

HOUSE BILL 958

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HB 735/22 – HGO

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By: **Delegates Metzgar, Arentz, Baker, Ciliberti, Ghrist, Grammer, Hornberger, R. Long, McComas, Miller, T. Morgan, Otto, Rose, Schmidt, Valentine, and Wivell**

Introduced and read first time: February 10, 2023
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Abortion**

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

15 BY repealing

16 Article – Health – General

17 The part designation “Part II. Abortion Procedures” immediately preceding Section
18 20–207; Section 20–209; the part designation “Part III. Information”
19 immediately preceding Section 20–211; and the part designation “Part IV.
20 Effect of Refusal to Participate or Refer” immediately preceding Section
21 20–214

22 Annotated Code of Maryland

23 (2019 Replacement Volume and 2022 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Health – General

26 Section 20–207, 20–208, and 20–214

27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2019 Replacement Volume and 2022 Supplement)

2 BY repealing

3 Article – Health – General

4 Section 20–209

5 Annotated Code of Maryland

6 (2019 Replacement Volume and 2022 Supplement)

7 BY adding to

8 Article – Health – General

9 Section 20–209 through 20–218

10 Annotated Code of Maryland

11 (2019 Replacement Volume and 2022 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 13 That the part designation “Part II. Abortion Procedures” immediately preceding Section
 14 20–207; the part designation “Part III. Information” immediately preceding Section
 15 20–211; and the part designation “Part IV. Effect of Refusal to Participate or Refer”
 16 immediately preceding Section 20–214 of Article – Health – General of the Annotated Code
 17 of Maryland be repealed.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 19 as follows:

20 **Article – Health – General**

21 20–207.

22 (A) In [Part II of] this subtitle[, “qualified provider”] **THE FOLLOWING WORDS**
 23 **HAVE THE MEANINGS INDICATED.**

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

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

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

32 (E) **“PHYSICIAN”** means an individual[:

33 (1) Who] **WHO** is licensed[, certified, or otherwise authorized by law] to
 34 practice **MEDICINE** in the State[: and

1 (2) For whom the performance of an abortion is within the scope of the
2 individual's license or certification] **UNDER TITLE 14 OF THE HEALTH OCCUPATIONS**
3 **ARTICLE.**

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

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

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

9 (3) **IS CALCULATED FROM THE FIRST DAY OF THE WOMAN'S LAST**
10 **MENSTRUAL PERIOD.**

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

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

16 20–208.

17 An abortion must be performed by a [qualified provider] **PHYSICIAN.**

18 [20–209.

19 (a) In this section, “viable” means that stage when, in the best clinical judgment
20 of the qualified provider based on the particular facts of the case before the qualified
21 provider, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

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

24 (1) Before the fetus is viable; or

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

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

28 (ii) The fetus is affected by genetic defect or serious deformity or
29 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 clinical practice.

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

9 **20-209.**

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

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

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

17 (3) **THE STATE HAS A COMPELLING INTEREST FROM THE OUTSET OF**
18 **A WOMAN'S PREGNANCY IN PROTECTING THE HEALTH OF THE WOMAN AND THE LIFE**
19 **OF THE UNBORN CHILD; AND**

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

24 **20-210.**

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

30 (B) **EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, A**
31 **PHYSICIAN MAY NOT KNOWINGLY PERFORM OR INDUCE OR ATTEMPT TO PERFORM**

1 OR INDUCE AN ABORTION ON A PREGNANT WOMAN:

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

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

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

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

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

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

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

18 (II) THE METHOD USED TO ESTIMATE THE GESTATIONAL AGE;
19 AND

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

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

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

26 (2) COMPLIES WITH THE REQUIREMENTS OF § 20-211 OF THIS
27 SUBTITLE.

