

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 933 (Delegate Metzgar, *et al.*)
Health and Government Operations

Abortion - Detection of Fetal Heartbeat

This bill prohibits a physician from performing or inducing an abortion (1) before determining whether the fetus has a detectable heartbeat or (2) if the physician determines that the fetus has a detectable heartbeat. A violator is guilty of a felony and subject to imprisonment for up to 12 months and a fine up to \$2,500. A violator may also be subject to disciplinary action. An individual who receives an abortion in violation of the bill's provisions may recover civil damages from the physician who performed the abortion.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in District Court due to the bill's penalty provision. The bill's disciplinary requirements can be handled with existing resources. The bill's provisions related to civil actions are not expected to materially affect caseloads and/or government finances. This analysis does not reflect any potential impact on Medicaid or the State Employee and Retiree Health and Welfare Benefits Program.

Local Effect: Potential minimal increase in expenditures due to individuals being committed to local correctional facilities under the bill's penalty provision. Potential minimal increase in revenues from the bill's penalty provisions for cases heard in circuit courts. The bill's provisions related to civil actions are not expected to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill also repeals current law provisions that (1) prohibit the State from interfering with a woman's decision to terminate a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality; (2) authorize MDH to adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman; and (3) exempt a physician from liability for civil damages or a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

Detecting a Fetal Heartbeat

A physician must use a method consistent with the standard of care to detect a fetal heartbeat before performing an abortion. The Maryland Department of Health (MDH) may adopt regulations for the method of detecting a fetal heartbeat that must be used. If MDH adopts these regulations, a physician must use the method required by the regulations.

Disclosures to Patient

If a physician detects a fetal heartbeat, the physician must inform the woman of her right to hear the heartbeat and, if the woman requests, allow her to hear the heartbeat.

Abortion – Not Prohibited

A physician may perform or induce an abortion if the physician believes that a medical emergency exists. If so, the physician must record in the patient's medical record the physician's belief that a medical emergency existed, the reasons for that belief, and the medical condition that caused the emergency.

A physician may perform or induce an abortion if the physician determines that there is no detectable fetal heartbeat. If so, the physician must include that determination in the patient's medical record.

Any medical records created under the bill's provisions must be maintained for at least seven years.

Current Law: The State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme

Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. MDH may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

Background: According to the Guttmacher Institute, a fetal heartbeat can be detected by an ultrasound as early as six weeks after a patient's last menstrual period, a time during which most women are unaware they are pregnant.

Two other states have enacted legislation that would ban abortion at six weeks after a patient's last menstrual period based on the presence of a fetal heartbeat: North Dakota in 2013 and Iowa in 2018. Neither of these laws is in effect. The North Dakota law was ruled unconstitutional by the U.S. Eighth Circuit Court of Appeals in July 2015, and the U.S. Supreme Court declined to review. The Iowa law was immediately enjoined from enforcement pending litigation on the law's constitutionality.

Ohio's legislature passed bills prohibiting an abortion after a fetal heartbeat has been detected on two separate occasions (2016 and 2018); however, Governor John Kasich vetoed both bills.

Additionally, Arkansas enacted similar legislation in 2013 that was slightly less restrictive and prohibited an abortion if a pregnancy has progressed to 12 weeks and a fetal heartbeat was detected. The U.S. Eighth Circuit Court of Appeals ruled the law was unconstitutional in January 2016, and the U.S. Supreme Court declined to review.

Small Business Effect: Meaningful for physicians whose practices currently encompass performing abortion procedures. Litigation costs may increase for physicians against whom civil actions are brought under the bill. Physicians also face significant fines and prison sentences for violations of the bill's provisions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; *The New York Times*; Guttmacher Institute; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2019
mm/jc

Analysis by: Amber R. Gundlach

Direct Inquiries to:

(410) 946-5510

(301) 970-5510