

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1043 (Delegates McComas and Wivell)
Health and Government Operations

**Public Health - Pregnancy - Coercion (Coercive Abuse Against Mothers
Prevention Act)**

This bill establishes a misdemeanor penalty for coercing a pregnant woman to have an abortion, as specified; violators are subject to a maximum fine of \$1,000. A victim of this crime may (1) file a civil action for damages against the perpetrator and (2) file an action in circuit court to prevent the perpetrator from committing or continuing to commit violations. A health care provider must take specified actions and wait at least 24 hours before performing an abortion on a specified pregnant woman unless the abortion is necessary to prevent the death of or substantial and irreversible injury to a pregnant woman. A health care facility must conspicuously post specified notices as a condition of licensure. An employee or volunteer of a health care facility who knows, alleges, or suspects that a pregnant woman is a victim of coercion must notify local law enforcement to make a specified report within 48 hours. If a minor is denied financial support due to the minor's refusal to have an abortion, the minor must be considered an emancipated minor for purposes of public assistance eligibility.

Fiscal Summary

State Effect: Any impact on expenditures regarding the provision of public assistance to an emancipated minor is assumed to be absorbable within existing budgeted resources. Minimal increase in general fund expenditures from additional civil and criminal cases heard in the District Court. Minimal increase in general fund revenues from fines imposed for the newly established criminal offense.

Local Effect: Minimal increase in local expenditures to the extent that additional civil actions are filed in circuit courts. Revenues are not materially affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Abortion” means the act of using or prescribing an instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. “Abortion” does not include the use or prescription of an instrument, medicine, drug, or any other substance, device, or means if used or prescribed to (1) save the life or preserve the health of an unborn child; (2) remove a dead unborn child resulting from spontaneous pregnancy loss; (3) remove an ectopic pregnancy; or (4) treat a maternal disease or illness for which the prescribed drug is indicated.

Prohibition Against Coercion

An individual who knows or suspects that a woman is pregnant may not engage (or conspire with another individual to engage) in the following conduct with the intent of directing the pregnant woman to have an abortion, based on the pregnant woman disregarding or refusing the individual’s demand that the woman seek an abortion:

- committing, attempting to commit, or threatening to commit physical harm to the pregnant woman, unborn child, or another individual;
- committing, attempting to commit, or threatening to commit a violation of the Criminal Law Article;
- revoking, attempting to revoke, or threatening to revoke a scholarship awarded to the pregnant woman by an institution of higher education;
- discharging, attempting to discharge, or threatening to discharge the pregnant woman or another individual from employment;
- changing, attempting to change, or threatening to change the compensation, terms, conditions, or privileges of employment of the pregnant woman or another individual;
- denying, attempting to deny, or threatening to deny any social assistance that a pregnant woman has applied for, has been receiving, or is eligible for;
- denying, removing, or threatening to remove financial support or housing from a dependent of the pregnant woman;
- selling, attempting to sell, or threatening to sell (1) the pregnant woman into sex trafficking; (2) the pregnant woman to another individual for the purpose of sex trafficking; or (3) the unborn baby of the pregnant woman into sex trafficking once the unborn baby is born;
- forcing, attempting to force, or threatening to force (1) the pregnant woman to continue to engage in sex trafficking; (2) the pregnant woman to move to another

- city, state, or country, against her will; or (3) the unborn baby of the pregnant woman into sex trafficking once the unborn baby is born; or
- separating, attempting to separate, or threatening to separate the pregnant woman from the unborn baby once the unborn baby is born.

A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Civil Remedies for Victims of Coercion

A woman who is a victim of a violation of the specified misdemeanor may bring a civil action for money damages against the perpetrator (including a wrongful death action) regardless of (1) whether an abortion was actually performed; (2) whether the defendant was criminally prosecuted; or (3) the outcome of any criminal prosecution. In a successful civil action, a woman is entitled to reasonable attorney's fees.

A woman may also bring an action in circuit court to prevent the perpetrator from committing a subsequent violation or cease an ongoing violation of the specified misdemeanor. The court must provide the pregnant woman with counsel (if requested) and grant any relief necessary to prevent further violation or cease an ongoing violation.

Minor's Emancipation

If a minor is denied financial support from a parent, guardian, or custodian due to the minor's refusal to have an abortion, the minor must be considered an emancipated minor for purposes of public assistance eligibility. However, any such public assistance benefits may not be used to obtain an abortion.

Health Care Facilities

As a condition of licensure, a health care facility that performs abortions must conspicuously post a specified notice in a waiting room, consultation room, and procedure room. A health care facility must also post conspicuous signs in a waiting room, consultation room, and procedure room that include (1) information on how to report sex trafficking and a statement that victims of human trafficking are protected under international, federal, and State law and (2) information and visual representation on how to use American Sign Language to indicate the pregnant woman is being sex trafficked. A health care facility may not employ or allow to volunteer an individual who has violated the below reporting requirements for employees and volunteers or health care provider requirements.

