

HOUSE BILL 1424

J1
HB 547/17 – HGO

8lr2964

By: **Delegates Ciliberti, Afzali, Aumann, Beitzel, Corderman, Grammer, Hornberger, Impallaria, Jacobs, Krebs, McComas, McConkey, McDonough, McKay, Metzgar, Miele, Otto, Parrott, Rose, Shoemaker, Szeliga, and Wivell**
Introduced and read first time: February 9, 2018
Assigned to: Health and Government Operations

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

27 BY adding to
28 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 (2015 Replacement Volume and 2017 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
6 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 GENERAL ASSEMBLY FINDS THAT:**

13 **(1) PAIN RECEPTORS (NOCICEPTORS) ARE PRESENT THROUGHOUT**
14 **AN UNBORN CHILD’S ENTIRE BODY, AND NERVES LINK THESE RECEPTORS TO THE**
15 **BRAIN’S THALAMUS AND SUBCORTICAL PLATE BY NOT LATER THAN 20 WEEKS;**

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

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

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

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

30 **(6) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN**
31 **UNBORN CHILD IS INCAPABLE OF EXPERIENCING PAIN UNTIL A POINT LATER IN**

1 PREGNANCY THAN 20 WEEKS AFTER FERTILIZATION PREDOMINANTLY RESTS ON
2 THE ASSUMPTION THAT THE ABILITY TO EXPERIENCE PAIN DEPENDS ON THE
3 CEREBRAL CORTEX AND REQUIRES NERVE CONNECTIONS BETWEEN THE THALAMUS
4 AND THE CORTEX, BUT RECENT MEDICAL RESEARCH AND ANALYSIS, ESPECIALLY
5 SINCE 2007, PROVIDE STRONG EVIDENCE FOR THE CONCLUSION THAT A
6 FUNCTIONING CORTEX IS NOT NECESSARY TO EXPERIENCE PAIN;

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

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

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

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

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

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

32 (13) THE STATE'S COMPELLING INTEREST IN PROTECTING THE LIVES
33 OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL MEDICAL
34 EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN IS INTENDED TO
35 BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S COMPELLING INTEREST IN
36 PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE OF VIABILITY,
37 AND NEITHER STATE INTEREST IS INTENDED TO REPLACE THE OTHER.

1 20–218.

2 (A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) (1) “ABORTION” MEANS THE INTENTIONAL USE OF ANY INSTRUMENT,
5 MEDICINE, DRUG, OR ANY OTHER SUBSTANCE OR DEVICE TO TERMINATE THE
6 PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT.

7 (2) “ABORTION” DOES NOT INCLUDE THE INTENTIONAL
8 TERMINATION OF A PREGNANCY FOR THE PURPOSE OF:

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

10 (II) PRESERVATION OF THE LIFE OR HEALTH OF THE CHILD
11 AFTER LIVE BIRTH; OR

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

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

21 (D) “FERTILIZATION” MEANS THE FUSION OF A HUMAN SPERMATOZOON
22 WITH A HUMAN OVUM.

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

31 (2) “MEDICAL EMERGENCY” DOES NOT INCLUDE A CONDITION BASED
32 ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL ENGAGE IN CONDUCT THAT SHE
33 INTENDS TO RESULT IN HER DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE

1 PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

2 (F) "PHYSICIAN" MEANS ANY INDIVIDUAL LICENSED BY THE STATE BOARD
3 OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.

4 (G) "POSTFERTILIZATION AGE" MEANS THE AGE OF THE UNBORN CHILD AS
5 CALCULATED FROM THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN
6 OVUM.

7 (H) "PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD" MEANS
8 THE AGE THAT, IN REASONABLE MEDICAL JUDGMENT, WILL WITH REASONABLE
9 PROBABILITY BE THE POSTFERTILIZATION AGE OF THE UNBORN CHILD AT THE TIME
10 THE ABORTION IS PLANNED TO BE PERFORMED OR INDUCED.

