HOUSE BILL 735

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

AN ACT concerning

Public Health – Abortion

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

BY repealing and reenacting, with amendments,

Article – Health – General
Section 20–207 and 20–208
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

BY adding to

Article – Health – General
Section 20–208 and 20–210 through 20–218
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

BY repealing

Article – Health – General
Section 20–209

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

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

Article – Health – General

20–207.

(A) In Part II of this subtitle[1, the word “physician”] THE FOLLOWING WORDS
HAVE THE MEANINGS INDICATED.

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

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

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

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

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

(1) BEGINS WITH FERTILIZATION;

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

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

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

(H) “UNBORN CHILD” MEANS A HUMAN FETUS OR EMBRYO IN ANY STAGE OF
GESTATION FROM FERTILIZATION UNTIL BIRTH.

20–208.

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

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

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

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

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

20–209.

An abortion must be performed by a licensed physician.

20–209.

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

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

(1) Before the fetus is viable; or

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

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

(ii) The fetus is affected by genetic defect or serious deformity or abnormality.
(c) The Department may adopt regulations that:

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

(2) Are not inconsistent with established medical practice.

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

20–210.

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

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

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

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

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

(1) CONSISTENT WITH THE PHYSICIAN'S GOOD FAITH AND REASONABLE UNDERSTANDING OF STANDARD MEDICAL PRACTICE; AND

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

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

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

AND

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

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

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

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

(2) COMPLIES WITH THE REQUIREMENTS OF § 20–211 OF THIS SUBTITLE.

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

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

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

(F) THIS SECTION MAY NOT BE CONSTRUED TO:

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

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

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

(4) RESTRICT A POLITICAL SUBDIVISION FROM REGULATING OR PROHIBITING ABORTION IN A MANNER THAT IS AT LEAST AS STRINGENT AS THE
LAWS OF THE STATE.

20–211.

(A) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that:

(1) Certifies the abortion is necessary due to a medical emergency; and

(2) Specifies the woman’s medical condition requiring the abortion.

(B) A physician shall:

(1) Include the document executed under subsection (A) of this section in the pregnant woman’s medical record; and

(2) Maintain a copy of the document in the physician’s practice records.

(C) A physician who performs or induces an abortion on a pregnant woman shall:

(1) If the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(i) Specifies the medical condition the abortion is asserted to address; and

(ii) Provides the medical rationale for the physician’s conclusion that the abortion is necessary to address the medical condition; or

(2) For an abortion other than an abortion described in item (1) of this subsection, specify in a written document that maternal health is not a purpose of the abortion.

(D) The physician shall maintain a copy of a document executed under subsection (C) of this section in the physician’s practice records.

20–212.
(A) (1) Notwithstanding any other provision of law, the requirements of §§ 20–210 and 20–211 of this subtitle shall be enforced exclusively through the private civil actions established in § 20–213 of this subtitle.

(2) Enforcement of § 20–210 or § 20–211 of this subtitle may not be taken or threatened by the State, a political subdivision of the State, a State’s Attorney, or an executive or administrative officer or employee of the State or a political subdivision of the State against any person, except as provided in § 20–213 of this subtitle.

(B) Subsection (A) of this section may not be construed to:

(1) Legalize the conduct prohibited by this subtitle;

(2) Limit in any way or affect the availability of a remedy established by § 20–213 of this subtitle; or

(3) Limit the enforceability of any other laws that regulate or prohibit abortion.

20–213.

(A) Any person, other than an officer or employee of the State or a local governmental entity in the State, may bring a civil action against any person who:

(1) Performs or induces an abortion in violation of § 20–210 or § 20–211 of this subtitle;

(2) Knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of § 20–210 or § 20–211 of this subtitle, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of § 20–210 or § 20–211 of this subtitle; or

(3) Intends to engage in the conduct described in item (1) or (2) of this subsection.

(B) Except as provided in subsection (C) of this section, if a
CLAIMANT PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT SHALL AWARD:

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

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

(3) COSTS AND ATTORNEY’S FEES.

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

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

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

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

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

(1) IGNORANCE OR MISTAKE OF LAW;

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

(3) A DEFENDANT’S RELIANCE ON ANY COURT DECISION THAT HAS BEEN OVERRULED ON APPEAL OR BY A SUBSEQUENT COURT, EVEN IF THAT COURT DECISION HAD NOT BEEN OVERRULED WHEN THE DEFENDANT ENGAGED IN
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CONDUCT THAT VIOLATES § 20–210 OR § 20–211 OF THIS SUBTITLE;

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

(5) NONMUTUAL ISSUE PRECLUSION OR NONMUTUAL CLAIM PRECLUSION;

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

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

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

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

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

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

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

(I) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE, A STATE OFFICIAL, OR A STATE’S ATTORNEY MAY NOT INTERVENE IN AN ACTION
BROUGHT UNDER THIS SECTION.

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

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

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

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

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

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

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

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

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

20–214.

