain attorney's fees under certain
21 circumstances; requiring a court to make a certain determination in a certain
22 proceeding; requiring a court to issue certain orders under certain
23 circumstances; requiring certain persons to use a pseudonym to bring a certain
24 action in court under certain circumstances; providing for the construction of
25 various provisions of this Act; stating certain findings of the General Assembly;
26 defining certain terms; and generally relating to the
27 Pain-Capable Unborn Child Protection Act.

28 BY adding to
29 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 20–217 through 20–225 to be under the new part “Part V. Pain–Capable
2 Unborn Child Protection Act”
3 Annotated Code of Maryland
4 (2009 Replacement Volume and 2012 Supplement)

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

7 **Article – Health – General**

8 **20–215. RESERVED.**

9 **20–216. RESERVED.**

10 **PART V. PAIN–CAPABLE UNBORN CHILD PROTECTION ACT.**

11 **20–217.**

12 **THE MARYLAND GENERAL ASSEMBLY FINDS THAT:**

13 **(1) PAIN RECEPTORS (NOCICEPTORS) ARE PRESENT**
14 **THROUGHOUT AN UNBORN CHILD’S ENTIRE BODY AND NERVES LINK THESE**
15 **RECEPTORS TO THE BRAIN’S THALAMUS AND SUBCORTICAL PLATE BY NO LATER**
16 **THAN 20 WEEKS;**

17 **(2) BY 8 WEEKS AFTER FERTILIZATION, AN UNBORN CHILD**
18 **REACTS TO TOUCH AND, AFTER 20 WEEKS, AN UNBORN CHILD REACTS TO**
19 **STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO AN ADULT**
20 **HUMAN;**

21 **(3) IN AN UNBORN CHILD, APPLICATION OF PAINFUL STIMULI IS**
22 **ASSOCIATED WITH SIGNIFICANT INCREASES IN STRESS HORMONES KNOWN AS**
23 **THE STRESS RESPONSE;**

24 **(4) SUBJECTION TO PAINFUL STIMULI IS ASSOCIATED WITH**
25 **LONG–TERM HARMFUL NEURODEVELOPMENTAL EFFECTS, INCLUDING ALTERED**
26 **PAIN SENSITIVITY AND, POSSIBLY, EMOTIONAL, BEHAVIORAL, AND LEARNING**
27 **DISABILITIES LATER IN LIFE;**

28 **(5) FOR THE PURPOSES OF SURGERY ON UNBORN CHILDREN,**
29 **FETAL ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A**
30 **DECREASE IN STRESS HORMONES COMPARED TO THEIR LEVEL WHEN PAINFUL**
31 **STIMULI ARE APPLIED WITHOUT FETAL ANESTHESIA;**

1 **(6) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT**
2 **AN UNBORN CHILD IS INCAPABLE OF EXPERIENCING PAIN UNTIL A POINT LATER**
3 **IN PREGNANCY THAN 20 WEEKS AFTER FERTILIZATION PREDOMINATELY RESTS**
4 **ON THE ASSUMPTION THAT THE ABILITY TO EXPERIENCE PAIN DEPENDS ON THE**
5 **CEREBRAL CORTEX AND REQUIRES NERVE CONNECTIONS BETWEEN THE**
6 **THALAMUS AND THE CORTEX, BUT RECENT MEDICAL RESEARCH AND ANALYSIS,**
7 **ESPECIALLY SINCE 2007, PROVIDE STRONG EVIDENCE FOR THE CONCLUSION**
8 **THAT A FUNCTIONING CORTEX IS NOT NECESSARY TO EXPERIENCE PAIN;**

9 **(7) SUBSTANTIAL EVIDENCE INDICATES THAT CHILDREN BORN**
10 **MISSING THE BULK OF THE CEREBRAL CORTEX, THOSE WITH**
11 **HYDRANENCEPHALY, NEVERTHELESS EXPERIENCE PAIN;**

12 **(8) IN ADULTS, STIMULATION OR ABLATION OF THE CEREBRAL**
13 **CORTEX DOES NOT ALTER PAIN PERCEPTION, WHILE STIMULATION OR**
14 **ABLATION OF THE THALAMUS DOES;**