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

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

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

5 **(F) THIS SECTION MAY NOT BE CONSTRUED TO:**

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

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

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

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

17 **20–211.**

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

21 **(1) CERTIFIES THAT THE ABORTION IS NECESSARY DUE TO A**
22 **MEDICAL EMERGENCY; AND**

23 **(2) SPECIFIES THE WOMAN’S MEDICAL CONDITION REQUIRING THE**
24 **ABORTION.**

25 **(B) A PHYSICIAN SHALL:**

26 **(1) INCLUDE THE DOCUMENT EXECUTED UNDER SUBSECTION (A) OF**
27 **THIS SECTION IN THE PREGNANT WOMAN’S MEDICAL RECORD; AND**

28 **(2) MAINTAIN A COPY OF THE DOCUMENT IN THE PHYSICIAN’S**
29 **PRACTICE RECORDS.**

1 **(C) A PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION ON A**
2 **PREGNANT WOMAN SHALL:**

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

5 **(I) SPECIFIES THE MEDICAL CONDITION THE ABORTION IS**
6 **ASSERTED TO ADDRESS; AND**

7 **(II) PROVIDES THE MEDICAL RATIONALE FOR THE PHYSICIAN'S**
8 **CONCLUSION THAT THE ABORTION IS NECESSARY TO ADDRESS THE MEDICAL**
9 **CONDITION; OR**

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

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

15 **20-212.**

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

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

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

26 **(1) LEGALIZE THE CONDUCT PROHIBITED BY THIS SUBTITLE;**

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

29 **(3) LIMIT THE ENFORCEABILITY OF ANY OTHER LAWS THAT**
30 **REGULATE OR PROHIBIT ABORTION.**

1 **20-213.**

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

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

7 (2) KNOWINGLY ENGAGES IN CONDUCT THAT AIDS OR ABETS THE
8 PERFORMANCE OR INDUCEMENT OF AN ABORTION, INCLUDING PAYING FOR OR
9 REIMBURSING THE COSTS OF AN ABORTION THROUGH INSURANCE OR OTHERWISE,
10 IF THE ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF § 20-210 OR §
11 20-211 OF THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON KNEW OR
12 SHOULD HAVE KNOWN THAT THE ABORTION WOULD BE PERFORMED OR INDUCED IN
13 VIOLATION OF § 20-210 OR § 20-211 OF THIS SUBTITLE; OR

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

16 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF A
17 CLAIMANT PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT
18 SHALL AWARD:

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

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

27 (3) COSTS AND ATTORNEY'S FEES.

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

33 (1) THE PARTICULAR ABORTION PERFORMED OR INDUCED IN

1 VIOLATION OF § 20–210 OR § 20–211 OF THIS SUBTITLE; OR

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

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

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

10 (1) IGNORANCE OR MISTAKE OF LAW;

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

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

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

20 (5) NONMUTUAL ISSUE PRECLUSION OR NONMUTUAL CLAIM
21 PRECLUSION;

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

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

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

30 (1) A PERSON SUED UNDER SUBSECTION (A)(2) OF THIS SECTION
31 REASONABLY BELIEVED, AFTER CONDUCTING A REASONABLE INVESTIGATION,

1 THAT THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION HAD COMPLIED
2 OR WOULD COMPLY WITH § 20–210 OR § 20–211 OF THIS SUBTITLE; OR

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

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

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

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

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

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

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

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

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

33 (2) THE COUNTY OF RESIDENCE FOR ANY ONE OF THE INDIVIDUAL

1 DEFENDANTS AT THE TIME THE CAUSE OF ACTION OCCURRED;

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

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

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

10 20-214.

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

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

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

21 (B) (1) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR PRECLUDE
22 A DEFENDANT FROM ASSERTING THE DEFENDANT'S PERSONAL CONSTITUTIONAL
23 RIGHTS AS A DEFENSE TO LIABILITY UNDER § 20-213 OF THIS SUBTITLE.

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

28 20-215.

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

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

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

5 **(I) THE PHYSICIAN'S NAME;**

6 **(II) THE PARTICULAR MEDICAL RISKS ASSOCIATED WITH THE**
7 **PARTICULAR ABORTION PROCEDURE TO BE EMPLOYED, INCLUDING, WHEN**
8 **MEDICALLY ACCURATE:**

9 **1. THE RISKS OF INFECTION AND HEMORRHAGE;**

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

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

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

17 **(IV) THE MEDICAL RISKS ASSOCIATED WITH CARRYING THE**
18 **CHILD TO TERM;**

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

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

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

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

30 **(3) THE PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION**

1 OR THE PHYSICIAN'S AGENT:

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

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

7 1. HAVE BEEN PROVIDED BY THE DEPARTMENT;

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

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

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

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

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

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

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

1 **ORGANS;**

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

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

14 **“ABORTION AND SONOGRAM ELECTION**

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

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

18 **(3) MARYLAND LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO**
19 **RECEIVING AN ABORTION.**

20 **(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM**
21 **IMAGES.**

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

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

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

30 ___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
31 **WITH § 20–103 OF THE HEALTH – GENERAL ARTICLE.**

1 ___ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION
2 OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND
3 DOCUMENTED IN MY MEDICAL FILE.

