

SENATE BILL 357

J1
SB 907/19 – SRU

0lr2422

By: **Senators Serafini, Edwards, and Salling**
Introduced and read first time: January 24, 2020
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Pain–Capable Unborn Child Protection Act**

3 FOR the purpose of prohibiting, except under certain circumstances, the performance or
4 inducement or attempted performance or inducement of an abortion on a pregnant
5 woman unless a certain determination as to the probable age of the unborn child is
6 made by a certain physician; providing that the failure of a physician to perform
7 certain actions is deemed “unprofessional conduct”; prohibiting the performance or
8 inducement or attempted performance or inducement of an abortion on a pregnant
9 woman if the probable age of an unborn child is a certain number of weeks, except
10 under certain circumstances; requiring an abortion to be performed in a certain
11 manner under certain circumstances; requiring certain physicians to submit a
12 certain report to the Maryland Department of Health that includes certain
13 information; requiring the Department to issue a certain public report by a certain
14 date each year that includes certain information; requiring the Department to adopt
15 certain regulations on or before a certain date; establishing certain civil and criminal
16 penalties; authorizing certain persons to bring a civil action under certain
17 circumstances; authorizing certain persons to apply to a certain court for permanent
18 or temporary injunctive relief against a certain person under certain circumstances;
19 providing for the award of certain attorney’s fees under certain circumstances;
20 prohibiting the award of damages to a plaintiff under certain circumstances;
21 requiring a court to make a certain determination in a certain proceeding; requiring
22 a court to issue certain orders under certain circumstances; requiring certain persons
23 to use a pseudonym to bring a certain action in court under certain circumstances;
24 providing for the construction of various provisions of this Act; stating certain
25 findings of the General Assembly; defining certain terms; and generally relating to
26 the Pain–Capable Unborn Child Protection Act.

27 BY adding to
28 Article – Health – General
29 Section 20–217 through 20–225 to be under the new part “Part V. Pain–Capable
30 Unborn Child Protection Act”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

20–215. RESERVED.

20–216. RESERVED.

PART V. PAIN–CAPABLE UNBORN CHILD PROTECTION ACT.

20–217.

THE GENERAL ASSEMBLY FINDS THAT:

(1) PAIN RECEPTORS (NOCICEPTORS) ARE PRESENT THROUGHOUT AN UNBORN CHILD’S ENTIRE BODY, AND NERVES LINK THESE RECEPTORS TO THE BRAIN’S THALAMUS AND SUBCORTICAL PLATE BY NOT LATER THAN 20 WEEKS;

(2) BY 8 WEEKS AFTER FERTILIZATION, AN UNBORN CHILD REACTS TO TOUCH AND, AFTER 20 WEEKS, AN UNBORN CHILD REACTS TO STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO AN ADULT HUMAN;

(3) IN AN UNBORN CHILD, APPLICATION OF PAINFUL STIMULI IS ASSOCIATED WITH SIGNIFICANT INCREASES IN STRESS HORMONES KNOWN AS THE STRESS RESPONSE;

(4) SUBJECTION TO PAINFUL STIMULI IS ASSOCIATED WITH LONG–TERM HARMFUL NEURODEVELOPMENTAL EFFECTS, INCLUDING ALTERED PAIN SENSITIVITY AND, POSSIBLY, EMOTIONAL, BEHAVIORAL, AND LEARNING DISABILITIES LATER IN LIFE;

(5) FOR THE PURPOSES OF SURGERY ON UNBORN CHILDREN, FETAL ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A DECREASE IN STRESS HORMONES COMPARED TO THEIR LEVEL WHEN PAINFUL STIMULI ARE APPLIED WITHOUT FETAL ANESTHESIA;

(6) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN UNBORN CHILD IS INCAPABLE OF EXPERIENCING PAIN UNTIL A POINT LATER IN PREGNANCY THAN 20 WEEKS AFTER FERTILIZATION PREDOMINANTLY RESTS ON THE ASSUMPTION THAT THE ABILITY TO EXPERIENCE PAIN DEPENDS ON THE