11 (I) "REASONABLE MEDICAL JUDGMENT" MEANS A MEDICAL JUDGMENT
12 THAT WOULD BE MADE BY A REASONABLY PRUDENT PHYSICIAN WHO IS
13 KNOWLEDGEABLE ABOUT THE CASE AND THE TREATMENT POSSIBILITIES WITH
14 RESPECT TO THE MEDICAL CONDITIONS INVOLVED.

15 (J) "UNBORN CHILD" OR "FETUS" MEANS AN INDIVIDUAL ORGANISM OF
16 THE SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.

17 (K) "WOMAN" MEANS A FEMALE HUMAN BEING WHETHER OR NOT SHE HAS
18 REACHED THE AGE OF MAJORITY.

19 20-219.

20 (A) (1) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN ABORTION
21 MAY NOT BE PERFORMED OR INDUCED OR BE ATTEMPTED TO BE PERFORMED OR
22 INDUCED UNLESS THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION:

23 (I) HAS MADE A DETERMINATION OF THE PROBABLE
24 POSTFERTILIZATION AGE OF THE UNBORN CHILD; OR

25 (II) IS RELYING ON THE DETERMINATION OF THE PROBABLE
26 POSTFERTILIZATION AGE OF THE UNBORN CHILD MADE BY ANOTHER PHYSICIAN.

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

29 (I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND

30 (II) PERFORM OR CAUSE TO BE PERFORMED MEDICAL
31 EXAMINATIONS AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN,

1 KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL CONDITIONS INVOLVED,
2 WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE DIAGNOSIS
3 OF THE POSTFERTILIZATION AGE.

4 (B) THE FAILURE OF A PHYSICIAN TO CONFORM TO THE PROVISIONS OF
5 SUBSECTION (A) OF THIS SECTION IS DEEMED “UNPROFESSIONAL CONDUCT” UNDER
6 § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

7 20-220.

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

13 (2) IF, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN,
14 THE PREGNANT WOMAN HAS A MEDICAL EMERGENCY, A PHYSICIAN MAY PERFORM
15 OR INDUCE AN ABORTION ON A PREGNANT WOMAN WHOSE UNBORN CHILD HAS A
16 PROBABLE POSTFERTILIZATION AGE OF 20 WEEKS OR MORE AS DETERMINED BY A
17 PHYSICIAN.

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

27 (2) A MANNER OF ABORTION DOES NOT INCLUDE A GREATER RISK OF
28 DEATH OR SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR
29 BODILY FUNCTION IF IT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL
30 ENGAGE IN CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH OR IN
31 SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY
32 FUNCTION.

33 20-221.

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

1 **(1) THE POSTFERTILIZATION AGE OF THE UNBORN CHILD OF THE**
2 **PREGNANT WOMAN:**

3 **(I) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION**
4 **AGE WAS MADE, WHETHER ULTRASOUND WAS EMPLOYED IN MAKING THE**
5 **DETERMINATION, AND THE WEEK OF PROBABLE POSTFERTILIZATION AGE**
6 **DETERMINED; AND**

7 **(II) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION**
8 **AGE WAS NOT MADE, THE BASIS OF THE DETERMINATION THAT A MEDICAL**
9 **EMERGENCY EXISTED;**

10 **(2) THE METHOD OF ABORTION PERFORMED OR INDUCED,**
11 **INCLUDING:**

12 **(I) MEDICATION ABORTION, INCLUDING**
13 **MIFEPRISTONE/MISOPROSTOL, METHOTREXATE/MISOPROSTOL, OR ANY OTHER**
14 **MEDICATION USED;**

