

HOUSE BILL 735

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By: **Delegates Metzgar, Arikan, Boteler, Chisholm, M. Fisher, Jacobs, Krebs, Mangione, McComas, McKay, Morgan, Otto, Parrott, Rose, Shoemaker, Szeliga, and Wivell**

Introduced and read first time: February 3, 2022

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Abortion**

3 FOR the purpose of repealing certain provisions of law related to State interference with
4 an abortion, regulations related to abortion, and liability or criminal punishment for
5 physicians who perform an abortion; prohibiting a physician from knowingly
6 performing, inducing, or attempting to perform or induce an abortion under certain
7 circumstances and subject to certain exceptions; establishing requirements for
8 performing or inducing an abortion on a pregnant woman; requiring that certain
9 requirements relating to the performance or inducement of abortions be enforced
10 exclusively through private civil actions; authorizing any person, other than an
11 officer or employee of the State or a local governmental entity in the State to bring
12 certain civil actions; providing for sovereign, governmental, and official immunity
13 under certain circumstances; and generally relating to abortions.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 20–207 and 20–208
17 Annotated Code of Maryland
18 (2019 Replacement Volume and 2021 Supplement)

19 BY adding to
20 Article – Health – General
21 Section 20–208 and 20–210 through 20–218
22 Annotated Code of Maryland
23 (2019 Replacement Volume and 2021 Supplement)

24 BY repealing
25 Article – Health – General
26 Section 20–209

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2019 Replacement Volume and 2021 Supplement)

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

5 **Article – Health – General**

6 20–207.

7 (A) In Part II of this subtitle[, the word “physician”] **THE FOLLOWING WORDS**
8 **HAVE THE MEANINGS INDICATED.**

9 (B) **“FETAL HEARTBEAT” MEANS CARDIAC ACTIVITY OR THE STEADY AND**
10 **REPETITIVE RHYTHMIC CONTRACTION OF THE FETAL HEART WITHIN THE**
11 **GESTATIONAL SAC.**

12 (C) **“GESTATIONAL AGE” MEANS THE AMOUNT OF TIME THAT HAS ELAPSED**
13 **FROM THE FIRST DAY OF THE PREGNANT WOMAN’S LAST MENSTRUAL PERIOD.**

14 (D) **“GESTATIONAL SAC” MEANS THE STRUCTURE THAT COMPRISES THE**
15 **EXTRAEMBRYONIC MEMBRANES THAT ENVELOP AN UNBORN CHILD AND THAT IS**
16 **TYPICALLY VISIBLE BY ULTRASOUND AFTER THE FOURTH WEEK OF PREGNANCY.**

17 (E) **“PHYSICIAN”** means any person, including a doctor of osteopathy, licensed to
18 practice medicine in the State of Maryland in compliance with the provisions of Title 14 of
19 the Health Occupations Article.

20 (F) **“PREGNANCY” MEANS THE HUMAN FEMALE REPRODUCTIVE CONDITION**
21 **THAT:**

22 (1) **BEGINS WITH FERTILIZATION;**

23 (2) **OCCURS WHEN THE WOMAN IS CARRYING THE DEVELOPING**
24 **UNBORN CHILD; AND**

25 (3) **IS CALCULATED FROM THE FIRST DAY OF THE WOMAN’S LAST**
26 **MENSTRUAL PERIOD.**

27 (G) **“STANDARD MEDICAL PRACTICE” MEANS THE DEGREE OF SKILL, CARE,**
28 **AND DILIGENCE THAT AN OBSTETRICIAN OF ORDINARY JUDGMENT, LEARNING, AND**
29 **SKILL WOULD EMPLOY IN SIMILAR CIRCUMSTANCES.**

30 (H) **“UNBORN CHILD” MEANS A HUMAN FETUS OR EMBRYO IN ANY STAGE OF**

1 GESTATION FROM FERTILIZATION UNTIL BIRTH.

2 **20-208.**

3 THE GENERAL ASSEMBLY FINDS, ACCORDING TO CONTEMPORARY MEDICAL
4 RESEARCH, THAT:

5 (1) FETAL HEARTBEAT HAS BECOME A KEY MEDICAL PREDICTOR
6 THAT AN UNBORN CHILD WILL REACH LIVE BIRTH;

7 (2) CARDIAC ACTIVITY BEGINS AT A BIOLOGICALLY IDENTIFIABLE
8 MOMENT IN TIME, NORMALLY WHEN THE FETAL HEART IS FORMED IN THE
9 GESTATIONAL SAC;

10 (3) THE STATE HAS A COMPELLING INTEREST FROM THE OUTSET OF
11 A WOMAN'S PREGNANCY IN PROTECTING THE HEALTH OF THE WOMAN AND THE LIFE
12 OF THE UNBORN CHILD; AND

13 (4) TO MAKE AN INFORMED CHOICE ABOUT WHETHER TO CONTINUE
14 HER PREGNANCY, THE PREGNANT WOMAN HAS A COMPELLING INTEREST IN
15 KNOWING THE LIKELIHOOD OF HER UNBORN CHILD SURVIVING TO FULL-TERM
16 BIRTH BASED ON THE PRESENCE OF CARDIAC ACTIVITY.

17 **[20-208.] 20-209.**

18 An abortion must be performed by a licensed physician.

19 **[20-209.**

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

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

25 (1) Before the fetus is viable; or

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

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

29 (ii) The fetus is affected by genetic defect or serious deformity or
30 abnormality.