15 **(9) SUBSTANTIAL EVIDENCE INDICATES THAT STRUCTURES USED**
16 **FOR PAIN PROCESSING IN EARLY DEVELOPMENT DIFFER FROM THOSE OF**
17 **ADULTS, USING DIFFERENT NEURAL ELEMENTS AVAILABLE AT SPECIFIC TIMES**
18 **DURING DEVELOPMENT, INCLUDING THE SUBCORTICAL PLATE, TO FULFILL THE**
19 **ROLE OF PAIN PROCESSING;**

20 **(10) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT**
21 **AN UNBORN CHILD REMAINS IN A COMA-LIKE SLEEP STATE THAT PRECLUDES**
22 **AN UNBORN CHILD EXPERIENCING PAIN IS INCONSISTENT WITH THE**
23 **DOCUMENTED REACTION OF UNBORN CHILDREN TO PAINFUL STIMULI AND**
24 **WITH THE EXPERIENCE OF FETAL SURGEONS WHO HAVE FOUND IT NECESSARY**
25 **TO SEDATE AN UNBORN CHILD WITH ANESTHESIA TO PREVENT THE UNBORN**
26 **CHILD FROM THRASHING ABOUT IN REACTION TO INVASIVE SURGERY;**

27 **(11) CONSEQUENTLY, THERE IS SUBSTANTIAL MEDICAL EVIDENCE**
28 **THAT AN UNBORN CHILD IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS**
29 **AFTER FERTILIZATION;**

30 **(12) IT IS THE DUTY OF THE STATE TO ASSERT A COMPELLING**
31 **STATE INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE**
32 **STAGE AT WHICH SUBSTANTIAL MEDICAL EVIDENCE INDICATES THAT THEY ARE**
33 **CAPABLE OF FEELING PAIN; AND**

34 **(13) THE STATE'S COMPELLING INTEREST IN PROTECTING THE**
35 **LIVES OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL**
36 **MEDICAL EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN IS**
37 **INTENDED TO BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S**

1 COMPELLING INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN
2 FROM THE STAGE OF VIABILITY, AND NEITHER STATE INTEREST IS INTENDED
3 TO REPLACE THE OTHER.

4 **20-218.**

5 (A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) (1) "ABORTION" MEANS THE INTENTIONAL USE OF ANY
8 INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE OR DEVICE TO
9 TERMINATE THE PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT.

10 (2) "ABORTION" DOES NOT INCLUDE THE INTENTIONAL
11 TERMINATION OF A PREGNANCY FOR THE PURPOSE OF:

12 (I) INCREASING THE PROBABILITY OF A LIVE BIRTH;

13 (II) PRESERVATION OF THE LIFE OR HEALTH OF THE CHILD
14 AFTER LIVE BIRTH; OR

15 (III) REMOVING A DEAD UNBORN CHILD WHO DIED IN
16 UTERO AS THE RESULT OF NATURAL CAUSES, ACCIDENTAL TRAUMA, OR A
17 CRIMINAL ASSAULT ON THE PREGNANT WOMAN OR HER UNBORN CHILD THAT
18 CAUSES THE PREMATURE TERMINATION OF A PREGNANCY.

19 (C) "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS AN ACT,
20 OR AN OMISSION OF A STATUTORILY REQUIRED ACT, THAT, UNDER THE
21 CIRCUMSTANCES AS THE ACTOR BELIEVES THEM TO BE, CONSTITUTES A
22 SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE
23 PERFORMANCE OR INDUCTION OF AN ABORTION.

24 (D) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOON
25 WITH A HUMAN OVUM.

26 (E) (1) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, IN
27 REASONABLE MEDICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION
28 OF THE PREGNANT WOMAN THAT IT NECESSITATES THE IMMEDIATE ABORTION
29 OF HER PREGNANCY WITHOUT FIRST DETERMINING POSTFERTILIZATION AGE
30 TO AVERT THE WOMAN'S DEATH OR FOR WHICH THE DELAY NECESSARY TO
31 DETERMINE POSTFERTILIZATION AGE WILL CREATE SERIOUS RISK OF
32 SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY
33 FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

1 **(2) “MEDICAL EMERGENCY” DOES NOT INCLUDE A CONDITION**
2 **BASED ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL ENGAGE IN CONDUCT**
3 **WHICH SHE INTENDS TO RESULT IN HER DEATH OR IN SUBSTANTIAL AND**
4 **IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.**