1 CEREBRAL CORTEX AND REQUIRES NERVE CONNECTIONS BETWEEN THE THALAMUS
2 AND THE CORTEX, BUT RECENT MEDICAL RESEARCH AND ANALYSIS, ESPECIALLY
3 SINCE 2007, PROVIDE STRONG EVIDENCE FOR THE CONCLUSION THAT A
4 FUNCTIONING CORTEX IS NOT NECESSARY TO EXPERIENCE PAIN;

5 (7) SUBSTANTIAL EVIDENCE INDICATES THAT CHILDREN BORN
6 MISSING THE BULK OF THE CEREBRAL CORTEX, THOSE WITH HYDRANENCEPHALY,
7 NEVERTHELESS EXPERIENCE PAIN;

8 (8) IN ADULTS, STIMULATION OR ABLATION OF THE CEREBRAL
9 CORTEX DOES NOT ALTER PAIN PERCEPTION, WHILE STIMULATION OR ABLATION OF
10 THE THALAMUS DOES;

11 (9) SUBSTANTIAL EVIDENCE INDICATES THAT STRUCTURES USED
12 FOR PAIN PROCESSING IN EARLY DEVELOPMENT DIFFER FROM THOSE OF ADULTS,
13 USING DIFFERENT NEURAL ELEMENTS AVAILABLE AT SPECIFIC TIMES DURING
14 DEVELOPMENT, INCLUDING THE SUBCORTICAL PLATE, TO FULFILL THE ROLE OF
15 PAIN PROCESSING;

16 (10) THE POSITION, ASSERTED BY SOME MEDICAL EXPERTS, THAT AN
17 UNBORN CHILD REMAINS IN A COMA-LIKE SLEEP STATE THAT PRECLUDES AN
18 UNBORN CHILD EXPERIENCING PAIN IS INCONSISTENT WITH THE DOCUMENTED
19 REACTION OF UNBORN CHILDREN TO PAINFUL STIMULI AND WITH THE EXPERIENCE
20 OF FETAL SURGEONS WHO HAVE FOUND IT NECESSARY TO SEDATE AN UNBORN
21 CHILD WITH ANESTHESIA TO PREVENT THE UNBORN CHILD FROM THRASHING
22 ABOUT IN REACTION TO INVASIVE SURGERY;

23 (11) CONSEQUENTLY, THERE IS SUBSTANTIAL MEDICAL EVIDENCE
24 THAT AN UNBORN CHILD IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS AFTER
25 FERTILIZATION;

26 (12) IT IS THE DUTY OF THE STATE TO ASSERT A COMPELLING STATE
27 INTEREST IN PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE AT
28 WHICH SUBSTANTIAL MEDICAL EVIDENCE INDICATES THAT THEY ARE CAPABLE OF
29 FEELING PAIN; AND

30 (13) THE STATE'S COMPELLING INTEREST IN PROTECTING THE LIVES
31 OF UNBORN CHILDREN FROM THE STAGE AT WHICH SUBSTANTIAL MEDICAL
32 EVIDENCE INDICATES THAT THEY ARE CAPABLE OF FEELING PAIN IS INTENDED TO
33 BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S COMPELLING INTEREST IN
34 PROTECTING THE LIVES OF UNBORN CHILDREN FROM THE STAGE OF VIABILITY,
35 AND NEITHER STATE INTEREST IS INTENDED TO REPLACE THE OTHER.

36 20-218.

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

3 (B) (1) "ABORTION" MEANS THE INTENTIONAL USE OF ANY INSTRUMENT,
4 MEDICINE, DRUG, OR ANY OTHER SUBSTANCE OR DEVICE TO TERMINATE THE
5 PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT.

6 (2) "ABORTION" DOES NOT INCLUDE THE INTENTIONAL
7 TERMINATION OF A PREGNANCY FOR THE PURPOSE OF:

8 (I) INCREASING THE PROBABILITY OF A LIVE BIRTH;

9 (II) PRESERVATION OF THE LIFE OR HEALTH OF THE CHILD
10 AFTER LIVE BIRTH; OR

11 (III) REMOVING A DEAD UNBORN CHILD WHO DIED IN UTERO AS
12 THE RESULT OF NATURAL CAUSES, ACCIDENTAL TRAUMA, OR A CRIMINAL ASSAULT
13 ON THE PREGNANT WOMAN OR HER UNBORN CHILD THAT CAUSES THE PREMATURE
14 TERMINATION OF A PREGNANCY.

