

SENATE BILL 535

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SB 1067/18 – SRU

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By: **Senators Ready, Bailey, Edwards, Hershey, Salling, and Simonaire**

Introduced and read first time: January 28, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

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 on a
5 pregnant woman; providing for certain hearing proceedings before the State Board
6 of Physicians; authorizing certain individuals to bring certain legal actions against
7 an individual who has performed or attempted to perform a dismemberment
8 abortion; and generally relating to the Unborn Child Protection From
9 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.**

23 **20–217.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

2. THE PERFORMANCE OF THE DISMEMBERMENT

1 ABORTION IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR
2 A DETERMINATION OF PREGNANCY.

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

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

14 (E) "PHYSICIAN" HAS THE MEANING STATED IN § 20-207 OF THIS SUBTITLE.

15 (F) "PURPOSELY" MEANS:

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

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

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

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

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

1 20-218.

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

6 20-219.

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

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

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

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

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

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

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

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

32 20-220.

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;

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

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

(I) ANY WOMAN ON WHOM A DISMEMBERMENT ABORTION HAS
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.

32 (II) THE COURT MAY AWARD:

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

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

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

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

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

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

20 **20-221.**

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

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

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

30 **(II) SEAL THE RECORD; AND**

31 **(III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM THE**

1 COURTROOM OR HEARING ROOM TO THE EXTENT NECESSARY TO SAFEGUARD HER
2 IDENTITY FROM PUBLIC DISCLOSURE.

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

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

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

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

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

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

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

21 20-222.

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

24 20-223.

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

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