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

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

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

14 _____
15 (SIGNATURE) (DATE)";

16 (8) BEFORE THE ABORTION IS PERFORMED OR INDUCED, THE
17 PHYSICIAN WHO IS TO PERFORM OR INDUCE THE ABORTION RECEIVES A COPY OF
18 THE SIGNED, WRITTEN CERTIFICATION REQUIRED UNDER ITEM (7) OF THIS
19 SUBSECTION; AND

20 (9) THE PREGNANT WOMAN IS PROVIDED THE NAME OF EACH
21 PERSON WHO PROVIDES OR EXPLAINS THE INFORMATION REQUIRED UNDER THIS
22 SECTION.

23 20-216.

24 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE HAS
25 SOVEREIGN IMMUNITY, A POLITICAL SUBDIVISION OF THE STATE HAS
26 GOVERNMENTAL IMMUNITY, AND EACH OFFICER AND EMPLOYEE OF THE STATE OR
27 A POLITICAL SUBDIVISION OF THE STATE HAS OFFICIAL IMMUNITY IN ANY ACTION,
28 CLAIM, OR COUNTERCLAIM OR ANY TYPE OF LEGAL OR EQUITABLE ACTION THAT
29 CHALLENGES THE VALIDITY OF ANY PROVISION OR APPLICATION OF THIS SUBTITLE,
30 ON CONSTITUTIONAL GROUNDS OR OTHERWISE.

31 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PROVISION OF
32 STATE LAW MAY NOT BE CONSTRUED TO WAIVE OR ABROGATE AN IMMUNITY
33 DESCRIBED IN SUBSECTION (A) OF THIS SECTION UNLESS IT EXPRESSLY WAIVES
34 IMMUNITY UNDER THIS SECTION.

1 **20–217.**

2 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PERSON WHO
3 SEEKS DECLARATORY OR INJUNCTIVE RELIEF TO PREVENT THE STATE, A POLITICAL
4 SUBDIVISION OF THE STATE, ANY GOVERNMENTAL ENTITY OR PUBLIC OFFICIAL IN
5 THE STATE, OR ANY PERSON IN THE STATE FROM ENFORCING ANY STATUTE,
6 ORDINANCE, RULE, REGULATION, OR ANY OTHER TYPE OF LAW THAT REGULATES OR
7 RESTRICTS ABORTION OR THAT LIMITS TAXPAYER FUNDING FOR INDIVIDUALS OR
8 ENTITIES THAT PERFORM OR PROMOTE ABORTIONS, IN ANY STATE OR FEDERAL
9 COURT, OR THAT REPRESENTS ANY LITIGANT SEEKING SUCH RELIEF IN ANY STATE
10 OR FEDERAL COURT, IS JOINTLY AND SEVERALLY LIABLE TO PAY THE COSTS AND
11 ATTORNEY’S FEES OF THE PREVAILING PARTY.

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

14 (1) DISMISSES ANY CLAIM OR CAUSE OF ACTION BROUGHT AGAINST
15 THE PARTY THAT SEEKS THE DECLARATORY OR INJUNCTIVE RELIEF UNDER
16 SUBSECTION (A) OF THIS SECTION, REGARDLESS OF THE REASON FOR THE
17 DISMISSAL; OR

18 (2) ENTERS JUDGMENT IN THE PARTY’S FAVOR ON ANY SUCH CLAIM
19 OR CAUSE OF ACTION.

20 (C) REGARDLESS OF WHETHER A PREVAILING PARTY SOUGHT TO RECOVER
21 COSTS OR ATTORNEY’S FEES IN THE UNDERLYING ACTION, A PREVAILING PARTY
22 UNDER THIS SECTION MAY BRING A CIVIL ACTION TO RECOVER COSTS AND
23 ATTORNEY’S FEES AGAINST A PERSON THAT SOUGHT DECLARATORY OR INJUNCTIVE
24 RELIEF UNDER SUBSECTION (A) OF THIS SECTION WITHIN 3 YEARS AFTER THE DATE
25 ON WHICH, AS APPLICABLE:

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

28 (2) THE TIME FOR SEEKING APPELLATE REVIEW EXPIRES.

