Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 108 (Delegate Metzgar)
Health and Government Operations

Public Health - Abortion (Heartbeat Bill)

This bill requires that an abortion be performed by a physician (rather than a qualified provider under current law) and prohibits a physician from performing, inducing, or attempting to perform or induce an abortion (1) before determining whether the baby has a detectable heartbeat and (2) if the physician determines that the baby has a detectable heartbeat. Accordingly, the bill repeals the current prohibition against State interference in a woman's decision to terminate a pregnancy before viability or at any time under specified circumstances. Any person (with specified exceptions) may bring a civil action to enforce this prohibition against (1) any person who performs, induces, or intends to perform or induce a prohibited abortion or (2) any person who aides, abets, or intends to aide or abet the performance or induction of a prohibited abortion. If a person prevails under such an enforcement action, the court must award damages of at least $10,000 for each prohibited abortion the defendant performed or induced (and/or each abortion performed or induced as a result of the defendant's aiding or abetting). The Maryland Department of Health (MDH) must prepare and provide specified materials.

Fiscal Summary

State Effect: MDH general fund expenditures increase by $4,700 annually to produce, print, and provide specified materials, as discussed below. Medicaid general fund expenditures decrease by up to $6.8 million in FY 2026 and up to $9.1 million on an annualized basis thereafter. Department of Budget and Management (DBM) expenditures for the State Employee and Retiree Health and Welfare Benefits Program likely decrease by an indeterminate amount beginning in FY 2026. The overall net fiscal effect on Medicaid and DBM is indeterminate, as discussed below.

Local Effect: Local expenditures increase for circuit courts to the extent that additional civil actions are filed under the bill. Revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Under the bill, "physician" means an individual who is licensed to practice medicine in the State under Title 14 of the Health Occupations Article.

Abortion – Prohibition

With limited exception, a physician may not knowingly perform, induce, or attempt to perform or induce, an abortion on a pregnant woman (1) before determining whether the baby has a detectable heartbeat and (2) if the physician determines that the baby has a detectable heartbeat. In addition, a person may not perform or induce an abortion unless the abortion is voluntary and informed, as specified.

To determine whether a baby has a detectable heartbeat, a physician must use a test that is (1) consistent with the physician's good faith and reasonable understanding of standard medical practice and (2) appropriate for the estimated gestational age of the baby and the condition of the pregnant woman and her pregnancy. The physician must record the estimated gestational age, the method used to estimate the gestational age, and the test used for detecting a fetal heartbeat, as specified.

Informed and Voluntary Consent

The physician performing or inducing the abortion must inform the pregnant woman of the following:

- the physician's name;
- the particular medical risks associated with the particular abortion procedure to be employed, including (1) the risks of infection and hemorrhage; (2) the potential danger to a subsequent pregnancy and of infertility; and (3) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;
- the probable gestational age of the baby at the time the abortion is to be performed or induced; and
- the medical risks associated with carrying the child to term.

The physician performing or inducing the abortion (or an agent of the physician) must inform the pregnant woman that (1) Medicaid benefits may be available for prenatal care, childbirth, and neonatal care; (2) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and (3) public and private agencies provide pregnancy prevention counseling and medical referrals for

obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest.

The physician performing or inducing the abortion (or an agent of the physician) must provide the pregnant woman with specified printed materials provided by MDH that describe the baby and list agencies that offer alternatives to abortion or sonogram services at no cost.

Before any sedative or anesthesia is administered and at least 24 hours before an abortion is induced or performed (with limited exception), the physician (or a qualified agent) must perform, display, explain, and make audible a sonogram to the pregnant woman, as specified. Before receiving the sonogram, the pregnant woman must sign and the performing/inducing physician must receive a copy of an "abortion and sonogram election" form, as specified.

Prohibition – Exception

A physician is not in violation of the above prohibition if the physician tests for the presence of a fetal heartbeat and does not detect a heartbeat. The prohibition does not apply to a physician who performs or induces an abortion if the physician believes that a medical emergency exists, and the performing physician executes a specified written document that (1) certifies the abortion is necessary due to a medical emergency and (2) specifies the woman's medical condition requiring the abortion. The written document must be maintained in the pregnant woman's medical record and the physician's patient records.