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

(1) THE U.S. SUPREME COURT HOLDS THAT THE COURTS OF THE STATE MUST CONFER STANDING ON THAT DEFENDANT TO ASSERT THE
THIRD–PARTY RIGHTS OF WOMEN SEEKING AN ABORTION IN STATE COURT AS A MATTER OF FEDERAL CONSTITUTIONAL LAW; OR

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

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

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

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

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

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

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

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

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

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

(E) THE AFFIRMATIVE DEFENSE UNDER SUBSECTION (B) OF THIS SECTION IS NOT AVAILABLE IF THE U.S. SUPREME COURT OVERRULES ROE V. WADE, 410 U.S. 113 (1973) OR PLANNED PARENTHOOD V. CASEY, 505 U.S. 833 (1992), REGARDLESS OF WHETHER THE CONDUCT ON WHICH THE CAUSE OF ACTION IS
BASED UNDER § 20–213 OF THIS SUBTITLE OCCURRED BEFORE THE U.S. SUPREME COURT OVERRULED EITHER OF THOSE DECISIONS.

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

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

20–215.

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

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

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

(i) THE PHYSICIAN’S NAME;

(ii) THE PARTICULAR MEDICAL RISKS ASSOCIATED WITH THE PARTICULAR ABORTION PROCEDURE TO BE EMPLOYED, INCLUDING, WHEN MEDICALLY ACCURATE:

1. THE RISKS OF INFECTION AND HEMORRHAGE;

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

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

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

(iv) THE MEDICAL RISKS ASSOCIATED WITH CARRYING THE
CHILD TO TERM;

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

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

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

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

(3) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION OR THE PHYSICIAN’S AGENT:

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

(II) INFORMS THE PREGNANT WOMAN THAT THOSE MATERIALS:

1. HAVE BEEN PROVIDED BY THE DEPARTMENT;

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

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

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

(4) BEFORE ANY SEDATIVE OR ANESTHESIA IS ADMINISTERED TO THE PREGNANT WOMAN AND AT LEAST 24 HOURS BEFORE THE ABORTION OR AT LEAST 2 HOURS BEFORE THE ABORTION IF THE PREGNANT WOMAN WAIVES THIS REQUIREMENT BY CERTIFYING THAT SHE CURRENTLY LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY THAT PERFORMS
MORE THAN 50 ABORTIONS IN ANY 12–MONTH PERIOD:

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

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

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

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

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

"ABORTION AND SONOGRAM ELECTION"

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

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

(3) MARYLAND LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO
RECEIVING AN ABORTION.
(4) I understand that I have the option to view the sonogram images.

(5) I understand that I have the option to hear the heartbeat.

(6) I understand that I am required by law to hear an explanation of the sonogram images unless I certify in writing one of the following:

___ I am pregnant as a result of sexual assault, incest, or other violations of the Maryland penal code that have been reported to law enforcement authorities or that have not been reported because I reasonably believe that doing so would put me at risk of retaliation resulting in serious bodily injury.

___ I am a minor and obtaining an abortion in accordance with § 20–103 of the Health – General Article.

___ My unborn child has an irreversible medical condition or abnormality, as identified by reliable diagnostic procedures and documented in my medical file.

(7) I am making this election of my own free will and without coercion.

(8) For a woman who lives 100 miles or more from the nearest abortion provider that is a facility that performs more than 50 abortions in any 12–month period:

___ I certify that, because I currently live 100 miles or more from the nearest abortion provider that is a facility that performs more than 50 abortions in any 12–month period, I waive the requirement to wait 24 hours after the sonogram is performed before receiving the abortion procedure. My place of residence is _________.

_________________________________________   ____________________________
(SIGNATURE)                      (DATE)”;

(8) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required under item (7) of this subsection; and
(9) The pregnant woman is provided the name of each person who provides or explains the information required under this section.

20–216.

(A) Notwithstanding any other provision of law, the State has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of the State or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this subtitle, on constitutional grounds or otherwise.

(B) Notwithstanding any other provision of law, a provision of State law may not be construed to waive or abrogate an immunity described in subsection (A) of this section unless it expressly waives immunity under this section.

20–217.

(A) Notwithstanding any other provision of law, any person who seeks declaratory or injunctive relief to prevent the State, a political subdivision, any governmental entity or public official in the State, or any person in the State from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney’s fees of the prevailing party.

(B) For purposes of this section, a party is considered a prevailing party if a federal or state court:

(1) Dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief under subsection (A) of this section, regardless of the reason for the dismissal; or

(2) Enters judgment in the party’s favor on any such claim or cause of action.
(C) Regardless of whether a prevailing party sought to recover costs or attorney’s fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney’s fees against a person that sought declaratory or injunctive relief under subsection (A) of this section within 3 years after the date on which, as applicable:

1. The dismissal or judgment under subsection (B) of this section becomes final on the conclusion of appellate review; or

2. The time for seeking appellate review expires.

(D) It is not a defense to an action brought under subsection (C) of this section that:

1. A prevailing party under this section failed to seek recovery of costs or attorney’s fees in the underlying action;

2. The court in the underlying action declined to recognize or enforce the requirements of this section; or

3. The court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

20–218.

(A) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(B) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of the State unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described in the statute.

(C) (1) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance.
(2) If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and the Maryland Constitution shall:

(i) Be severed from the unconstitutional applications;

(ii) Remain enforceable, notwithstanding any other law; and

(iii) Be interpreted as if containing language limiting the statute’s application to the persons, group of persons, or circumstances for which the statute’s application will not violate the United States Constitution and the Maryland Constitution.

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

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