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

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

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

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

7 **20-218.**

8 **(A) A STATUTE THAT REGULATES OR PROHIBITS ABORTION MAY NOT BE**
9 **CONSTRUED TO REPEAL ANY OTHER STATUTE THAT REGULATES OR PROHIBITS**
10 **ABORTION, EITHER WHOLLY OR PARTLY, UNLESS THE REPEALING STATUTE**
11 **EXPLICITLY STATES THAT IT IS REPEALING THE OTHER STATUTE.**

12 **(B) A STATUTE MAY NOT BE CONSTRUED TO RESTRICT A POLITICAL**
13 **SUBDIVISION OF THE STATE FROM REGULATING OR PROHIBITING ABORTION IN A**
14 **MANNER THAT IS AT LEAST AS STRINGENT AS THE LAWS OF THE STATE UNLESS THE**
15 **STATUTE EXPLICITLY STATES THAT POLITICAL SUBDIVISIONS OF THE STATE ARE**
16 **PROHIBITED FROM REGULATING OR PROHIBITING ABORTION IN THE MANNER**
17 **DESCRIBED IN THE STATUTE.**

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

20 **(2) IF ANY STATUTE THAT REGULATES OR PROHIBITS ABORTION IS**
21 **FOUND BY ANY COURT TO BE UNCONSTITUTIONAL, EITHER ON ITS FACE OR AS**
22 **APPLIED, THEN ALL APPLICATIONS OF THAT STATUTE THAT DO NOT VIOLATE THE**
23 **U. S. CONSTITUTION AND THE MARYLAND CONSTITUTION SHALL:**

24 **(I) BE SEVERED FROM THE UNCONSTITUTIONAL**
25 **APPLICATIONS;**

26 **(II) REMAIN ENFORCEABLE, NOTWITHSTANDING ANY OTHER**
27 **LAW; AND**

28 **(III) BE INTERPRETED AS IF CONTAINING LANGUAGE LIMITING**
29 **THE STATUTE'S APPLICATION TO THE PERSONS, GROUP OF PERSONS, OR**
30 **CIRCUMSTANCES FOR WHICH THE STATUTE'S APPLICATION WILL NOT VIOLATE THE**
31 **U. S. CONSTITUTION AND THE MARYLAND CONSTITUTION.**

32 **[20-214.] 20-219.**

1 (a) (1) A person may not be required to perform or participate in, or refer to
2 any source for, any medical procedure that results in artificial insemination, sterilization,
3 or termination of pregnancy.

4 (2) The refusal of a person to perform or participate in, or refer to a source
5 for, these medical procedures may not be a basis for:

6 (i) Civil liability to another person; or

7 (ii) Disciplinary or other recriminatory action against the person.

8 (b) (1) A licensed hospital, hospital director, or hospital governing board may
9 not be required:

10 (i) To permit, within the hospital, the performance of any medical
11 procedure that results in artificial insemination, sterilization, or termination of pregnancy;
12 or

13 (ii) To refer to any source for these medical procedures.

14 (2) The refusal to permit or to refer to a source for these procedures may
15 not be grounds for:

16 (i) Civil liability to another person; or

17 (ii) Disciplinary or other recriminatory action against the person by
18 this State or any person.

19 (c) (1) The refusal of an individual to submit to or give consent for an abortion
20 or sterilization may not be grounds for loss of any privileges or immunities to which the
21 individual otherwise would be entitled.

22 (2) Submitting to or granting consent for an abortion or sterilization may
23 not be a condition precedent to the receipt of any public benefits.

24 (d) Notwithstanding any other provision of this section, a health care provider, a
25 licensed hospital, a hospital director, or a hospital governing board is not immune from civil
26 damages, if available at law, or from disciplinary or other recriminatory action, if the failure
27 to refer a patient to a source for any medical procedure that results in sterilization or
28 termination of pregnancy would reasonably be determined as:

29 (1) The cause of death or serious physical injury or serious long-lasting
30 injury to the patient; and

31 (2) Otherwise contrary to the standards of medical care.

32 SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or

1 the application thereof to any person or circumstance is held invalid for any reason in a
2 court of competent jurisdiction, the invalidity does not affect other provisions or any other
3 application of this Act that can be given effect without the invalid provision or application,
4 and for this purpose the provisions of this Act are declared severable.

5 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2023.