15 **(II) MANUAL VACUUM ASPIRATION;**

16 **(III) ELECTRICAL VACUUM ASPIRATION;**

17 **(IV) DILATION AND EVACUATION;**

18 **(V) COMBINED INDUCTION ABORTION AND DILATION AND**
19 **EVACUATION;**

20 **(VI) INDUCTION ABORTION WITH PROSTAGLANDINS;**

21 **(VII) INDUCTION ABORTION WITH INTRAAMNIOTIC**
22 **INSTILLATION, INCLUDING SALINE OR UREA;**

23 **(VIII) INDUCTION ABORTION;**

24 **(IX) INTACT DILATION AND EXTRACTION (PARTIAL-BIRTH); OR**

25 **(X) ANY OTHER METHOD USED;**

26 **(3) WHETHER AN INTRAFETAL INJECTION WAS USED IN AN ATTEMPT**
27 **TO INDUCE FETAL DEMISE, INCLUDING THE USE OF INTRAFETAL POTASSIUM**
28 **CHLORIDE OR DIGOXIN;**

1 **(4) THE AGE AND RACE OF THE PREGNANT WOMAN; AND**

2 **(5) IF THE PROBABLE POSTFERTILIZATION AGE WAS DETERMINED TO**
3 **BE 20 OR MORE WEEKS:**

4 **(I) THE BASIS OF THE PHYSICIAN'S DETERMINATION THAT THE**
5 **PREGNANT WOMAN HAD A CONDITION THAT SO COMPLICATED HER MEDICAL**
6 **CONDITION AS TO NECESSITATE THE ABORTION OF HER PREGNANCY TO AVERT HER**
7 **DEATH OR TO AVERT SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL**
8 **IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR**
9 **EMOTIONAL CONDITIONS; AND**

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

19 **(B) (1) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION:**

20 **(I) MAY NOT INCLUDE:**

21 **1. THE NAME OR THE ADDRESS OF THE WOMAN WHOSE**
22 **PREGNANCY WAS TERMINATED; OR**

23 **2. ANY OTHER PERSONAL INFORMATION THAT COULD**
24 **IDENTIFY THE PREGNANT WOMAN; AND**

25 **(II) SHALL INCLUDE A UNIQUE MEDICAL RECORD IDENTIFYING**
26 **NUMBER TO ENABLE MATCHING THE PHYSICIAN'S REPORT TO THE INDIVIDUAL'S**
27 **MEDICAL RECORDS.**

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

31 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
32 **PARAGRAPH, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL**

1 BE CONFIDENTIAL AND NOT AVAILABLE FOR PUBLIC INSPECTION.

2 (II) ON REQUEST, A REPORT REQUIRED UNDER SUBSECTION (A)
3 OF THIS SECTION SHALL BE MADE AVAILABLE:

4 1. TO THE ATTORNEY GENERAL OR A STATE'S
5 ATTORNEY PURSUANT TO A CRIMINAL OR CIVIL INVESTIGATION; OR

6 2. ON A COURT ORDER.

7 (C) (1) ON OR BEFORE JUNE 30 EACH YEAR, THE DEPARTMENT SHALL
8 ISSUE A PUBLIC REPORT PROVIDING STATISTICS FOR THE PREVIOUS CALENDAR
9 YEAR COMPILED FROM ALL THE REPORTS COVERING THAT YEAR SUBMITTED IN
10 ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION FOR EACH OF THE ITEMS
11 LISTED IN SUBSECTION (A) OF THIS SECTION.

12 (2) THE REPORT SHALL INCLUDE THE STATISTICS FOR ALL PREVIOUS
13 CALENDAR YEARS, ADJUSTED TO REFLECT ANY ADDITIONAL INFORMATION FROM
14 LATE OR CORRECTED REPORTS.

15 (3) THE REPORT MAY NOT INCLUDE PERSONAL IDENTIFYING
16 INFORMATION OF ANY PREGNANT WOMAN ON WHOM AN ABORTION WAS
17 PERFORMED, INDUCED, OR ATTEMPTED.

18 (D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT
19 THE PROVISIONS OF THIS SECTION ON OR BEFORE JANUARY 1, 2019.

20 (2) THE REGULATIONS SHALL REQUIRE THAT THE REPORT
21 REQUIRED UNDER SUBSECTION (A) OF THIS SECTION INCLUDE ALL ABORTIONS
22 PERFORMED OR INDUCED ON AND AFTER THE FIRST DAY OF THE FIRST CALENDAR
23 MONTH FOLLOWING THE DATE THE REGULATIONS ARE ADOPTED.