5 **(F) “PHYSICIAN” MEANS ANY INDIVIDUAL LICENSED BY THE STATE**
6 **BOARD OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.**

7 **(G) “POSTFERTILIZATION AGE” MEANS THE AGE OF THE UNBORN CHILD**
8 **AS CALCULATED FROM THE FUSION OF A HUMAN SPERMATOZOON WITH A**
9 **HUMAN OVUM.**

10 **(H) “PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD”**
11 **MEANS THE AGE THAT, IN REASONABLE MEDICAL JUDGMENT, WILL WITH**
12 **REASONABLE PROBABILITY BE THE POSTFERTILIZATION AGE OF THE UNBORN**
13 **CHILD AT THE TIME THE ABORTION IS PLANNED TO BE PERFORMED OR**
14 **INDUCED.**

15 **(I) “REASONABLE MEDICAL JUDGMENT” MEANS A MEDICAL JUDGMENT**
16 **THAT WOULD BE MADE BY A REASONABLY PRUDENT PHYSICIAN WHO IS**
17 **KNOWLEDGEABLE ABOUT THE CASE AND THE TREATMENT POSSIBILITIES WITH**
18 **RESPECT TO THE MEDICAL CONDITIONS INVOLVED.**

19 **(J) “UNBORN CHILD” OR “FETUS” MEANS AN INDIVIDUAL ORGANISM OF**
20 **THE SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.**

21 **(K) “WOMAN” MEANS A FEMALE HUMAN BEING WHETHER OR NOT SHE**
22 **HAS REACHED THE AGE OF MAJORITY.**

23 **20–219.**

24 **(A) (1) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN**
25 **ABORTION MAY NOT BE PERFORMED OR INDUCED OR BE ATTEMPTED TO BE**
26 **PERFORMED OR INDUCED UNLESS THE PHYSICIAN PERFORMING OR INDUCING**
27 **THE ABORTION:**

28 **(I) HAS MADE A DETERMINATION OF THE PROBABLE**
29 **POSTFERTILIZATION AGE OF THE UNBORN CHILD; OR**

30 **(II) IS RELYING ON THE DETERMINATION OF THE PROBABLE**
31 **POSTFERTILIZATION AGE OF THE UNBORN CHILD MADE BY ANOTHER**
32 **PHYSICIAN.**

1 **(2) IN MAKING A DETERMINATION UNDER PARAGRAPH (1) OF**
2 **THIS SUBSECTION, THE PHYSICIAN SHALL:**

3 **(I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND**

4 **(II) PERFORM OR CAUSE TO BE PERFORMED MEDICAL**
5 **EXAMINATIONS AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN,**
6 **KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL CONDITIONS INVOLVED,**
7 **WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE**
8 **DIAGNOSIS OF THE POSTFERTILIZATION AGE.**

9 **(B) THE FAILURE OF A PHYSICIAN TO CONFORM TO THE PROVISIONS OF**
10 **SUBSECTION (A) OF THIS SECTION IS DEEMED “UNPROFESSIONAL CONDUCT”**
11 **UNDER § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.**

12 **20-220.**

13 **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
14 **SUBSECTION, AN INDIVIDUAL MAY NOT PERFORM OR INDUCE OR ATTEMPT TO**
15 **PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN IF THE PROBABLE**
16 **POSTFERTILIZATION AGE OF THE WOMAN’S UNBORN CHILD HAS BEEN**
17 **DETERMINED BY A PHYSICIAN TO BE 20 WEEKS OR MORE.**

18 **(2) IF, IN THE REASONABLE MEDICAL JUDGMENT OF A**
19 **PHYSICIAN, THE PREGNANT WOMAN HAS A MEDICAL EMERGENCY, A PHYSICIAN**
20 **MAY PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN WHOSE**
21 **UNBORN CHILD HAS A PROBABLE POSTFERTILIZATION AGE OF 20 WEEKS OR**
22 **MORE AS DETERMINED BY A PHYSICIAN.**