Prohibition – Enforcement

Any person (other than an officer or employee of the State or a local governmental entity in the State) may bring a civil action in the appropriate venue as specified against any person who:

- performs or induces an abortion in violation of the specified prohibitions;
- knowingly engages in conduct that aids or abets the performance or inducement of an abortion (including paying for or reimbursing the costs of an abortion through insurance or otherwise) performed or induced in violation of the specified prohibitions; or
- intends to engage in either of the above.

An action must be filed within four years of the date when the cause of action arose. If a claimant prevails in the specified civil action, the court must award (1) injunctive relief sufficient to prevent the defendant from violating or engaging in acts that aid or abet violations of the specified prohibitions; (2) statutory damages of at least $10,000 for each

abortion the defendant performed or induced (and/or each abortion performed or induced as a result of the defendant's aiding or abetting) in violation of the specified prohibition; and (3) costs and attorney's fees.

A court may not award the above specified relief if the defendant demonstrates previous payment of the full amount of statutory damages for the particular abortion performed or induced (or the particular conduct that aided and abetted an abortion performed or induced) in violation of the specified prohibitions.

Defenses

It is an affirmative defense to an action filed to enforce violation of the specified prohibition that a defendant who performed or induced an abortion or a defendant who aided or abetted the performance or induction of an abortion reasonably believes, after conducting a reasonable investigation, that the physician complied or would comply with the bill's requirements, as specified. The defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

None of the following may be used as a defense: (1) ignorance or mistake of law; (2) a defendant's belief that the requirements of the bill are unconstitutional; (3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court (even if not overruled when the defendant engaged in a violation of the specified prohibition); (4) a defendant's reliance on any federal or State court decision that is not binding on the court in which the action is filed; (5) nonmutual issue preclusion or nonmutual claim preclusion; (6) the consent of the baby's mother to the abortion; or (7) any claim that the enforcement of the bill or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

Immunities

In any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this bill, (1) the State has sovereign immunity; (2) a political subdivision has governmental immunity; and (3) each officer and employee of the State or a political subdivision has official immunity.

Severability

Each statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance such that the unconstitutionality of one statute under one interpretation does not render other statutes or other interpretations unconstitutional.

In addition, the bill's provisions are severable such that the invalidity of any provision does not affect other provisions.

Current Law: Chapter 56 of 2022 established the Abortion Care Clinical Training Program to protect access to abortion care by ensuring that there are enough health professionals to provide abortion care and required health insurers and Maryland Medicaid to cover abortion services without a deductible, coinsurance, copayment, or other cost-sharing requirement. Chapter 56 also established the Abortion Care Clinical Training Program Fund, a special fund under MDH to fund the program.

For more information on the current status of abortion law on the State and federal level, please see **Appendix – Legal Developments Regarding Abortion**.

State Expenditures:

Administrative Costs

Under the bill, MDH must provide printed materials that describe the baby and list agencies that offer alternatives to abortion or sonogram services at no cost to the pregnant woman. These materials must also be accessible on a website sponsored by MDH. MDH estimates an annual cost of $3,500 to produce the materials and $1,200 to mail approximately 50,000 brochures. Thus, MDH general fund expenditures increase by approximately $4,700 in fiscal 2026 and annually thereafter.

Abortion Care Clinical Training Program

MDH advises that funds totaling approximately $10.6 million have already been expended for the program to expand training access to qualified providers. In addition, the fiscal 2026 budget as introduced includes $3.5 million for the program fund reflecting the annual mandated appropriation (pursuant to Chapter 56).

While the bill does not explicitly alter the purpose of or mandated funding for the program, the bill limits the provision of abortion care services to physicians. As such, usage of the program and associated program funds would likely be limited to physicians only (rather than to other qualified providers as under current law).

For a similar bill last year, MDH advised that it could use existing budgeted resources to modify the program to focus on training physicians only (rather than qualified providers), if necessary, under the bill.

Medicaid

Medicaid paid for 12,518 abortions in fiscal 2024 at an average cost of $726 per abortion for a total cost of $9.1 million. Thus, general fund expenditures decrease by up to $6.8 million in fiscal 2026, based on fiscal 2024 claims. This estimate reflects the bill's October 1, 2025 effective date. Based on fiscal 2024 claims, general fund expenditures decrease by up to $9.1 million annually thereafter.

