

HOUSE BILL 1230

J1, J2
HB 1355/18 – HGO

2lr2666

By: **Delegates Wivell, Arentz, Arikan, Boteler, M. Fisher, Grammer, Griffith, Krebs, McComas, McKay, Morgan, Parrott, Rose, Shoemaker, Szeliga, and Thiam**

Introduced and read first time: February 11, 2022
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Unborn Child Protection From Dismemberment Abortion Act of 2022**

3 FOR the purpose of prohibiting, except under certain circumstances, the performance of or
4 the attempt to perform a dismemberment abortion that kills an unborn child of a
5 pregnant woman; authorizing a certain individual to seek a hearing before the State
6 Board of Physicians on a certain issue; authorizing certain individuals to bring a civil
7 action or to apply to a certain court for permanent injunctive relief against a certain
8 individual under certain circumstances; and generally relating to the Unborn Child
9 Protection From Dismemberment Abortion Act.

10 BY adding to

11 Article – Health – General

12 Section 20–217 through 20–223 to be under the new part “Part V. Unborn Child
13 Protection From Dismemberment Abortion Act”

14 Annotated Code of Maryland

15 (2019 Replacement Volume and 2021 Supplement)

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

18 **Article – Health – General**

19 **20–215. RESERVED.**

20 **20–216. RESERVED.**

21 **PART V. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION**
22 **ACT.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 20-217.

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

4 (B) "ABORTION" MEANS THE USE OF ANY INSTRUMENT, MEDICINE, DRUG,
5 OR OTHER SUBSTANCE OR DEVICE TO:

6 (1) PURPOSELY KILL THE UNBORN CHILD OF A PREGNANT WOMAN;
7 OR

8 (2) PURPOSELY TERMINATE THE PREGNANCY OF A PREGNANT
9 WOMAN, WITH A PURPOSE OTHER THAN TO:

10 (I) AFTER VIABILITY, PRODUCE A LIVE BIRTH AND PRESERVE
11 THE LIFE AND HEALTH OF THE CHILD BORN ALIVE; OR

12 (II) REMOVE THE REMAINS OF A DEAD UNBORN CHILD.

13 (C) (1) "ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION" MEANS
14 AN ACT OR AN OMISSION OF A STATUTORILY REQUIRED ACT THAT, UNDER THE
15 CIRCUMSTANCES AS THE INDIVIDUAL BELIEVES THEM TO BE, CONSTITUTES A
16 SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE
17 PERFORMANCE OF A DISMEMBERMENT ABORTION.

18 (2) "ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION"
19 INCLUDES:

20 (I) AGREEING WITH AN INDIVIDUAL TO PERFORM A
21 DISMEMBERMENT ABORTION ON THE INDIVIDUAL OR ON ANY OTHER INDIVIDUAL,
22 WHETHER OR NOT:

23 1. THE TERM "DISMEMBERMENT ABORTION" IS USED IN
24 THE AGREEMENT; OR

25 2. THE AGREEMENT IS CONTINGENT ON ANOTHER
26 FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNANCY; AND

27 (II) SCHEDULING OR PLANNING A TIME TO PERFORM A
28 DISMEMBERMENT ABORTION ON AN INDIVIDUAL, WHETHER OR NOT:

29 1. THE TERM "DISMEMBERMENT ABORTION" IS USED;
30 OR

1 **2. THE PERFORMANCE OF THE DISMEMBERMENT**
2 **ABORTION IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR**
3 **A DETERMINATION OF PREGNANCY.**

4 **(D) (1) “DISMEMBERMENT ABORTION” MEANS, WITH THE INTENT TO**
5 **CAUSE THE DEATH OF THE UNBORN CHILD, TO PURPOSELY DISMEMBER A LIVING**
6 **UNBORN CHILD BY USING CLAMPS, GRASPING FORCEPS, TONGS, SCISSORS, OR**
7 **SIMILAR INSTRUMENTS THAT, THROUGH THE CONVERGENCE OF TWO RIGID LEVERS,**
8 **SLICE, CRUSH, OR GRASP A PORTION OF THE UNBORN CHILD’S BODY TO CUT OR RIP**
9 **IT OFF AND TO EXTRACT THE PIECES OF THE BODY OF THE UNBORN CHILD ONE AT**
10 **A TIME WITH THE AFOREMENTIONED DEVICES OR TOOLS OR BY USE OF A SUCTION**
11 **DEVICE.**