15 (C) "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS AN ACT, OR
16 AN OMISSION OF A STATUTORILY REQUIRED ACT, THAT, UNDER THE
17 CIRCUMSTANCES AS THE ACTOR BELIEVES THEM TO BE, CONSTITUTES A
18 SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE
19 PERFORMANCE OR INDUCEMENT OF AN ABORTION.

20 (D) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOON
21 WITH A HUMAN OVUM.

22 (E) (1) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, IN
23 REASONABLE MEDICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF
24 THE PREGNANT WOMAN THAT IT NECESSITATES THE IMMEDIATE ABORTION OF HER
25 PREGNANCY WITHOUT FIRST DETERMINING POSTFERTILIZATION AGE TO AVERT
26 THE WOMAN'S DEATH OR FOR WHICH THE DELAY NECESSARY TO DETERMINE
27 POSTFERTILIZATION AGE WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND
28 IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT
29 INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

30 (2) "MEDICAL EMERGENCY" DOES NOT INCLUDE A CONDITION BASED
31 ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL ENGAGE IN CONDUCT THAT SHE
32 INTENDS TO RESULT IN HER DEATH OR IN SUBSTANTIAL AND IRREVERSIBLE
33 PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION.

1 **(F) “PHYSICIAN” MEANS ANY INDIVIDUAL LICENSED BY THE STATE BOARD**
2 **OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.**

3 **(G) “POSTFERTILIZATION AGE” MEANS THE AGE OF THE UNBORN CHILD AS**
4 **CALCULATED FROM THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN**
5 **OVUM.**

6 **(H) “PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD” MEANS**
7 **THE AGE THAT, IN REASONABLE MEDICAL JUDGMENT, WILL WITH REASONABLE**
8 **PROBABILITY BE THE POSTFERTILIZATION AGE OF THE UNBORN CHILD AT THE TIME**
9 **THE ABORTION IS PLANNED TO BE PERFORMED OR INDUCED.**

10 **(I) “REASONABLE MEDICAL JUDGMENT” MEANS A MEDICAL JUDGMENT**
11 **THAT WOULD BE MADE BY A REASONABLY PRUDENT PHYSICIAN WHO IS**
12 **KNOWLEDGEABLE ABOUT THE CASE AND THE TREATMENT POSSIBILITIES WITH**
13 **RESPECT TO THE MEDICAL CONDITIONS INVOLVED.**

14 **(J) “UNBORN CHILD” OR “FETUS” MEANS AN INDIVIDUAL ORGANISM OF**
15 **THE SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.**

16 **(K) “WOMAN” MEANS A FEMALE HUMAN BEING WHETHER OR NOT SHE HAS**
17 **REACHED THE AGE OF MAJORITY.**

18 **20–219.**

19 **(A) (1) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN ABORTION**
20 **MAY NOT BE PERFORMED OR INDUCED OR BE ATTEMPTED TO BE PERFORMED OR**
21 **INDUCED UNLESS THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION:**

22 **(I) HAS MADE A DETERMINATION OF THE PROBABLE**
23 **POSTFERTILIZATION AGE OF THE UNBORN CHILD; OR**

24 **(II) IS RELYING ON THE DETERMINATION OF THE PROBABLE**
25 **POSTFERTILIZATION AGE OF THE UNBORN CHILD MADE BY ANOTHER PHYSICIAN.**

26 **(2) IN MAKING A DETERMINATION UNDER PARAGRAPH (1) OF THIS**
27 **SUBSECTION, THE PHYSICIAN SHALL:**

28 **(I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND**

29 **(II) PERFORM OR CAUSE TO BE PERFORMED MEDICAL**
30 **EXAMINATIONS AND TESTS THAT A REASONABLY PRUDENT PHYSICIAN,**
31 **KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL CONDITIONS INVOLVED,**
32 **WOULD CONSIDER NECESSARY TO PERFORM IN MAKING AN ACCURATE DIAGNOSIS**

1 OF THE POSTFERTILIZATION AGE.

2 (B) THE FAILURE OF A PHYSICIAN TO CONFORM TO THE PROVISIONS OF
3 SUBSECTION (A) OF THIS SECTION IS DEEMED “UNPROFESSIONAL CONDUCT” UNDER
4 § 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

5 20-220.