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

26 (2) ANY PHYSICIAN WHO FAILS TO SUBMIT A REPORT REQUIRED
27 UNDER SUBSECTION (A) OF THIS SECTION WITHIN 30 DAYS AFTER THE REPORTING
28 DEADLINE IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF
29 \$1,000 FOR EACH 30-DAY PERIOD OR PORTION OF A 30-DAY PERIOD THE REPORT IS
30 OVERDUE.

31 (3) (I) A PHYSICIAN WHO FAILS TO FILE A REPORT OR KNOWINGLY
32 FILES AN INCOMPLETE REPORT MORE THAN 6 MONTHS AFTER JUNE 30 OF THE

1 REPORTING YEAR MAY, IN AN ACTION BROUGHT BY THE DEPARTMENT, BE
2 DIRECTED BY A COURT OF COMPETENT JURISDICTION TO SUBMIT A COMPLETE
3 REPORT WITHIN A PERIOD STATED BY COURT ORDER OR BE CITED FOR CIVIL
4 CONTEMPT.

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

9 (III) A WILLFUL FAILURE BY ANY PHYSICIAN TO SUBMIT A
10 COMPLETE REPORT IN ACCORDANCE WITH A COURT ORDER UNDER SUBPARAGRAPH
11 (I) OF THIS PARAGRAPH SHALL BE DEEMED “UNPROFESSIONAL CONDUCT” UNDER §
12 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

13 (4) (I) A PHYSICIAN MAY NOT WILLFULLY FALSIFY A REPORT
14 REQUIRED UNDER THIS SECTION.

15 (II) A PHYSICIAN WHO VIOLATES THIS PARAGRAPH IS GUILTY
16 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
17 \$1,000.

18 20-222.

19 (A) (1) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED
20 OR THE FATHER OF THE UNBORN CHILD WHO WAS THE SUBJECT OF AN ABORTION
21 PERFORMED IN VIOLATION OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE
22 PERSON WHO PERFORMED OR INDUCED THE ABORTION IN INTENTIONAL OR
23 RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY AND PUNITIVE DAMAGES.

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

28 (B) A WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR
29 ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS PART, THE
30 WOMAN’S SPOUSE, PARENT, GUARDIAN, OR SIBLING, OR THE WOMAN’S CURRENT OR
31 FORMER LICENSED HEALTH CARE PROVIDER, THE DEPARTMENT, THE ATTORNEY
32 GENERAL, OR THE STATE’S ATTORNEY FOR THE COUNTY WHERE THE ABORTION
33 WAS PERFORMED MAY APPLY TO THE APPROPRIATE COURT FOR A TEMPORARY OR
34 PERMANENT INJUNCTION TO RESTRAIN THE PERSON THAT PERFORMED OR
35 INDUCED THE ABORTION OR ATTEMPTED TO PERFORM OR INDUCE AN ABORTION ON
36 THE WOMAN FOR VIOLATING THIS PART:

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

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

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

4 **(C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN AN**
5 **ACTION TAKEN UNDER THIS SECTION, THE COURT ALSO SHALL RENDER JUDGMENT**
6 **FOR REASONABLE ATTORNEY'S FEES IN FAVOR OF THE PLAINTIFF AGAINST THE**
7 **DEFENDANT.**

8 **(2) IF JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT AND**
9 **THE COURT FINDS THAT THE PLAINTIFF'S ACTION WAS FRIVOLOUS AND BROUGHT**
10 **IN BAD FAITH, THE COURT SHALL RENDER JUDGMENT FOR REASONABLE**
11 **ATTORNEY'S FEES IN FAVOR OF THE DEFENDANT AGAINST THE PLAINTIFF.**