1 (c) The Department may adopt regulations that:

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

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

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

9 **20-210.**

10 **(A) FOR THE PURPOSES OF DETERMINING THE PRESENCE OF A FETAL**
11 **HEARTBEAT UNDER THIS SECTION, "STANDARD MEDICAL PRACTICE" INCLUDES**
12 **EMPLOYING THE APPROPRIATE MEANS OF DETECTING A HEARTBEAT BASED ON THE**
13 **ESTIMATED GESTATIONAL AGE OF THE UNBORN CHILD AND THE CONDITION OF THE**
14 **WOMAN AND HER PREGNANCY.**

15 **(B) EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, A**
16 **PHYSICIAN MAY NOT KNOWINGLY PERFORM OR INDUCE OR ATTEMPT TO PERFORM**
17 **OR INDUCE AN ABORTION ON A PREGNANT WOMAN:**

18 **(1) BEFORE A PHYSICIAN DETERMINES IN ACCORDANCE WITH**
19 **SUBSECTION (C) OF THIS SECTION WHETHER THE UNBORN CHILD HAS A**
20 **DETECTABLE HEARTBEAT; AND**

21 **(2) IF THE PHYSICIAN DETERMINES THAT THE UNBORN CHILD HAS A**
22 **DETECTABLE HEARTBEAT.**

23 **(C) (1) TO DETERMINE WHETHER A FETUS HAS A DETECTABLE**
24 **HEARTBEAT, A PHYSICIAN SHALL USE A TEST THAT IS:**

25 **(I) CONSISTENT WITH THE PHYSICIAN'S GOOD FAITH AND**
26 **REASONABLE UNDERSTANDING OF STANDARD MEDICAL PRACTICE; AND**

27 **(II) APPROPRIATE FOR THE ESTIMATED GESTATIONAL AGE OF**
28 **THE UNBORN CHILD AND THE CONDITION OF THE PREGNANT WOMAN AND HER**
29 **PREGNANCY.**

30 **(2) A PHYSICIAN MAKING A DETERMINATION UNDER PARAGRAPH (1)**
31 **OF THIS SUBSECTION SHALL RECORD IN THE PREGNANT WOMAN'S MEDICAL**

1 RECORD:

2 (I) THE ESTIMATED GESTATIONAL AGE OF THE UNBORN CHILD;

3 (II) THE METHOD USED TO ESTIMATE THE GESTATIONAL AGE;

4 AND

5 (III) THE TEST USED FOR DETECTING A FETAL HEARTBEAT,
6 INCLUDING THE DATE, TIME, AND RESULTS OF THE TEST.

7 (D) SUBSECTION (B) OF THIS SECTION DOES NOT APPLY TO A PHYSICIAN
8 WHO PERFORMS OR INDUCES AN ABORTION IF THE PHYSICIAN:

9 (1) BELIEVES THAT A MEDICAL EMERGENCY EXISTS THAT PREVENTS
10 COMPLIANCE WITH SUBSECTION (B) OF THIS SECTION; AND

11 (2) COMPLIES WITH THE REQUIREMENTS OF § 20-211 OF THIS
12 SUBTITLE.

13 (E) A PHYSICIAN IS NOT IN VIOLATION OF SUBSECTION (B) OF THIS SECTION
14 IF:

15 (1) THE PHYSICIAN COMPLIES WITH SUBSECTION (C) OF THIS
16 SECTION; AND

17 (2) THE METHOD USED TO TEST FOR THE PRESENCE OF A FETAL
18 HEARTBEAT DOES NOT DETECT A HEARTBEAT.

19 (F) THIS SECTION MAY NOT BE CONSTRUED TO:

20 (1) CREATE OR RECOGNIZE A RIGHT TO ABORTION BEFORE A FETAL
21 HEARTBEAT IS DETECTED;

22 (2) AUTHORIZE THE INITIATION OF A CAUSE OF ACTION AGAINST OR
23 THE PROSECUTION OF A WOMAN ON WHOM AN ABORTION IS PERFORMED OR
24 INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS
25 SECTION;

26 (3) WHOLLY OR PARTLY REPEAL, EITHER EXPRESSLY OR BY
27 IMPLICATION, ANY OTHER STATUTE THAT REGULATES OR PROHIBITS ABORTION; OR

28 (4) RESTRICT A POLITICAL SUBDIVISION FROM REGULATING OR
29 PROHIBITING ABORTION IN A MANNER THAT IS AT LEAST AS STRINGENT AS THE

1 LAWS OF THE STATE.

2 **20-211.**

3 (A) IF AN ABORTION IS PERFORMED OR INDUCED ON A PREGNANT WOMAN
4 BECAUSE OF A MEDICAL EMERGENCY, THE PHYSICIAN WHO PERFORMS OR INDUCES
5 THE ABORTION SHALL EXECUTE A WRITTEN DOCUMENT THAT:

6 (1) CERTIFIES THE ABORTION IS NECESSARY DUE TO A MEDICAL
7 EMERGENCY; AND

8 (2) SPECIFIES THE WOMAN'S MEDICAL CONDITION REQUIRING THE
9 ABORTION.

10 (B) A PHYSICIAN SHALL:

11 (1) INCLUDE THE DOCUMENT EXECUTED UNDER SUBSECTION (A) OF
12 THIS SECTION IN THE PREGNANT WOMAN'S MEDICAL RECORD; AND

13 (2) MAINTAIN A COPY OF THE DOCUMENT IN THE PHYSICIAN'S
14 PRACTICE RECORDS.