However, Medicaid has previously noted that any savings may be offset by an increase in costs for labor and delivery services provided to Medicaid eligible women to the extent that births increase under the bill. The approximate average cost for prenatal care, labor/delivery, and postpartum care for Medicaid beneficiaries is $36,000. Moreover, newborns born to Medicaid-eligible mothers are deemed automatically eligible for Medicaid benefits for their first year and typically retain eligibility for subsequent years. On average, Medicaid pays $9,700 for health care per eligible newborn annually (50% general funds, 50% federal funds). The extent of any increase in expenditures cannot be reliably estimated at this time. Federal fund revenues increase accordingly.

Department of Budget and Management

DBM oversees the State Employee and Retiree Health and Welfare Benefits Program. The bill likely results in a significant decrease in the number of abortions covered under the program. Thus, DBM expenditures for the program (general, federal, and special funds) decrease. Any potential reduction in expenditures cannot be reliably estimated as DBM has previously advised that it does not monitor claims data for abortion procedures.

To the extent that births increase among individuals covered by the program, there is likely an offsetting increase in expenditures (and potentially an overall increase in expenditures) for labor and delivery costs and to cover additional dependents. The extent of any increase cannot be reliably estimated at this time.

Small Business Effect: Small businesses that currently provide abortion services are prohibited from doing so if a fetal heartbeat is detected. Litigation costs and damage awards may also increase for physicians against whom civil actions are filed.

Additional Comments: According to the American Pregnancy Association, a fetal heartbeat can be detected by an ultrasound as early as six weeks gestation (or six weeks after a patient's last menstrual period).

While the bill requires that an abortion be performed by a physician, § 20-103 of the Health-General Article (which specifies the conditions under which a "qualified provider" may or may not perform an abortion on an unmarried minor) is not altered under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1233 of 2024, HB 958 of 2023, and HB 735 of 2022.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Maryland Department of Health; Department of Legislative Services

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rh/jc

Analysis by: Eliana R. Prober

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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

Roe and *Casey* were codified in Maryland law before the *Dobbs* decision, thereby limiting its impact in the State. Section 20-209 of the Health-General Article prohibits 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. The Maryland Department of Health may also 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.

Chapter 56 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 also established the Abortion Care Clinical Training Program to (1) ensure there are enough 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. Chapters 248 and 249 of 2023 require certain health insurers that provide labor and delivery coverage to also cover abortion care services, with limited exceptions.

Chapters 244 and 245 of 2023 proposed a constitutional amendment to (1) establish an individual's fundamental right to reproductive freedom, including but not limited to the ability to make and effectuate decisions to prevent, continue, or end one's own pregnancy and (2) prohibit the State from directly or indirectly denying, burdening, or abridging the

right unless justified by a compelling State interest achieved by the least restrictive means. In November 2024, Maryland voters approved this constitutional amendment through a ballot referendum.

Maryland Shield Laws

Chapters 248 and 249 generally prohibit the disclosure of mifepristone data or the diagnosis, procedure, medication, or related codes for abortion care and other sensitive health services (including reproductive health services other than abortion care) by a health information exchange, electronic health network, or health care provider. The Acts also define "legally protected health care" to mean all reproductive health services, medications, and supplies related to the provision of abortion care and other sensitive health services as determined by the Secretary of Health based on the recommendation of the Protected Health Care Commission.

Chapters 246 and 247 of 2023 generally (1) establish additional protections for information related to "legally protected health care" when that information is sought by another state; (2) prohibit a health occupations board from taking specified disciplinary actions related to the provision of legally protected health care; (3) prohibit a medical professional liability insurer from taking "adverse actions" against a practitioner related to the practice of legally protected health care; and (4) prohibit specified State entities, agents, and employees from participating in any interstate investigation seeking to impose specified liabilities or sanctions against a person for activity related to legally protected health care (with limited exception). Data related to legally protected health care is also generally protected from other states.

State Actions Following the Dobbs Decision

As of January 2025, 41 states have some type of abortion ban in place with limited exceptions. Twelve states (Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia) have implemented total abortion bans. Twenty-nine states have abortion restrictions based on gestational duration, including 7 states that ban abortion at or before 18 weeks gestation and 22 states that ban abortion at some point after 18 weeks. All 41 states have an exception for a threat to the mother's life; 22 states have exceptions for a threat to the physical health of the mother; and 13 states have exceptions for a threat to the general health of the mother. Several states also have limited exceptions for rape (10 states), incest (9 states), or lethal fetal anomalies (12 states).