

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 973 (Delegate Ciliberti, *et al.*)
Health and Government Operations

Health - Abortion - Ultrasound and Waiting Period

This bill generally prohibits a qualified provider from performing or inducing an abortion on a pregnant woman (1) within 24 hours after the woman receives specified transabdominal ultrasound imaging or (2) if the woman resides at least 100 miles from the facility, within two hours after the woman receives specified transabdominal ultrasound imaging. Violators are subject to a penalty of up to \$2,500.

Fiscal Summary

State Effect: General fund revenues may increase to the extent fines are imposed in the District Court due to the bill's penalty provision. Expenditures are not materially affected.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The medical professional performing the transabdominal ultrasound imaging must (1) be trained in sonography and working under the supervision of a qualified provider; (2) if possible, determine the gestational age of the fetus; (3) if gestational age cannot be determined, verbally offer to the woman other ultrasound imaging to determine the gestational age of the fetus; (4) if present and viewable, include in the ultrasound image the dimensions of the fetus and an accurate portrayal of the presence of external members and internal organs of the fetus; (5) make a print of the ultrasound image to document any measurements taken to determine the gestational age of the fetus; (6) verbally offer to the

woman during the transabdominal ultrasound imaging the option to view the ultrasound image, receive a printed copy of the ultrasound image, and hear the fetal heartbeat; and (7) obtain from the woman specified written certification.

A woman is not required to accept anything offered during the transabdominal ultrasound imaging performed.

The facility in which an abortion is performed must maintain a printed copy of the ultrasound image for the greater of seven years or an amount of time as required by federal or State law.

These requirements do not apply to a woman seeking an abortion if (1) the woman is the victim of an alleged rape or of incest and (2) the incident of rape or incest is reported to law enforcement.

Current Law: Generally, the State may not interfere with a woman’s decision to end a pregnancy before the fetus is viable, or at any time during a woman’s pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Maryland Department of Health may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

Pursuant to Chapter 56 of 2022, if an abortion is provided, it must be performed by a “qualified provider,” which includes a physician, nurse practitioner, nurse-midwife, licensed certified midwife, physician assistant, or any other individual who is licensed, certified, or otherwise authorized by law to practice in the State and for whom the performance of an abortion is within the scope of the individuals’ license or certification. A qualified provider is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the qualified provider’s best clinical judgment using accepted standards of clinical practice.

For a detailed discussion of both federal and State abortion laws, please see the **Appendix – Legal Developments Regarding Abortion.**

Small Business Effect: Meaningful for qualified providers whose practice currently encompass performing abortions to comply with the bill.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1161 of 2022; HB 1109 of 2021; and HB 1321 of 2020.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2023
rh/jc

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Appendix – Legal Developments Regarding Abortion

Status of Federal Abortion Law

In June 2022, the U.S. Supreme Court overturned precedent regarding abortion access in *Dobbs v. Jackson Women’s Health Organization*. Before this decision, abortions prior to viability were constitutionally protected based on *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The petitioners in *Dobbs* sought to overturn the invalidation of Mississippi’s Gestational Age Act, which prohibited abortions after 15 weeks gestation except for medical emergencies or severe fetal abnormalities. The U.S. Supreme Court upheld the Mississippi law by overturning *Roe* and *Casey*, holding that there is no constitutionally protected right to an abortion as it is not a right explicitly granted by the Constitution or a right “deeply rooted” in the country’s history and tradition. The *Dobbs* decision leaves states to decide how to regulate abortion access, resulting in a patchwork of state laws with varying degrees of access to abortion care.

Maryland Abortion Law

The *Dobbs* decision does not impact Maryland law as § 20-209 of the Health-General Article codifies the protections of *Roe* and *Casey* by prohibiting the State from interfering with an abortion conducted (1) before viability or (2) at any point, if the procedure is necessary to protect the health or life of the woman in cases of fetal defect, deformity, or abnormality.

Chapter 56 of 2022 expanded beyond physicians the types of health care providers who may provide abortions to include nurse practitioners, nurse-midwives, licensed certified midwives, physician assistants, and other qualified licensed health care providers. The Act established the Abortion Care Clinical Training Program to (1) ensure there are a sufficient number of health care professionals to provide abortion services in the State and (2) require health insurers and Maryland Medicaid to cover abortion services without a deductible, coinsurance, copayment, or other cost-sharing requirement.