15 (C) A PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION ON A
16 PREGNANT WOMAN SHALL:

17 (1) IF THE ABORTION IS PERFORMED OR INDUCED TO PRESERVE THE
18 HEALTH OF THE PREGNANT WOMAN, EXECUTE A WRITTEN DOCUMENT THAT:

19 (i) SPECIFIES THE MEDICAL CONDITION THE ABORTION IS
20 ASSERTED TO ADDRESS; AND

21 (ii) PROVIDES THE MEDICAL RATIONALE FOR THE PHYSICIAN'S
22 CONCLUSION THAT THE ABORTION IS NECESSARY TO ADDRESS THE MEDICAL
23 CONDITION; OR

24 (2) FOR AN ABORTION OTHER THAN AN ABORTION DESCRIBED IN
25 ITEM (1) OF THIS SUBSECTION, SPECIFY IN A WRITTEN DOCUMENT THAT MATERNAL
26 HEALTH IS NOT A PURPOSE OF THE ABORTION.

27 (D) THE PHYSICIAN SHALL MAINTAIN A COPY OF A DOCUMENT EXECUTED
28 UNDER SUBSECTION (C) OF THIS SECTION IN THE PHYSICIAN'S PRACTICE RECORDS.

29 **20-212.**

1 (A) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
2 REQUIREMENTS OF §§ 20-210 AND 20-211 OF THIS SUBTITLE SHALL BE ENFORCED
3 EXCLUSIVELY THROUGH THE PRIVATE CIVIL ACTIONS ESTABLISHED IN § 20-213 OF
4 THIS SUBTITLE.

5 (2) ENFORCEMENT OF § 20-210 OR § 20-211 OF THIS SUBTITLE MAY
6 NOT BE TAKEN OR THREATENED BY THE STATE, A POLITICAL SUBDIVISION OF THE
7 STATE, A STATE'S ATTORNEY, OR AN EXECUTIVE OR ADMINISTRATIVE OFFICER OR
8 EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE AGAINST
9 ANY PERSON, EXCEPT AS PROVIDED IN § 20-213 OF THIS SUBTITLE.

10 (B) SUBSECTION (A) OF THIS SECTION MAY NOT BE CONSTRUED TO:

11 (1) LEGALIZE THE CONDUCT PROHIBITED BY THIS SUBTITLE;

12 (2) LIMIT IN ANY WAY OR AFFECT THE AVAILABILITY OF A REMEDY
13 ESTABLISHED BY § 20-213 OF THIS SUBTITLE; OR

14 (3) LIMIT THE ENFORCEABILITY OF ANY OTHER LAWS THAT
15 REGULATE OR PROHIBIT ABORTION.

16 20-213.

17 (A) ANY PERSON, OTHER THAN AN OFFICER OR EMPLOYEE OF THE STATE
18 OR A LOCAL GOVERNMENTAL ENTITY IN THE STATE, MAY BRING A CIVIL ACTION
19 AGAINST ANY PERSON WHO:

20 (1) PERFORMS OR INDUCES AN ABORTION IN VIOLATION OF § 20-210
21 OR § 20-211 OF THIS SUBTITLE;

22 (2) KNOWINGLY ENGAGES IN CONDUCT THAT AIDS OR ABETS THE
23 PERFORMANCE OR INDUCEMENT OF AN ABORTION, INCLUDING PAYING FOR OR
24 REIMBURSING THE COSTS OF AN ABORTION THROUGH INSURANCE OR OTHERWISE,
25 IF THE ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF § 20-210 OR §
26 20-211 OF THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON KNEW OR
27 SHOULD HAVE KNOWN THAT THE ABORTION WOULD BE PERFORMED OR INDUCED IN
28 VIOLATION OF § 20-210 OR § 20-211 OF THIS SUBTITLE; OR

29 (3) INTENDS TO ENGAGE IN THE CONDUCT DESCRIBED IN ITEM (1) OR
30 (2) OF THIS SUBSECTION.

31 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF A

1 CLAIMANT PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT
2 SHALL AWARD:

3 (1) INJUNCTIVE RELIEF SUFFICIENT TO PREVENT THE DEFENDANT
4 FROM VIOLATING § 20-210 OR § 20-211 OF THIS SUBTITLE OR ENGAGING IN ACTS
5 THAT AID OR ABET VIOLATIONS OF § 20-210 OR § 20-211 OF THIS SUBTITLE;

6 (2) STATUTORY DAMAGES IN AN AMOUNT OF NOT LESS THAN \$10,000
7 FOR EACH ABORTION THAT THE DEFENDANT PERFORMED OR INDUCED IN
8 VIOLATION OF § 20-210 OR § 20-211 OF THIS SUBTITLE, AND FOR EACH ABORTION
9 PERFORMED OR INDUCED IN VIOLATION OF § 20-210 OR § 20-211 OF THIS SUBTITLE
10 THAT THE DEFENDANT AIDED OR ABETTED; AND

11 (3) COSTS AND ATTORNEY'S FEES.