23 **(B) (1) WHEN AN ABORTION IS PERFORMED OR INDUCED ON A**
24 **PREGNANT WOMAN UNDER SUBSECTION (A)(2) OF THIS SECTION, THE**
25 **PHYSICIAN SHALL TERMINATE THE PREGNANCY IN THE MANNER THAT, IN THE**
26 **PHYSICIAN’S REASONABLE MEDICAL JUDGMENT, PROVIDES THE BEST**
27 **OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE, UNLESS USING THAT**
28 **METHOD WOULD, IN THE PHYSICIAN’S REASONABLE MEDICAL JUDGMENT, POSE**
29 **A GREATER RISK OF THE DEATH OR OF THE SUBSTANTIAL AND IRREVERSIBLE**
30 **PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE PREGNANT**
31 **WOMAN, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.**

32 **(2) A MANNER OF ABORTION DOES NOT INCLUDE A GREATER**
33 **RISK OF DEATH OR SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT**
34 **OF A MAJOR BODILY FUNCTION IF IT IS BASED ON A CLAIM OR DIAGNOSIS THAT**
35 **THE WOMAN WILL ENGAGE IN CONDUCT WHICH SHE INTENDS TO RESULT IN HER**

1 DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A
2 MAJOR BODILY FUNCTION.

3 **20-221.**

4 (A) A PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO
5 PERFORM OR INDUCE AN ABORTION SHALL SUBMIT A REPORT TO THE
6 DEPARTMENT THAT INCLUDES INFORMATION ON:

7 (1) THE POSTFERTILIZATION AGE OF THE UNBORN CHILD OF THE
8 PREGNANT WOMAN:

9 (I) IF A DETERMINATION OF PROBABLE
10 POSTFERTILIZATION AGE WAS MADE, WHETHER ULTRASOUND WAS EMPLOYED
11 IN MAKING THE DETERMINATION, AND THE WEEK OF PROBABLE
12 POSTFERTILIZATION AGE DETERMINED; AND

13 (II) IF A DETERMINATION OF PROBABLE
14 POSTFERTILIZATION AGE WAS NOT MADE, THE BASIS OF THE DETERMINATION
15 THAT A MEDICAL EMERGENCY EXISTED;

16 (2) THE METHOD OF ABORTION PERFORMED OR INDUCED,
17 INCLUDING:

18 (I) MEDICATION ABORTION, INCLUDING
19 MIFEPRISTONE/MISOPROSTOL, METHOTREXATE/MISOPROSTOL, OR ANY OTHER
20 MEDICATION USED;

21 (II) MANUAL VACUUM ASPIRATION;

22 (III) ELECTRICAL VACUUM ASPIRATION;

23 (IV) DILATION AND EVACUATION;

24 (V) COMBINED INDUCTION ABORTION AND DILATION AND
25 EVACUATION;

26 (VI) INDUCTION ABORTION WITH PROSTAGLANDINS;

27 (VII) INDUCTION ABORTION WITH INTRAAMNIOTIC
28 INSTILLATION, INCLUDING SALINE OR UREA;

29 (VIII) INDUCTION ABORTION;

1 (IX) INTACT DILATION AND EXTRACTION (PARTIAL-BIRTH);
2 OR

3 (X) ANY OTHER METHOD USED;

4 (3) WHETHER AN INTRAFETAL INJECTION WAS USED IN AN
5 ATTEMPT TO INDUCE FETAL DEMISE, INCLUDING THE USE OF INTRAFETAL
6 POTASSIUM CHLORIDE OR DIGOXIN;

7 (4) THE AGE AND RACE OF THE PREGNANT WOMAN; AND

8 (5) IF THE PROBABLE POSTFERTILIZATION AGE WAS
9 DETERMINED TO BE 20 OR MORE WEEKS:

10 (i) THE BASIS OF THE PHYSICIAN'S DETERMINATION THAT
11 THE PREGNANT WOMAN HAD A CONDITION THAT SO COMPLICATED HER
12 MEDICAL CONDITION AS TO NECESSITATE THE ABORTION OF HER PREGNANCY
13 TO AVERT HER DEATH OR TO AVERT SERIOUS RISK OF SUBSTANTIAL AND
14 IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT
15 INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS; AND

16 (ii) WHETHER OR NOT THE METHOD OF ABORTION USED
17 WAS ONE THAT, IN REASONABLE MEDICAL JUDGMENT, PROVIDED THE BEST
18 OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE AND, IF SUCH A METHOD
19 WAS NOT USED, THE BASIS OF THE DETERMINATION THAT TERMINATION OF THE
20 PREGNANCY IN THAT MANNER WOULD POSE A GREATER RISK OF THE DEATH OF
21 THE PREGNANT WOMAN OR OF THE SUBSTANTIAL AND IRREVERSIBLE PHYSICAL
22 IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL
23 OR EMOTIONAL CONDITIONS, OF THE WOMAN THAN OTHER AVAILABLE
24 METHODS OF ABORTION.