Health Care Facility Employees and Volunteers

An employee or volunteer at a health care facility must report the knowledge, allegation, or suspicion that a pregnant woman is a victim of coercion in violation of the specified misdemeanor within 48 hours of discovery. The report must contain the name and address of the pregnant woman, the name and address of a parent or guardian if the pregnant woman is a minor, and any relevant information the employee or volunteer has relating to the known, alleged, or suspected coercion. An employee or volunteer who fails to report their knowledge, allegation, or suspicion regarding coercion, as specified, is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500.

Health Care Provider Requirements

Before performing an abortion or dispensing an abortion-inducing drug, a health care provider must, in a private room, (1) ask the pregnant woman if she is being coerced, threatened, or forced to have an abortion; (2) ask the pregnant woman if she is being sex trafficked; (3) offer to provide the pregnant woman with information about assistance, counseling, and protective services offered by social services and law enforcement agencies; (4) provide the pregnant woman with a telephone that she may use to make a private phone call; and (5) provide the pregnant woman with an alternative exit from the facility.

If an employee or volunteer knows, alleges, or suspects that a pregnant woman is a victim of the specified misdemeanor, a health care provider must orally inform the pregnant woman that (1) coercion is prohibited; (2) the pregnant woman may have legal remedies; and (3) a request or demand for an abortion made by the father of the unborn child does not relieve the father of his financial support responsibilities.

A health care provider may not perform an abortion on a pregnant woman who is known, alleged, or suspected to be a victim of the specified misdemeanor within 24 hours after the later of (1) the discovery of the knowledge, suspicion, or allegation or (2) informing the pregnant woman of her rights as specified above. The 24-hour waiting period may be waived if, in the health care provider's best medical judgment, an abortion is necessary to prevent the death of the pregnant woman or substantial and irreversible injury to one of the pregnant woman's major bodily functions.

A health care provider who fails to comply with these requirements is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500.

Rights of Reporting Individuals

If an individual who reports an alleged violation of the bill requests a notification, a law enforcement agency must notify the reporting individual at least 24 hours before the law enforcement agency's initial contact with the alleged violator.

Sex Trafficking Crimes

The bill may not be construed to alter any existing criminal law regarding crimes arising from sex trafficking.

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.**

Additional Comments: The bill states that the sentence imposed for the misdemeanor of coercing an abortion must be consecutive to and not concurrent with any other sentence imposed. However, the maximum penalty for the misdemeanor is a \$1,000 fine.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1167 of 2022.

Designated Cross File: SB 832 (Senator Carozza, *et al.*) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Maryland Department of Health; Department of Human Services; Department of State Police; Department of Legislative Services

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js/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.

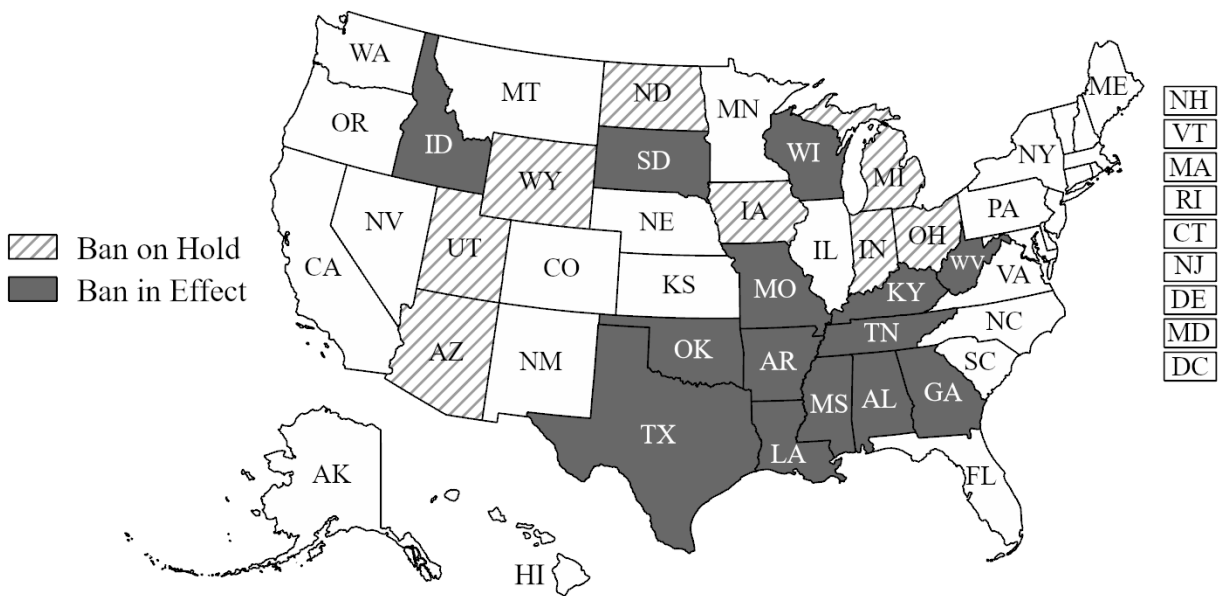
A qualified health care provider who performs an abortion is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the provider’s best clinical judgment using accepted standards of clinical practice. The Maryland Department of Health 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.