12 (C) A COURT MAY NOT AWARD RELIEF UNDER THIS SECTION IN RESPONSE
13 TO A CIVIL ACTION BROUGHT UNDER SUBSECTION (A)(1) OR (2) OF THIS SECTION IF
14 THE DEFENDANT DEMONSTRATES THAT THE DEFENDANT PREVIOUSLY PAID THE
15 FULL AMOUNT OF STATUTORY DAMAGES UNDER SUBSECTION (B)(2) OF THIS
16 SECTION IN A PREVIOUS ACTION FOR:

17 (1) THE PARTICULAR ABORTION PERFORMED OR INDUCED IN
18 VIOLATION OF § 20-210 OR § 20-211 OF THIS SUBTITLE; OR

19 (2) THE PARTICULAR CONDUCT THAT AIDED OR ABETTED AN
20 ABORTION PERFORMED OR INDUCED IN VIOLATION OF § 20-210 OR § 20-211 OF
21 THIS SUBTITLE.

22 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON MAY
23 NOT BRING AN ACTION UNDER THIS SECTION AFTER 4 YEARS AFTER THE DATE THE
24 CAUSE OF ACTION AROSE.

25 (E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING
26 ARE NOT A DEFENSE TO AN ACTION BROUGHT UNDER THIS SECTION:

27 (1) IGNORANCE OR MISTAKE OF LAW;

28 (2) A DEFENDANT'S BELIEF THAT THE REQUIREMENTS OF THIS
29 SUBTITLE ARE UNCONSTITUTIONAL;

30 (3) A DEFENDANT'S RELIANCE ON ANY COURT DECISION THAT HAS
31 BEEN OVERRULED ON APPEAL OR BY A SUBSEQUENT COURT, EVEN IF THAT COURT
32 DECISION HAD NOT BEEN OVERRULED WHEN THE DEFENDANT ENGAGED IN

1 CONDUCT THAT VIOLATES § 20–210 OR § 20–211 OF THIS SUBTITLE;

2 (4) A DEFENDANT’S RELIANCE ON ANY FEDERAL OR STATE COURT
3 DECISION THAT IS NOT BINDING ON THE COURT IN WHICH THE ACTION HAS BEEN
4 BROUGHT;

5 (5) NONMUTUAL ISSUE PRECLUSION OR NONMUTUAL CLAIM
6 PRECLUSION;

7 (6) THE CONSENT OF THE UNBORN CHILD’S MOTHER TO THE
8 ABORTION; OR

9 (7) ANY CLAIM THAT THE ENFORCEMENT OF THIS SUBTITLE OR THE
10 IMPOSITION OF CIVIL LIABILITY AGAINST THE DEFENDANT WILL VIOLATE THE
11 CONSTITUTIONAL RIGHTS OF THIRD PARTIES, EXCEPT AS PROVIDED BY § 20–214 OF
12 THIS SUBTITLE.

13 (F) IT IS AN AFFIRMATIVE DEFENSE TO AN ACTION BROUGHT UNDER THIS
14 SECTION IF:

15 (1) A PERSON SUED UNDER SUBSECTION (A)(2) OF THIS SECTION
16 REASONABLY BELIEVED, AFTER CONDUCTING A REASONABLE INVESTIGATION,
17 THAT THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION HAD COMPLIED
18 OR WOULD COMPLY WITH § 20–210 OR § 20–211 OF THIS SUBTITLE; OR

19 (2) A PERSON SUED UNDER SUBSECTION (A)(3) OF THIS SECTION
20 REASONABLY BELIEVED, AFTER CONDUCTING A REASONABLE INVESTIGATION,
21 THAT THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION WOULD COMPLY
22 WITH § 20–210 OR § 20–211 OF THIS SUBTITLE.

23 (G) THE DEFENDANT HAS THE BURDEN OF PROVING AN AFFIRMATIVE
24 DEFENSE UNDER SUBSECTION (F) OF THIS SECTION BY A PREPONDERANCE OF THE
25 EVIDENCE.

26 (H) THIS SECTION MAY NOT BE CONSTRUED TO IMPOSE LIABILITY ON ANY
27 SPEECH OR CONDUCT PROTECTED BY THE FIRST AMENDMENT OF THE U.S.
28 CONSTITUTION, AS MADE APPLICABLE TO THE STATES THROUGH THE U.S.
29 SUPREME COURT’S INTERPRETATION OF THE FOURTEENTH AMENDMENT OF THE
30 U.S. CONSTITUTION, OR BY ARTICLE 40 OF THE MARYLAND DECLARATION OF
31 RIGHTS.

32 (I) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE,
33 A STATE OFFICIAL, OR A STATE’S ATTORNEY MAY NOT INTERVENE IN AN ACTION

1 BROUGHT UNDER THIS SECTION.

2 (2) THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT A
3 PERSON FROM FILING AN AMICUS CURIAE BRIEF IN AN ACTION.

4 (J) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY NOT
5 AWARD COSTS OR ATTORNEY'S FEES UNDER THE MARYLAND RULES OF CIVIL
6 PROCEDURE OR ANY OTHER RULE ADOPTED BY THE COURT OF APPEALS TO A
7 DEFENDANT IN AN ACTION BROUGHT UNDER THIS SECTION.

8 (K) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL ACTION
9 UNDER THIS SECTION MAY NOT BE BROUGHT BY AN INDIVIDUAL WHO IMPREGNATED
10 THE ABORTION PATIENT THROUGH AN ACT OF RAPE, SEXUAL ASSAULT, INCEST, OR
11 ANY OTHER ACT PROHIBITED BY LAW.