25 (B) (1) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS
26 SECTION:

27 (i) MAY NOT INCLUDE:

28 1. THE NAME OR THE ADDRESS OF THE WOMAN
29 WHOSE PREGNANCY WAS TERMINATED; OR

30 2. ANY OTHER PERSONAL INFORMATION THAT
31 COULD IDENTIFY THE PREGNANT WOMAN; AND

1 **(II) SHALL INCLUDE A UNIQUE MEDICAL RECORD**
2 **IDENTIFYING NUMBER TO ENABLE MATCHING THE PHYSICIAN'S REPORT TO THE**
3 **INDIVIDUAL'S MEDICAL RECORDS.**

4 **(2) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS**
5 **SECTION SHALL BE SUBMITTED ON THE FORMS AND ON A SCHEDULE REQUIRED**
6 **BY THE DEPARTMENT IN REGULATION.**

7 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
8 **PARAGRAPH, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION**
9 **SHALL BE CONFIDENTIAL AND NOT AVAILABLE FOR PUBLIC INSPECTION.**

10 **(II) ON REQUEST, A REPORT REQUIRED UNDER**
11 **SUBSECTION (A) OF THIS SECTION SHALL BE MADE AVAILABLE:**

12 **1. TO THE ATTORNEY GENERAL OR A STATE'S**
13 **ATTORNEY PURSUANT TO A CRIMINAL OR CIVIL INVESTIGATION; OR**

14 **2. ON A COURT ORDER.**

15 **(C) (1) ON OR BEFORE JUNE 30 OF EACH YEAR, THE DEPARTMENT**
16 **SHALL ISSUE A PUBLIC REPORT PROVIDING STATISTICS FOR THE PREVIOUS**
17 **CALENDAR YEAR COMPILED FROM ALL OF THE REPORTS COVERING THAT YEAR**
18 **SUBMITTED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION FOR EACH**
19 **OF THE ITEMS LISTED IN SUBSECTION (A) OF THIS SECTION.**

20 **(2) THE REPORT SHALL INCLUDE THE STATISTICS FOR ALL**
21 **PREVIOUS CALENDAR YEARS, ADJUSTED TO REFLECT ANY ADDITIONAL**
22 **INFORMATION FROM LATE OR CORRECTED REPORTS.**

23 **(3) THE REPORT MAY NOT INCLUDE PERSONAL IDENTIFYING**
24 **INFORMATION OF ANY PREGNANT WOMAN ON WHOM AN ABORTION WAS**
25 **PERFORMED, INDUCED, OR ATTEMPTED.**

26 **(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO**
27 **IMPLEMENT THE PROVISIONS OF THIS SECTION ON OR BEFORE JANUARY 1,**
28 **2014.**

29 **(2) THE REGULATIONS SHALL REQUIRE THAT THE REPORT**
30 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION INCLUDE ALL ABORTIONS**
31 **PERFORMED OR INDUCED ON AND AFTER THE FIRST DAY OF THE FIRST**
32 **CALENDAR MONTH FOLLOWING THE DATE THE REGULATIONS ARE ADOPTED.**

1 **(E) (1) A PHYSICIAN MAY NOT KNOWINGLY FAIL TO FILE OR LATE**
2 **FILE A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.**

3 **(2) ANY PHYSICIAN WHO FAILS TO SUBMIT A REPORT REQUIRED**
4 **UNDER SUBSECTION (A) OF THIS SECTION WITHIN 30 DAYS AFTER THE**
5 **REPORTING DEADLINE IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A**
6 **CIVIL PENALTY OF \$1,000 FOR EACH 30-DAY PERIOD OR PORTION OF A 30-DAY**
7 **PERIOD THE REPORT IS OVERDUE.**