12 **(2) “DISMEMBERMENT ABORTION” DOES NOT INCLUDE AN ABORTION**
13 **THAT USES ONLY SUCTION TO DISMEMBER THE BODY OF THE UNBORN CHILD BY**
14 **SUCKING FETAL PARTS IN THEIR ENTIRETY INTO A COLLECTION CONTAINER.**

15 **(E) “PHYSICIAN” HAS THE MEANING STATED IN § 20–207 OF THIS SUBTITLE.**

16 **(F) “PURPOSELY” MEANS:**

17 **(1) REGARDING A MATERIAL ELEMENT OF A VIOLATION, AN**
18 **INDIVIDUAL’S CHOICE TO CONSCIOUSLY ENGAGE IN CONDUCT OF THAT NATURE OR**
19 **TO CAUSE THAT RESULT; OR**

20 **(2) REGARDING AN ELEMENT THAT INVOLVES THE ATTENDANT**
21 **CIRCUMSTANCES OF A VIOLATION, THE INDIVIDUAL IS AWARE OF THE EXISTENCE**
22 **OF THOSE CIRCUMSTANCES OR BELIEVES OR HOPES THAT THOSE CIRCUMSTANCES**
23 **EXIST.**

24 **(G) (1) “SERIOUS HEALTH RISK TO THE PREGNANT WOMAN” MEANS**
25 **THAT, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN, THE PREGNANT**
26 **WOMAN HAS A CONDITION THAT SO COMPLICATES HER MEDICAL CONDITION THAT**
27 **IT NECESSITATES THE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR TO**
28 **AVERT A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL**
29 **IMPAIRMENT OF A MAJOR BODILY FUNCTION.**

30 **(2) “SERIOUS HEALTH RISK TO THE PREGNANT WOMAN” DOES NOT**
31 **INCLUDE A PSYCHOLOGICAL OR EMOTIONAL CONDITION, INCLUDING A CONDITION**
32 **THAT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE PREGNANT WOMAN WILL**
33 **ENGAGE IN CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH OR IN**
34 **SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY**
35 **FUNCTION.**

1 (H) "WOMAN" MEANS A FEMALE HUMAN BEING OF ANY AGE.

2 20-218.

3 AN INDIVIDUAL MAY NOT PURPOSELY PERFORM OR ATTEMPT TO PERFORM A
4 DISMEMBERMENT ABORTION THAT KILLS AN UNBORN CHILD UNLESS THE
5 ABORTION IS NECESSARY TO PREVENT A SERIOUS HEALTH RISK TO THE PREGNANT
6 WOMAN.

7 20-219.

8 (A) AN INDIVIDUAL ACCUSED IN ANY PROCEEDING OF A VIOLATION OF §
9 20-218 OF THIS SUBTITLE MAY SEEK A HEARING BEFORE THE STATE BOARD OF
10 PHYSICIANS ON WHETHER THE DISMEMBERMENT ABORTION WAS NECESSARY TO
11 PREVENT A SERIOUS HEALTH RISK TO THE PREGNANT WOMAN.

12 (B) (1) THE STATE BOARD OF PHYSICIANS' FINDINGS FROM A HEARING
13 UNDER SUBSECTION (A) OF THIS SECTION ARE ADMISSIBLE ON THAT ISSUE AT ANY
14 TRIAL IN WHICH A VIOLATION OF § 20-218 OF THIS SUBTITLE IS ALLEGED.

15 (2) ON A MOTION OF THE DEFENDANT, THE COURT SHALL DELAY THE
16 BEGINNING OF THE TRIAL FOR NOT MORE THAN 30 DAYS TO ALLOW FOR A HEARING
17 UNDER SUBSECTION (A) OF THIS SECTION.