12 (L) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL ACTION
13 BROUGHT UNDER THIS SECTION SHALL BE BROUGHT IN:

14 (1) THE COUNTY IN WHICH ALL OR A SUBSTANTIAL PART OF THE
15 EVENTS OR OMISSIONS GIVING RISE TO THE CLAIM OCCURRED;

16 (2) THE COUNTY OF RESIDENCE FOR ANY ONE OF THE INDIVIDUAL
17 DEFENDANTS AT THE TIME THE CAUSE OF ACTION OCCURRED;

18 (3) THE COUNTY OF THE PRINCIPAL OFFICE IN THE STATE OF ANY
19 ONE OF THE DEFENDANTS THAT IS NOT AN INDIVIDUAL; OR

20 (4) THE COUNTY OF RESIDENCE FOR THE CLAIMANT IF THE
21 CLAIMANT IS AN INDIVIDUAL RESIDING IN THE STATE.

22 (M) IF A CIVIL ACTION IS BROUGHT UNDER THIS SECTION IN ANY ONE OF
23 THE VENUES DESCRIBED IN SUBSECTION (L) OF THIS SECTION, THE ACTION MAY
24 NOT BE TRANSFERRED TO A DIFFERENT VENUE WITHOUT THE WRITTEN CONSENT
25 OF ALL PARTIES.

26 20-214.

27 (A) A DEFENDANT AGAINST WHOM AN ACTION IS BROUGHT UNDER § 20-213
28 OF THIS SUBTITLE DOES NOT HAVE STANDING TO ASSERT THE RIGHTS OF WOMEN
29 SEEKING AN ABORTION AS A DEFENSE TO LIABILITY UNDER THAT SECTION UNLESS:

30 (1) THE U.S. SUPREME COURT HOLDS THAT THE COURTS OF THE
31 STATE MUST CONFER STANDING ON THAT DEFENDANT TO ASSERT THE

1 THIRD-PARTY RIGHTS OF WOMEN SEEKING AN ABORTION IN STATE COURT AS A
2 MATTER OF FEDERAL CONSTITUTIONAL LAW; OR

3 (2) THE DEFENDANT HAS STANDING TO ASSERT THE RIGHTS OF
4 WOMEN SEEKING AN ABORTION UNDER THE TESTS FOR THIRD-PARTY STANDING
5 ESTABLISHED BY THE U.S. SUPREME COURT.

6 (B) A DEFENDANT IN AN ACTION BROUGHT UNDER § 20-213 OF THIS
7 SUBTITLE MAY ASSERT AN AFFIRMATIVE DEFENSE TO LIABILITY UNDER THIS
8 SECTION IF:

9 (1) THE DEFENDANT HAS STANDING TO ASSERT THE THIRD-PARTY
10 RIGHTS OF A WOMAN OR GROUP OF WOMEN SEEKING AN ABORTION IN ACCORDANCE
11 WITH SUBSECTION (A) OF THIS SECTION; AND

12 (2) THE DEFENDANT DEMONSTRATES THAT THE RELIEF SOUGHT BY
13 THE CLAIMANT WILL IMPOSE AN UNDUE BURDEN ON THAT WOMAN OR THAT GROUP
14 OF WOMEN SEEKING AN ABORTION.

15 (C) A COURT MAY NOT FIND AN UNDUE BURDEN UNDER SUBSECTION (B) OF
16 THIS SECTION UNLESS THE DEFENDANT INTRODUCES EVIDENCE PROVING THAT:

17 (1) AN AWARD OF RELIEF WILL PREVENT A WOMAN OR A GROUP OF
18 WOMEN FROM OBTAINING AN ABORTION; OR

19 (2) AN AWARD OF RELIEF WILL PLACE A SUBSTANTIAL OBSTACLE IN
20 THE PATH OF A WOMAN OR A GROUP OF WOMEN WHO ARE SEEKING AN ABORTION.

21 (D) A DEFENDANT MAY NOT ESTABLISH AN UNDUE BURDEN UNDER THIS
22 SECTION BY:

23 (1) MERELY DEMONSTRATING THAT AN AWARD OF RELIEF WILL
24 PREVENT WOMEN FROM OBTAINING SUPPORT OR ASSISTANCE, FINANCIAL OR
25 OTHERWISE, FROM OTHERS IN THEIR EFFORT TO OBTAIN AN ABORTION; OR

26 (2) ARGUING OR ATTEMPTING TO DEMONSTRATE THAT AN AWARD OF
27 RELIEF AGAINST OTHER DEFENDANTS OR OTHER POTENTIAL DEFENDANTS WILL
28 IMPOSE AN UNDUE BURDEN ON WOMEN SEEKING AN ABORTION.

29 (E) THE AFFIRMATIVE DEFENSE UNDER SUBSECTION (B) OF THIS SECTION
30 IS NOT AVAILABLE IF THE U.S. SUPREME COURT OVERRULES ROE V. WADE, 410
31 U.S. 113 (1973) OR PLANNED PARENTHOOD V. CASEY, 505 U.S. 833 (1992),
32 REGARDLESS OF WHETHER THE CONDUCT ON WHICH THE CAUSE OF ACTION IS

1 BASED UNDER § 20–213 OF THIS SUBTITLE OCCURRED BEFORE THE U.S. SUPREME
2 COURT OVERRULED EITHER OF THOSE DECISIONS.

3 (F) (1) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR PRECLUDE
4 A DEFENDANT FROM ASSERTING THE DEFENDANT’S PERSONAL CONSTITUTIONAL
5 RIGHTS AS A DEFENSE TO LIABILITY UNDER § 20–213 OF THIS SUBTITLE.