8 **(3) (I) A PHYSICIAN WHO FAILS TO FILE A REPORT OR**
9 **KNOWINGLY FILES AN INCOMPLETE REPORT MORE THAN 6 MONTHS AFTER**
10 **JUNE 30 OF THE REPORTING YEAR MAY, IN AN ACTION BROUGHT BY THE**
11 **DEPARTMENT, BE DIRECTED BY A COURT OF COMPETENT JURISDICTION TO**
12 **SUBMIT A COMPLETE REPORT WITHIN A PERIOD STATED BY COURT ORDER OR**
13 **BE SUBJECT TO CIVIL CONTEMPT.**

14 **(II) A WILLFUL FAILURE BY ANY PHYSICIAN TO CONFORM**
15 **TO ANY REQUIREMENT OF THIS SECTION, OTHER THAN LATE FILING OF A**
16 **REPORT, SHALL BE DEEMED “UNPROFESSIONAL CONDUCT” UNDER § 14-404 OF**
17 **THE HEALTH OCCUPATIONS ARTICLE.**

18 **(III) A WILLFUL FAILURE BY ANY PHYSICIAN TO SUBMIT A**
19 **COMPLETE REPORT IN ACCORDANCE WITH A COURT ORDER UNDER**
20 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE DEEMED “UNPROFESSIONAL**
21 **CONDUCT” UNDER TO § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.**

22 **(4) (I) A PHYSICIAN MAY NOT WILLFULLY FALSIFY A REPORT**
23 **REQUIRED UNDER THIS SECTION.**

24 **(II) A PHYSICIAN WHO VIOLATES THIS PARAGRAPH IS**
25 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
26 **EXCEEDING \$1,000.**

27 **20-222.**

28 **(A) (1) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR**
29 **INDUCED OR THE FATHER OF THE UNBORN CHILD WHO WAS THE SUBJECT OF AN**
30 **ABORTION PERFORMED IN VIOLATION OF THIS PART MAY BRING A CIVIL ACTION**
31 **AGAINST THE PERSON WHO PERFORMED OR INDUCED THE ABORTION IN**
32 **INTENTIONAL OR RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY**
33 **AND PUNITIVE DAMAGES.**

1 **(2) A WOMAN ON WHOM AN ABORTION WAS ATTEMPTED IN**
2 **VIOLATION OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE PERSON**
3 **WHO ATTEMPTED TO PERFORM OR INDUCE THE ABORTION IN INTENTIONAL OR**
4 **RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY AND PUNITIVE**
5 **DAMAGES.**

6 **(B) A WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED**
7 **OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS PART,**
8 **THE WOMAN’S SPOUSE, PARENT, GUARDIAN, OR SIBLING, OR THE WOMAN’S**
9 **CURRENT OR FORMER LICENSED HEALTH CARE PROVIDER, THE DEPARTMENT,**
10 **THE ATTORNEY GENERAL, OR THE STATE’S ATTORNEY FOR THE COUNTY**
11 **WHERE THE ABORTION WAS PERFORMED MAY APPLY TO THE APPROPRIATE**
12 **COURT FOR A TEMPORARY OR PERMANENT INJUNCTION TO RESTRAIN THE**
13 **PERSON THAT PERFORMED OR INDUCED THE ABORTION OR ATTEMPTED TO**
14 **PERFORM OR INDUCE AN ABORTION ON THE WOMAN FOR VIOLATING THIS PART:**

15 **(1) WHETHER OR NOT AN ADEQUATE REMEDY AT LAW EXISTS;**

16 **(2) IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW; AND**

17 **(3) NOTWITHSTANDING ANY OTHER LAW.**

18 **(C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN**
19 **AN ACTION TAKEN UNDER THIS SECTION, THE COURT ALSO SHALL RENDER**
20 **JUDGMENT FOR REASONABLE ATTORNEY’S FEES IN FAVOR OF THE PLAINTIFF**
21 **AGAINST THE DEFENDANT.**

22 **(2) IF JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT**
23 **AND THE COURT FINDS THAT THE PLAINTIFF’S ACTION WAS FRIVOLOUS AND**
24 **BROUGHT IN BAD FAITH, THE COURT SHALL RENDER JUDGMENT FOR**
25 **REASONABLE ATTORNEY’S FEES IN FAVOR OF THE DEFENDANT AGAINST THE**
26 **PLAINTIFF.**