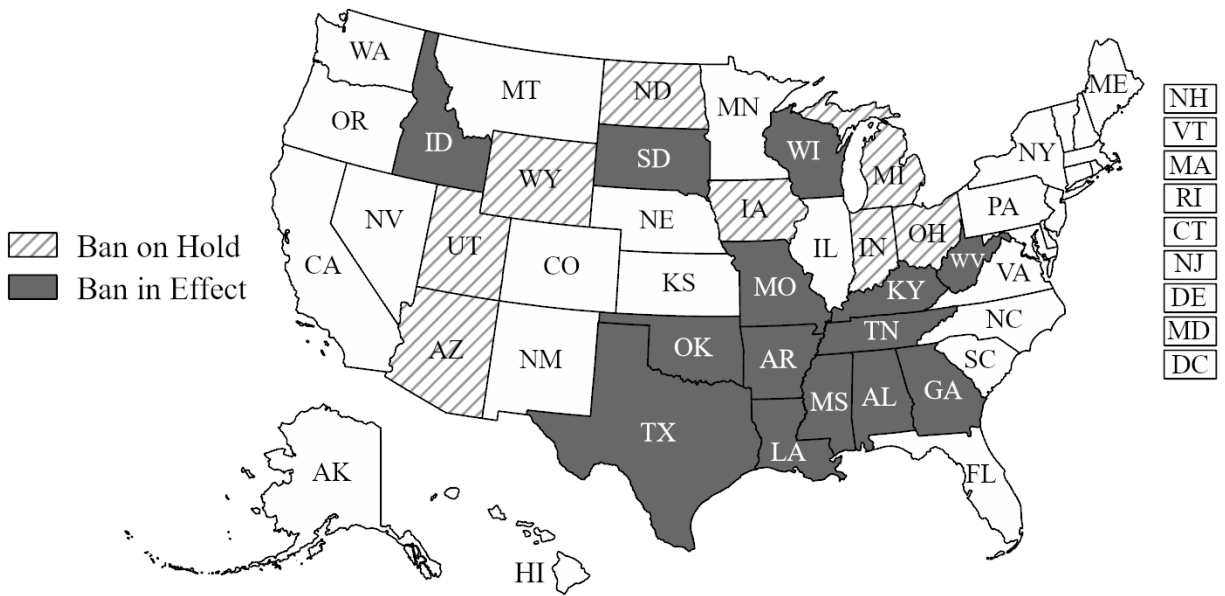
A qualified health care provider who performs an abortion is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the provider’s best clinical judgment using accepted standards of clinical practice. The Maryland Department of Health may adopt regulations consistent with established clinical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

After *Dobbs*, Maryland is authorized to enact additional laws protecting access to abortion or enact restrictions on abortion access that were unconstitutional under *Roe* and *Casey*.

State Actions Following the Dobbs Decision

Exhibit 1 indicates which states have banned abortion or have an abortion ban on hold. As of January 2023, 14 states have banned abortion and 9 states have bans on hold. In states such as Louisiana, Texas, and Utah, laws restricting abortion access took effect immediately following the *Dobbs* decision (the Utah ban is currently blocked by the courts). Seven states passed laws restricting abortion access prior to *Roe* but never repealed the laws following *Roe*. Those states may be able to enforce these laws post-*Dobbs*, but parties in several states have sought injunctions to prevent enforcement. Other states, such as Florida, Idaho, and Kentucky, passed laws restricting abortion, but specified that the laws would only take effect if existing precedent protecting the right to an abortion was overturned. These laws are also being challenged in state courts, with many challenges alleging that restrictions violate provisions of state constitutions.

Exhibit 1
States with Abortion Bans in Effect or on Hold
As of January 2023



Note: State laws with bans include near-total bans on abortion and bans after the detection of a fetal heartbeat or six weeks gestational age. Although Michigan is included as having a “Ban on Hold,” Michigan voters approved an amendment to its state constitution including the right to an abortion. This will impact the court’s decision on the validity of the pre-*Roe* law banning abortion as the law will now be considered unconstitutional.

Source: Guttmacher Institute; Center for Reproductive Rights; National Public Radio; Department of Legislative Services

Seventeen states and the District of Columbia currently have laws that protect the right to abortion, mostly before the point of fetal viability. Several states are seeking to establish the right to an abortion, either in statute or the state constitution. In November 2022, voters in California, Michigan, and Vermont approved ballot initiatives establishing the right to an abortion in their state constitutions. In some states where abortions are accessible, there have been efforts to limit liability and prevent enforcement of any judgment against an individual performing or obtaining an abortion in the state. This is in response to laws similar to Texas' law allowing civil actions against individuals who assist an individual in obtaining an abortion. Other states have taken additional measures to expand abortion access. For example, several states (including Maryland) require health insurance plans to cover abortions without imposing cost-sharing on beneficiaries, and several other states (also including Maryland) permit providers other than licensed physicians to perform abortions. Several states have introduced or passed laws to weaken or prohibit investigation of in-state providers by out-of-state officials to counteract laws in states that subject abortion providers to criminal penalties.