12 **(D) (1) NO DAMAGES OR ATTORNEY'S FEES MAY BE ASSESSED AGAINST**
13 **THE WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR ATTEMPTED**
14 **TO BE PERFORMED OR INDUCED EXCEPT UNDER SUBSECTION (C)(2) OF THIS**
15 **SECTION.**

16 **(2) NO DAMAGES MAY BE AWARDED TO A PLAINTIFF IF THE COURT**
17 **FINDS THAT PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.**

18 **20-223.**

19 **(A) IN A CIVIL ACTION OR CRIMINAL PROCEEDING BROUGHT UNDER THIS**
20 **PART, THE COURT SHALL DETERMINE WHETHER THE ANONYMITY OF A WOMAN ON**
21 **WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR ATTEMPTED TO BE**
22 **PERFORMED OR INDUCED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF SHE**
23 **DOES NOT GIVE HER CONSENT TO DISCLOSURE.**

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

26 **(I) ISSUE A GAG ORDER TO THE PARTIES, WITNESSES, AND**
27 **COUNSEL;**

28 **(II) SEAL THE RECORD; AND**

29 **(III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM**
30 **COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD THE**
31 **WOMAN'S IDENTITY FROM PUBLIC DISCLOSURE.**

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

4 **(I) WHY THE ANONYMITY OF THE WOMAN SHOULD BE**
5 **PRESERVED FROM PUBLIC DISCLOSURE;**

6 **(II) WHY THE ORDER IS ESSENTIAL TO PRESERVING THE**
7 **WOMAN'S ANONYMITY;**

8 **(III) HOW THE ORDER IS NARROWLY TAILORED TO SERVE THE**
9 **WOMAN'S INTERESTS; AND**

10 **(IV) WHY NO REASONABLE LESS RESTRICTIVE ALTERNATIVE**
11 **EXISTS.**

12 **(C) IF A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR**
13 **INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED REFUSES TO CONSENT TO**
14 **DISCLOSURE OF HER NAME IN A COURT PROCEEDING UNDER SUBSECTION (A) OF**
15 **THIS SECTION, ANY PERSON LISTED IN § 20-222 OF THIS PART, OTHER THAN A**
16 **PUBLIC OFFICIAL, WHO BRINGS AN ACTION UNDER THIS PART SHALL USE A**
17 **PSEUDONYM FOR THE WOMAN.**

18 **(D) THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE THE**
19 **CONCEALMENT OF THE IDENTITY OF THE PLAINTIFF OR OF A WITNESS FROM THE**
20 **DEFENDANT OR FROM AN ATTORNEY FOR THE DEFENDANT.**

21 **20-224.**

22 **(A) THIS PART MAY NOT BE CONSTRUED TO REPEAL § 20-209 OF THIS**
23 **SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF STATE LAW REGULATING OR**
24 **RESTRICTING ABORTION.**

25 **(B) (1) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §§**
26 **20-219 AND 20-220 OF THIS PART BUT VIOLATES THE PROVISIONS OF §**
27 **20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW**
28 **SHALL BE DEEMED UNLAWFUL AS PROVIDED IN THE APPLICABLE PROVISION OF**
29 **LAW.**

30 **(2) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §**
31 **20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW**
32 **REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS OF THIS**

1 PART SHALL BE DEEMED UNLAWFUL.

2 (3) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE
3 TEMPORARILY OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL ORDER,
4 ALL OTHER PROVISIONS OF LAW REGULATING OR RESTRICTING ABORTION SHALL
5 BE ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED PROVISIONS HAD NOT
6 BEEN ADOPTED, EXCEPT THAT WHENEVER THE TEMPORARY OR PERMANENT
7 RESTRAINING ORDER OR INJUNCTION IS STAYED OR DISSOLVED, OR OTHERWISE
8 CEASES TO HAVE EFFECT, THE AFFECTED PROVISIONS SHALL HAVE FULL FORCE
9 AND EFFECT.

10 20-225.

11 THIS PART MAY BE CITED AS THE MARYLAND PAIN-CAPABLE UNBORN CHILD
12 PROTECTION ACT.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2018.