SENATE BILL 535

By: Senators Ready, Bailey, Edwards, Hershey, Salling, and Simonaire
Introduced and read first time: January 28, 2022
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Unborn Child Protection From Dismemberment Abortion Act

FOR the purpose of prohibiting, except under certain circumstances, the performance of or the attempt to perform a dismemberment abortion that kills an unborn child on a pregnant woman; providing for certain hearing proceedings before the State Board of Physicians; authorizing certain individuals to bring certain legal actions against an individual who has performed or attempted to perform a dismemberment abortion; and generally relating to the Unborn Child Protection From Dismemberment Abortion Act.

BY adding to

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

20–215. RESERVED.

20–216. RESERVED.

PART V. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT.

20–217.
(A) In this part the following words have the meanings indicated.

(B) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device to:

(1) Purposely kill the unborn child of a pregnant woman; or

(2) Purposely terminate the pregnancy of a pregnant woman, with a purpose other than to:

(i) After viability, produce a live birth and preserve the life and health of the child born alive; or

(ii) Remove the remains of a dead unborn child.

(C) (1) “Attempt to perform a dismemberment abortion” means an act or an omission of a statutorily required act, that, under the circumstances as the individual believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of a dismemberment abortion.

(2) “Attempt to perform a dismemberment abortion” includes:

(i) Agreeing with an individual to perform a dismemberment abortion on the individual or on any other individual, whether or not:

1. The term “dismemberment abortion” is used in the agreement; or

2. The agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; and

(ii) Scheduling or planning a time to perform a dismemberment abortion on an individual, whether or not:

1. The term “dismemberment abortion” is used; or

2. The performance of the dismemberment
ABORTION IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNANCY.

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

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

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

(F) “PURPOSELY” MEANS:

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

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

(G) (1) “Serious health risk to the pregnant woman” MEANS THAT, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN, THE PREGNANT WOMAN HAS A CONDITION THAT SO COMPlicATES HER MEDICAL CONDITION THAT IT NECESSitates THE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR TO AVERT A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

(2) “Serious health risk to the pregnant woman” DOES NOT INCLUDE A PSYCHOLOGICAL OR EMOTIONAL CONDITION, INCLUDING A CONDITION THAT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE PREGNANT WOMAN WILL ENGAGE IN CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

(H) “Woman” MEANS A FEMALE HUMAN BEING OF ANY AGE.
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20–218.

AN INDIVIDUAL MAY NOT PURPOSELY PERFORM OR ATTEMPT TO PERFORM A
Dismemberment Abortion that kills an unborn child unless the
abortion is necessary to prevent a serious health risk to the pregnant
woman.

20–219.

(A) An individual accused in any proceeding of a violation of §
20–218 of this subtitle may seek a hearing before the State Board of
Physicians on whether the dismemberment abortion was necessary to
prevent a serious health risk to the pregnant woman.

(B) (1) The State Board of Physicians’ findings from a hearing
under subsection (A) of this section are admissible on that issue at any
trial in which a violation of § 20–218 of this subtitle is alleged.

(2) On a motion of the defendant, the court shall delay the
beginning of the trial for not more than 30 days to allow for a hearing
under subsection (A) of this section.

(C) The following individuals may not be held liable for
performing or attempting to perform a dismemberment abortion:

(1) The pregnant woman on whom the dismemberment
abortion was performed or attempted;

(2) Any nurse, technician, secretary, receptionist, or other
employee or agent of a physician who performed or attempted to
perform a dismemberment abortion who acts at the direction of the
physician; or

(3) Any pharmacist or other individual who is not a
pharmacist but who fills a prescription or provides instruments or
materials used in a dismemberment abortion at the direction of or to a
physician who performed or attempted to perform a dismemberment
abortion.

(D) This part may not be construed to prevent an abortion for
any reason, including rape and incest, or by any other method.