18 (C) THE FOLLOWING INDIVIDUALS MAY NOT BE HELD LIABLE FOR
19 PERFORMING OR ATTEMPTING TO PERFORM A DISMEMBERMENT ABORTION:

20 (1) THE PREGNANT WOMAN ON WHOM THE DISMEMBERMENT
21 ABORTION WAS PERFORMED OR ATTEMPTED;

22 (2) ANY NURSE, TECHNICIAN, SECRETARY, RECEPTIONIST, OR OTHER
23 EMPLOYEE OR AGENT OF A PHYSICIAN WHO PERFORMED OR ATTEMPTED TO
24 PERFORM A DISMEMBERMENT ABORTION WHO ACTS AT THE DIRECTION OF THE
25 PHYSICIAN; OR

26 (3) ANY PHARMACIST OR OTHER INDIVIDUAL WHO IS NOT A
27 PHARMACIST BUT WHO FILLS A PRESCRIPTION OR PROVIDES INSTRUMENTS OR
28 MATERIALS USED IN A DISMEMBERMENT ABORTION AT THE DIRECTION OF OR TO A
29 PHYSICIAN WHO PERFORMED OR ATTEMPTED TO PERFORM A DISMEMBERMENT
30 ABORTION.

31 (D) THIS PART MAY NOT BE CONSTRUED TO PREVENT AN ABORTION FOR
32 ANY REASON, INCLUDING RAPE AND INCEST, OR BY ANY OTHER METHOD.

1 **20-220.**

2 (A) (1) ANY OF THE FOLLOWING INDIVIDUALS MAY BRING AN ACTION TO
3 OBTAIN A PERMANENT INJUNCTION AGAINST AN INDIVIDUAL WHO HAS PERFORMED
4 OR ATTEMPTED TO PERFORM A DISMEMBERMENT ABORTION IN VIOLATION OF
5 § 20-218 OF THIS SUBTITLE IN THE CIRCUIT COURT OF THE COUNTY WHERE THE
6 INDIVIDUAL RESIDES OR WHERE THE DISMEMBERMENT ABORTION WAS
7 PERFORMED:

8 (I) A PREGNANT WOMAN ON WHOM A DISMEMBERMENT
9 ABORTION WAS PERFORMED OR ATTEMPTED;

10 (II) AN INDIVIDUAL WHO IS THE SPOUSE, THE PARENT OR
11 GUARDIAN, OR A LICENSED OR FORMERLY LICENSED HEALTH CARE PROVIDER OF A
12 WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED;
13 OR

14 (III) A PROSECUTING ATTORNEY WITH APPROPRIATE
15 JURISDICTION.

16 (2) THE INJUNCTION SHALL PREVENT THE DEFENDANT FROM
17 PERFORMING OR ATTEMPTING TO PERFORM DISMEMBERMENT ABORTIONS IN
18 VIOLATION OF § 20-218 OF THIS SUBTITLE.

19 (B) (1) THE FOLLOWING INDIVIDUALS MAY BRING A CIVIL ACTION
20 AGAINST AN INDIVIDUAL WHO PERFORMED A DISMEMBERMENT ABORTION IN
21 VIOLATION OF § 20-218 OF THIS SUBTITLE:

22 (I) ANY WOMAN ON WHOM A DISMEMBERMENT ABORTION HAS
23 BEEN PERFORMED IN VIOLATION OF § 20-218 OF THIS SUBTITLE;

24 (II) THE FATHER OF THE UNBORN CHILD, IF MARRIED TO THE
25 WOMAN AT THE TIME THE DISMEMBERMENT ABORTION WAS PERFORMED; OR

26 (III) IF THE PREGNANT WOMAN WAS A MINOR AT THE TIME OF
27 THE DISMEMBERMENT ABORTION OR DIED AS A RESULT OF THE DISMEMBERMENT
28 ABORTION, THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD.