6 (2) A COURT MAY NOT AWARD RELIEF UNDER § 20–213 OF THIS
7 SUBTITLE IF THE CONDUCT FOR WHICH THE DEFENDANT HAS BEEN SUED WAS AN
8 EXERCISE OF STATE OR FEDERAL CONSTITUTIONAL RIGHTS THAT PERSONALLY
9 BELONG TO THE DEFENDANT.

10 20–215.

11 (A) A PERSON MAY NOT PERFORM OR INDUCE AN ABORTION ON A
12 PREGNANT WOMAN IN THE STATE UNLESS THE ABORTION IS VOLUNTARY AND
13 INFORMED.

14 (B) CONSENT TO AN ABORTION IS VOLUNTARY AND INFORMED ONLY IF:

15 (1) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION
16 INFORMS THE PREGNANT WOMAN ON WHOM THE ABORTION IS TO BE PERFORMED
17 OR INDUCED OF:

18 (I) THE PHYSICIAN’S NAME;

19 (II) THE PARTICULAR MEDICAL RISKS ASSOCIATED WITH THE
20 PARTICULAR ABORTION PROCEDURE TO BE EMPLOYED, INCLUDING, WHEN
21 MEDICALLY ACCURATE:

22 1. THE RISKS OF INFECTION AND HEMORRHAGE;

23 2. THE POTENTIAL DANGER TO A SUBSEQUENT
24 PREGNANCY AND OF INFERTILITY; AND

25 3. THE POSSIBILITY OF INCREASED RISK OF BREAST
26 CANCER FOLLOWING AN INDUCED ABORTION AND THE NATURAL PROTECTIVE
27 EFFECT OF A COMPLETED PREGNANCY IN AVOIDING BREAST CANCER;

28 (III) THE PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD
29 AT THE TIME THE ABORTION IS TO BE PERFORMED OR INDUCED; AND

30 (IV) THE MEDICAL RISKS ASSOCIATED WITH CARRYING THE

1 CHILD TO TERM;

2 (2) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION
3 OR THE PHYSICIAN'S AGENT INFORMS THE PREGNANT WOMAN THAT:

4 (I) MEDICAL ASSISTANCE BENEFITS MAY BE AVAILABLE FOR
5 PRENATAL CARE, CHILDBIRTH, AND NEONATAL CARE;

6 (II) THE FATHER IS LIABLE FOR ASSISTANCE IN THE SUPPORT
7 OF THE CHILD WITHOUT REGARD TO WHETHER THE FATHER HAS OFFERED TO PAY
8 FOR THE ABORTION; AND

9 (III) PUBLIC AND PRIVATE AGENCIES PROVIDE PREGNANCY
10 PREVENTION COUNSELING AND MEDICAL REFERRALS FOR OBTAINING PREGNANCY
11 PREVENTION MEDICATIONS OR DEVICES, INCLUDING EMERGENCY CONTRACEPTION
12 FOR VICTIMS OF RAPE OR INCEST;

13 (3) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION
14 OR THE PHYSICIAN'S AGENT:

15 (I) PROVIDES THE PREGNANT WOMAN WITH PRINTED
16 MATERIALS THAT DESCRIBE THE UNBORN CHILD AND LIST AGENCIES THAT OFFER
17 ALTERNATIVES TO ABORTION OR SONOGRAM SERVICES AT NO COST TO THE
18 PREGNANT WOMAN; AND

19 (II) INFORMS THE PREGNANT WOMAN THAT THOSE MATERIALS:

20 1. HAVE BEEN PROVIDED BY THE DEPARTMENT;

21 2. ARE ACCESSIBLE ON A WEBSITE SPONSORED BY THE
22 DEPARTMENT;

23 3. DESCRIBE THE UNBORN CHILD AND LIST AGENCIES
24 THAT OFFER ALTERNATIVES TO ABORTION; AND

25 4. INCLUDE A LIST OF AGENCIES THAT OFFER
26 SONOGRAM SERVICES AT NO COST TO THE PREGNANT WOMAN;

27 (4) BEFORE ANY SEDATIVE OR ANESTHESIA IS ADMINISTERED TO THE
28 PREGNANT WOMAN AND AT LEAST 24 HOURS BEFORE THE ABORTION OR AT LEAST 2
29 HOURS BEFORE THE ABORTION IF THE PREGNANT WOMAN WAIVES THIS
30 REQUIREMENT BY CERTIFYING THAT SHE CURRENTLY LIVES 100 MILES OR MORE
31 FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY THAT PERFORMS

1 MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD:

2 (I) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE
3 ABORTION OR AN AGENT OF THE PHYSICIAN WHO IS ALSO A SONOGRAPHER
4 CERTIFIED BY A NATIONAL REGISTRY OF MEDICAL SONOGRAPHERS PERFORMS A
5 SONOGRAM ON THE PREGNANT WOMAN ON WHOM THE ABORTION IS TO BE
6 PERFORMED OR INDUCED; AND

7 (II) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE
8 ABORTION DISPLAYS THE SONOGRAM IMAGES IN A QUALITY CONSISTENT WITH
9 CURRENT MEDICAL PRACTICE IN A MANNER THAT THE PREGNANT WOMAN MAY VIEW
10 THEM;

11 (5) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION
12 PROVIDES, IN A MANNER UNDERSTANDABLE TO A LAYPERSON, A VERBAL
13 EXPLANATION OF THE RESULTS OF THE SONOGRAM IMAGES, INCLUDING A MEDICAL
14 DESCRIPTION OF THE DIMENSIONS OF THE EMBRYO OR FETUS, THE PRESENCE OF
15 CARDIAC ACTIVITY, AND THE PRESENCE OF EXTERNAL MEMBERS AND INTERNAL
16 ORGANS;