27 **(D) NO DAMAGES OR ATTORNEY’S FEES MAY BE ASSESSED AGAINST THE**
28 **WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR ATTEMPTED**
29 **TO BE PERFORMED OR INDUCED EXCEPT UNDER SUBSECTION (C)(2) OF THIS**
30 **SECTION.**

31 **20–223.**

32 **(A) IN A CIVIL ACTION OR CRIMINAL PROCEEDING BROUGHT UNDER**
33 **THIS PART, THE COURT SHALL DETERMINE WHETHER THE ANONYMITY OF A**
34 **WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR**

1 ATTEMPTED TO BE PERFORMED OR INDUCED SHALL BE PRESERVED FROM
2 PUBLIC DISCLOSURE IF SHE DOES NOT GIVE HER CONSENT TO DISCLOSURE.

3 (B) (1) IF A COURT FINDS THAT A WOMAN'S ANONYMITY SHOULD BE
4 PRESERVED UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL:

5 (I) ISSUE A GAG ORDER TO THE PARTIES, WITNESSES, AND
6 COUNSEL;

7 (II) SEAL THE RECORD; AND

8 (III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM
9 COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD
10 THE WOMAN'S IDENTITY FROM PUBLIC DISCLOSURE.

11 (2) EACH ORDER ISSUED UNDER PARAGRAPH (1) OF THIS
12 SUBSECTION SHALL BE ACCOMPANIED BY A SPECIFIC WRITTEN FINDING
13 EXPLAINING:

14 (I) WHY THE ANONYMITY OF THE WOMAN SHOULD BE
15 PRESERVED FROM PUBLIC DISCLOSURE;

16 (II) WHY THE ORDER IS ESSENTIAL TO PRESERVING THE
17 WOMAN'S ANONYMITY;

18 (III) HOW THE ORDER IS NARROWLY TAILORED TO SERVE
19 THE WOMAN'S INTERESTS; AND

20 (IV) WHY NO REASONABLE LESS RESTRICTIVE ALTERNATIVE
21 EXISTS.

22 (C) IF A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR
23 INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED REFUSES TO
24 CONSENT TO DISCLOSURE OF HER NAME IN A COURT PROCEEDING UNDER
25 SUBSECTION (A) OF THIS SECTION, ANY PERSON LISTED IN § 20-222 OF THIS
26 PART, OTHER THAN A PUBLIC OFFICIAL, WHO BRINGS AN ACTION UNDER THIS
27 PART SHALL USE A PSEUDONYM.

28 (D) THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE THE
29 CONCEALMENT OF THE IDENTITY OF THE PLAINTIFF OR OF A WITNESS FROM
30 THE DEFENDANT OR FROM AN ATTORNEY FOR THE DEFENDANT.

31 20-224.

1 **(A) THIS PART MAY NOT BE CONSTRUED TO REPEAL § 20–209 OF THIS**
2 **SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF STATE LAW REGULATING**
3 **OR RESTRICTING ABORTION.**

4 **(B) (1) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §§**
5 **20–219 AND 20–220 OF THIS PART BUT VIOLATES THE PROVISIONS OF §**
6 **20–209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF**
7 **LAW SHALL BE DEEMED UNLAWFUL AS PROVIDED IN THE APPLICABLE**
8 **PROVISION OF LAW.**

9 **(2) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §**
10 **20–209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF**
11 **LAW REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS**
12 **OF THIS PART SHALL BE DEEMED UNLAWFUL.**

13 **(3) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE**
14 **TEMPORARILY OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL**
15 **ORDER, ALL OTHER PROVISIONS OF LAW REGULATING OR RESTRICTING**
16 **ABORTION SHALL BE ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED**
17 **PROVISIONS HAD NOT BEEN ADOPTED, EXCEPT THAT WHENEVER THE**
18 **TEMPORARY OR PERMANENT RESTRAINING ORDER OR INJUNCTION IS STAYED**
19 **OR DISSOLVED, OR OTHERWISE CEASES TO HAVE EFFECT, THE AFFECTED**
20 **PROVISIONS SHALL HAVE FULL FORCE AND EFFECT.**

21 **20–225.**

22 **THIS PART MAY BE CITED AS THE “MARYLAND PAIN–CAPABLE UNBORN**
23 **CHILD PROTECTION ACT”.**

24 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2013.**