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1 (A) (1) Any of the following individuals may bring an action to
2 obtain a permanent injunction against an individual who has performed
3 or attempted to perform a dismemberment abortion in violation of
4 § 20–218 of this subtitle in the circuit court of the county where the
5 individual resides or where the dismemberment abortion was
6 performed:

7 (I) A pregnant woman on whom a dismemberment
8 abortion was performed or attempted;

9 (II) An individual who is the spouse, the parent or
10 guardian, or a licensed or formerly licensed health care provider of a
11 woman on whom a dismemberment abortion was performed or attempted;
12 or

13 (III) A prosecuting attorney with appropriate
14 jurisdiction.

15 (2) The injunction shall prevent the defendant from
16 performing or attempting to perform dismemberment abortions in
17 violation of § 20–218 of this subtitle.

18 (B) (1) The following individuals may bring a civil action
19 against an individual who performed a dismemberment abortion in
20 violation of § 20–218 of this subtitle:

21 (I) Any woman on whom a dismemberment abortion has
22 been performed in violation of § 20–218 of this subtitle;

23 (II) The father of the unborn child, if married to the
24 woman at the time the dismemberment abortion was performed; or

25 (III) If the pregnant woman was a minor at the time of
26 the dismemberment abortion or died as a result of the dismemberment
27 abortion, the maternal grandparents of the unborn child.

28 (2) (I) A civil action taken under paragraph (1) of this
29 subsection may seek the imposition of damages as set forth in
30 subparagraph (II) of this paragraph, an injunction to prohibit the
31 individual from continuing the violation, or both.

32 (II) The court may award:
1. **Monetary damages for all injuries incurred** by the individual as a result of the dismemberment abortion, including psychological and physical injuries; and

2. **Statutory damages equal to three times the cost of the dismemberment abortion.**

(3) No damages may be awarded to a plaintiff if the pregnancy resulted from the plaintiff’s criminal conduct.

(C) (1) If a judgment is rendered in favor of the plaintiff in an action taken under subsection (A) or (B) of this section, the court shall order a reasonable attorney’s fee for the plaintiff against the defendant.

(2) If a judgment is rendered in favor of the defendant in an action taken under subsection (A) or (B) of this section and the court finds that the plaintiff’s suit was frivolous and brought in bad faith, the court shall order a reasonable attorney’s fee in favor of the defendant against the plaintiff.

(3) Except as provided in paragraph (2) of this subsection, a court may not assess an attorney’s fee against the woman on whom a dismemberment abortion was performed or attempted.

20–221.

(A) In any civil, criminal, or administrative proceeding or action brought under this part, the court shall determine whether the identity of any woman on whom a dismemberment abortion was performed or attempted shall be preserved from public disclosure if she does not give her consent to the disclosure.

(B) (1) If a court finds that the woman’s anonymity should be preserved under subsection (A) of this section, the court shall:

   (I) Issue a gag order to the parties, witnesses, and counsel;

   (II) Seal the record; and

   (III) Exclude unauthorized individuals from the
COURTROOM OR HEARING ROOM TO THE EXTENT NECESSARY TO SAFEGUARD HER
IDENTITY FROM PUBLIC DISCLOSURE.

(2) Each order issued under paragraph (1) of this
subsection shall be accompanied by specific written findings
explaining:

(i) Why the identity of the woman should be preserved
from public disclosure;

(ii) Why the order is essential to preserving the
woman’s anonymity;

(iii) How the order is narrowly tailored to serve the
woman’s interests; and

(iv) Why no reasonable, less restrictive alternative
exists.

(c) In the absence of the written consent of the woman on whom
a dismemberment abortion was performed or attempted, any individual
other than a public official who brings an action under § 20–220 of this
subtitle shall do so under a pseudonym.

(d) This section may not be construed to conceal the identity of
the plaintiff or of a witness from the defendant or from an attorney
for the defendant.

20–222.

This part may not be construed to create or recognize a right to
an abortion or a right to a particular method of abortion.

20–223.

This part may be cited as the “Maryland Unborn Child Protection
From Dismemberment Abortion Act”.

SECTION 2. And be it further enacted, That this Act shall take effect
October 1, 2022.