17 (6) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION
18 OR AN AGENT OF THE PHYSICIAN WHO IS ALSO A SONOGRAPHER CERTIFIED BY A
19 NATIONAL REGISTRY OF MEDICAL SONOGRAPHERS MAKES AUDIBLE THE HEART
20 AUSCULTATION FOR THE PREGNANT WOMAN TO HEAR, IF PRESENT, IN A QUALITY
21 CONSISTENT WITH CURRENT MEDICAL PRACTICE AND PROVIDES, IN A MANNER
22 UNDERSTANDABLE TO A LAYPERSON, A SIMULTANEOUS VERBAL EXPLANATION OF
23 THE HEART AUSCULTATION;

24 (7) BEFORE RECEIVING A SONOGRAM UNDER ITEM (6) OF THIS
25 SECTION AND BEFORE THE ABORTION IS PERFORMED OR INDUCED AND BEFORE ANY
26 SEDATIVE OR ANESTHESIA IS ADMINISTERED, THE PREGNANT WOMAN COMPLETES
27 AND CERTIFIES WITH HER SIGNATURE AN ELECTION FORM THAT STATES AS
28 FOLLOWS:

29 "ABORTION AND SONOGRAM ELECTION

30 (1) THE INFORMATION AND PRINTED MATERIALS UNDER § 20-215(B)(3) OF
31 THE HEALTH - GENERAL ARTICLE HAVE BEEN PROVIDED AND EXPLAINED TO ME.

32 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

33 (3) MARYLAND LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO
34 RECEIVING AN ABORTION.

1 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM
2 IMAGES.

3 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

4 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION
5 OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING ONE OF THE FOLLOWING:

6 ___ I AM PREGNANT AS A RESULT OF SEXUAL ASSAULT, INCEST, OR
7 OTHER VIOLATIONS OF THE MARYLAND PENAL CODE THAT HAVE BEEN REPORTED
8 TO LAW ENFORCEMENT AUTHORITIES OR THAT HAVE NOT BEEN REPORTED
9 BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF
10 RETALIATION RESULTING IN SERIOUS BODILY INJURY.

11 ___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
12 WITH § 20-103 OF THE HEALTH – GENERAL ARTICLE.

13 ___ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION
14 OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND
15 DOCUMENTED IN MY MEDICAL FILE.

16 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT
17 COERCION.

18 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST
19 ABORTION PROVIDER THAT IS A FACILITY THAT PERFORMS MORE THAN 50
20 ABORTIONS IN ANY 12-MONTH PERIOD:

21 ___ I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR
22 MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY THAT
23 PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE
24 REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE
25 RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS _____.

26 _____
27 (SIGNATURE) (DATE)";

28 (8) BEFORE THE ABORTION IS PERFORMED OR INDUCED, THE
29 PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION RECEIVES A COPY OF
30 THE SIGNED, WRITTEN CERTIFICATION REQUIRED UNDER ITEM (7) OF THIS
31 SUBSECTION; AND

1 **(9) THE PREGNANT WOMAN IS PROVIDED THE NAME OF EACH**
2 **PERSON WHO PROVIDES OR EXPLAINS THE INFORMATION REQUIRED UNDER THIS**
3 **SECTION.**

4 **20-216.**

5 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE HAS**
6 **SOVEREIGN IMMUNITY, A POLITICAL SUBDIVISION HAS GOVERNMENTAL IMMUNITY,**
7 **AND EACH OFFICER AND EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION**
8 **HAS OFFICIAL IMMUNITY IN ANY ACTION, CLAIM, OR COUNTERCLAIM OR ANY TYPE**
9 **OF LEGAL OR EQUITABLE ACTION THAT CHALLENGES THE VALIDITY OF ANY**
10 **PROVISION OR APPLICATION OF THIS SUBTITLE, ON CONSTITUTIONAL GROUNDS OR**
11 **OTHERWISE.**

12 **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PROVISION OF**
13 **STATE LAW MAY NOT BE CONSTRUED TO WAIVE OR ABROGATE AN IMMUNITY**
14 **DESCRIBED IN SUBSECTION (A) OF THIS SECTION UNLESS IT EXPRESSLY WAIVES**
15 **IMMUNITY UNDER THIS SECTION.**

16 **20-217.**

17 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PERSON WHO**
18 **SEEKS DECLARATORY OR INJUNCTIVE RELIEF TO PREVENT THE STATE, A POLITICAL**
19 **SUBDIVISION, ANY GOVERNMENTAL ENTITY OR PUBLIC OFFICIAL IN THE STATE, OR**
20 **ANY PERSON IN THE STATE FROM ENFORCING ANY STATUTE, ORDINANCE, RULE,**
21 **REGULATION, OR ANY OTHER TYPE OF LAW THAT REGULATES OR RESTRICTS**
22 **ABORTION OR THAT LIMITS TAXPAYER FUNDING FOR INDIVIDUALS OR ENTITIES**
23 **THAT PERFORM OR PROMOTE ABORTIONS, IN ANY STATE OR FEDERAL COURT, OR**
24 **THAT REPRESENTS ANY LITIGANT SEEKING SUCH RELIEF IN ANY STATE OR FEDERAL**
25 **COURT, IS JOINTLY AND SEVERALLY LIABLE TO PAY THE COSTS AND ATTORNEY'S**
26 **FEEES OF THE PREVAILING PARTY.**