29 (2) (I) A CIVIL ACTION TAKEN UNDER PARAGRAPH (1) OF THIS
30 SUBSECTION MAY SEEK THE IMPOSITION OF DAMAGES AS SET FORTH IN
31 SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN INJUNCTION TO PROHIBIT THE
32 INDIVIDUAL FROM CONTINUING THE VIOLATION, OR BOTH.

1 (II) THE COURT MAY AWARD:

2 1. MONETARY DAMAGES FOR ALL INJURIES INCURRED
3 BY THE INDIVIDUAL AS A RESULT OF THE DISMEMBERMENT ABORTION, INCLUDING
4 PSYCHOLOGICAL AND PHYSICAL INJURIES; AND

5 2. STATUTORY DAMAGES EQUAL TO THREE TIMES THE
6 COST OF THE DISMEMBERMENT ABORTION.

7 (3) NO DAMAGES MAY BE AWARDED TO A PLAINTIFF IF THE
8 PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

9 (C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN AN
10 ACTION TAKEN UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE COURT SHALL
11 ORDER A REASONABLE ATTORNEY'S FEE FOR THE PLAINTIFF AGAINST THE
12 DEFENDANT.

13 (2) IF A JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT IN
14 AN ACTION TAKEN UNDER SUBSECTION (A) OR (B) OF THIS SECTION AND THE COURT
15 FINDS THAT THE PLAINTIFF'S SUIT WAS FRIVOLOUS AND BROUGHT IN BAD FAITH,
16 THE COURT SHALL ORDER A REASONABLE ATTORNEY'S FEE IN FAVOR OF THE
17 DEFENDANT AGAINST THE PLAINTIFF.

18 (3) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
19 COURT MAY NOT ASSESS AN ATTORNEY'S FEE AGAINST THE WOMAN ON WHOM A
20 DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED.

21 20-221.

22 (A) IN ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING OR ACTION
23 BROUGHT UNDER THIS PART, THE COURT SHALL DETERMINE WHETHER THE
24 IDENTITY OF ANY WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS
25 PERFORMED OR ATTEMPTED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF
26 SHE DOES NOT GIVE HER CONSENT TO THE DISCLOSURE.

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

29 (I) ISSUE A GAG ORDER TO THE PARTIES, WITNESSES, AND
30 COUNSEL;

31 (II) SEAL THE RECORD; AND

1 (III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM THE
2 COURTROOM OR HEARING ROOM TO THE EXTENT NECESSARY TO SAFEGUARD HER
3 IDENTITY FROM PUBLIC DISCLOSURE.

4 (2) EACH ORDER ISSUED UNDER PARAGRAPH (1) OF THIS
5 SUBSECTION SHALL BE ACCOMPANIED BY SPECIFIC WRITTEN FINDINGS
6 EXPLAINING:

7 (I) WHY THE IDENTITY OF THE WOMAN SHOULD BE PRESERVED
8 FROM PUBLIC DISCLOSURE;

9 (II) WHY THE ORDER IS ESSENTIAL TO PRESERVING THE
10 WOMAN'S ANONYMITY;

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

13 (IV) WHY NO REASONABLE, LESS RESTRICTIVE ALTERNATIVE
14 EXISTS.

15 (C) IN THE ABSENCE OF THE WRITTEN CONSENT OF THE WOMAN ON WHOM
16 A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED, ANY INDIVIDUAL
17 OTHER THAN A PUBLIC OFFICIAL WHO BRINGS AN ACTION UNDER § 20-220 OF THIS
18 SUBTITLE SHALL DO SO UNDER A PSEUDONYM.

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

22 **20-222.**

23 THIS PART MAY NOT BE CONSTRUED TO CREATE OR RECOGNIZE A RIGHT TO
24 AN ABORTION OR A RIGHT TO A PARTICULAR METHOD OF ABORTION.

25 **20-223.**

26 THIS PART MAY BE CITED AS THE MARYLAND UNBORN CHILD PROTECTION
27 FROM DISMEMBERMENT ABORTION ACT.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2022.