27 **(B) FOR PURPOSES OF THIS SECTION, A PARTY IS CONSIDERED A**
28 **PREVAILING PARTY IF A FEDERAL OR STATE COURT:**

29 **(1) DISMISSES ANY CLAIM OR CAUSE OF ACTION BROUGHT AGAINST**
30 **THE PARTY THAT SEEKS THE DECLARATORY OR INJUNCTIVE RELIEF UNDER**
31 **SUBSECTION (A) OF THIS SECTION, REGARDLESS OF THE REASON FOR THE**
32 **DISMISSAL; OR**

33 **(2) ENTERS JUDGMENT IN THE PARTY'S FAVOR ON ANY SUCH CLAIM**
34 **OR CAUSE OF ACTION.**

1 **(C) REGARDLESS OF WHETHER A PREVAILING PARTY SOUGHT TO RECOVER**
2 **COSTS OR ATTORNEY’S FEES IN THE UNDERLYING ACTION, A PREVAILING PARTY**
3 **UNDER THIS SECTION MAY BRING A CIVIL ACTION TO RECOVER COSTS AND**
4 **ATTORNEY’S FEES AGAINST A PERSON THAT SOUGHT DECLARATORY OR INJUNCTIVE**
5 **RELIEF UNDER SUBSECTION (A) OF THIS SECTION WITHIN 3 YEARS AFTER THE DATE**
6 **ON WHICH, AS APPLICABLE:**

7 **(1) THE DISMISSAL OR JUDGMENT UNDER SUBSECTION (B) OF THIS**
8 **SECTION BECOMES FINAL ON THE CONCLUSION OF APPELLATE REVIEW; OR**

9 **(2) THE TIME FOR SEEKING APPELLATE REVIEW EXPIRES.**

10 **(D) IT IS NOT A DEFENSE TO AN ACTION BROUGHT UNDER SUBSECTION (C)**
11 **OF THIS SECTION THAT:**

12 **(1) A PREVAILING PARTY UNDER THIS SECTION FAILED TO SEEK**
13 **RECOVERY OF COSTS OR ATTORNEY’S FEES IN THE UNDERLYING ACTION;**

14 **(2) THE COURT IN THE UNDERLYING ACTION DECLINED TO**
15 **RECOGNIZE OR ENFORCE THE REQUIREMENTS OF THIS SECTION; OR**

16 **(3) THE COURT IN THE UNDERLYING ACTION HELD THAT ANY**
17 **PROVISION OF THIS SECTION IS INVALID, UNCONSTITUTIONAL, OR PREEMPTED BY**
18 **FEDERAL LAW, NOTWITHSTANDING THE DOCTRINES OF ISSUE OR CLAIM**
19 **PRECLUSION.**

20 **20–218.**

21 **(A) A STATUTE THAT REGULATES OR PROHIBITS ABORTION MAY NOT BE**
22 **CONSTRUED TO REPEAL ANY OTHER STATUTE THAT REGULATES OR PROHIBITS**
23 **ABORTION, EITHER WHOLLY OR PARTLY, UNLESS THE REPEALING STATUTE**
24 **EXPLICITLY STATES THAT IT IS REPEALING THE OTHER STATUTE.**

25 **(B) A STATUTE MAY NOT BE CONSTRUED TO RESTRICT A POLITICAL**
26 **SUBDIVISION FROM REGULATING OR PROHIBITING ABORTION IN A MANNER THAT IS**
27 **AT LEAST AS STRINGENT AS THE LAWS OF THE STATE UNLESS THE STATUTE**
28 **EXPLICITLY STATES THAT POLITICAL SUBDIVISIONS ARE PROHIBITED FROM**
29 **REGULATING OR PROHIBITING ABORTION IN THE MANNER DESCRIBED IN THE**
30 **STATUTE.**

31 **(C) (1) EVERY STATUTE THAT REGULATES OR PROHIBITS ABORTION IS**
32 **SEVERABLE IN EACH OF ITS APPLICATIONS TO EVERY PERSON AND CIRCUMSTANCE.**

1 **(2) IF ANY STATUTE THAT REGULATES OR PROHIBITS ABORTION IS**
2 **FOUND BY ANY COURT TO BE UNCONSTITUTIONAL, EITHER ON ITS FACE OR AS**
3 **APPLIED, THEN ALL APPLICATIONS OF THAT STATUTE THAT DO NOT VIOLATE THE**
4 **UNITED STATES CONSTITUTION AND THE MARYLAND CONSTITUTION SHALL:**

5 **(I) BE SEVERED FROM THE UNCONSTITUTIONAL**
6 **APPLICATIONS;**

7 **(II) REMAIN ENFORCEABLE, NOTWITHSTANDING ANY OTHER**
8 **LAW; AND**

9 **(III) BE INTERPRETED AS IF CONTAINING LANGUAGE LIMITING**
10 **THE STATUTE'S APPLICATION TO THE PERSONS, GROUP OF PERSONS, OR**
11 **CIRCUMSTANCES FOR WHICH THE STATUTE'S APPLICATION WILL NOT VIOLATE THE**
12 **UNITED STATES CONSTITUTION AND THE MARYLAND CONSTITUTION.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
14 the application thereof to any person or circumstance is held invalid for any reason in a
15 court of competent jurisdiction, the invalidity does not affect other provisions or any other
16 application of this Act that can be given effect without the invalid provision or application,
17 and for this purpose the provisions of this Act are declared severable.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2022.