6 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
7 AN INDIVIDUAL MAY NOT PERFORM OR INDUCE OR ATTEMPT TO PERFORM OR
8 INDUCE AN ABORTION ON A PREGNANT WOMAN IF THE PROBABLE
9 POSTFERTILIZATION AGE OF THE WOMAN’S UNBORN CHILD HAS BEEN DETERMINED
10 BY A PHYSICIAN TO BE 20 WEEKS OR MORE.

11 (2) IF, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN,
12 THE PREGNANT WOMAN HAS A MEDICAL EMERGENCY, A PHYSICIAN MAY PERFORM
13 OR INDUCE AN ABORTION ON A PREGNANT WOMAN WHOSE UNBORN CHILD HAS A
14 PROBABLE POSTFERTILIZATION AGE OF 20 WEEKS OR MORE AS DETERMINED BY A
15 PHYSICIAN.

16 (B) (1) WHEN AN ABORTION IS PERFORMED OR INDUCED ON A PREGNANT
17 WOMAN UNDER SUBSECTION (A)(2) OF THIS SECTION, THE PHYSICIAN SHALL
18 TERMINATE THE PREGNANCY IN THE MANNER THAT, IN THE PHYSICIAN’S
19 REASONABLE MEDICAL JUDGMENT, PROVIDES THE BEST OPPORTUNITY FOR THE
20 UNBORN CHILD TO SURVIVE, UNLESS USING THAT METHOD WOULD, IN THE
21 PHYSICIAN’S REASONABLE MEDICAL JUDGMENT, POSE A GREATER RISK OF THE
22 DEATH OR OF THE SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A
23 MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN, NOT INCLUDING
24 PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

25 (2) A MANNER OF ABORTION DOES NOT INCLUDE A GREATER RISK OF
26 DEATH OR SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR
27 BODILY FUNCTION IF IT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE WOMAN WILL
28 ENGAGE IN CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH OR IN
29 SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY
30 FUNCTION.

31 20-221.

32 (A) A PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO PERFORM
33 OR INDUCE AN ABORTION SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT
34 INCLUDES INFORMATION ON:

35 (1) THE POSTFERTILIZATION AGE OF THE UNBORN CHILD OF THE

1 **PREGNANT WOMAN:**

2 **(I) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION**
3 **AGE WAS MADE, WHETHER ULTRASOUND WAS EMPLOYED IN MAKING THE**
4 **DETERMINATION, AND THE WEEK OF PROBABLE POSTFERTILIZATION AGE**
5 **DETERMINED; AND**

6 **(II) IF A DETERMINATION OF PROBABLE POSTFERTILIZATION**
7 **AGE WAS NOT MADE, THE BASIS OF THE DETERMINATION THAT A MEDICAL**
8 **EMERGENCY EXISTED;**

9 **(2) THE METHOD OF ABORTION PERFORMED OR INDUCED,**
10 **INCLUDING:**

11 **(I) MEDICATION ABORTION, INCLUDING**
12 **MIFEPRISTONE/MISOPROSTOL, METHOTREXATE/MISOPROSTOL, OR ANY OTHER**
13 **MEDICATION USED;**

14 **(II) MANUAL VACUUM ASPIRATION;**

15 **(III) ELECTRICAL VACUUM ASPIRATION;**

16 **(IV) DILATION AND EVACUATION;**

17 **(V) COMBINED INDUCTION ABORTION AND DILATION AND**
18 **EVACUATION;**

19 **(VI) INDUCTION ABORTION WITH PROSTAGLANDINS;**

20 **(VII) INDUCTION ABORTION WITH INTRAAMNIOTIC**
21 **INSTILLATION, INCLUDING SALINE OR UREA;**

22 **(VIII) INDUCTION ABORTION;**

23 **(IX) INTACT DILATION AND EXTRACTION (PARTIAL-BIRTH); OR**

24 **(X) ANY OTHER METHOD USED;**

25 **(3) WHETHER AN INTRAFETAL INJECTION WAS USED IN AN ATTEMPT**
26 **TO INDUCE FETAL DEMISE, INCLUDING THE USE OF INTRAFETAL POTASSIUM**
27 **CHLORIDE OR DIGOXIN;**

28 **(4) THE AGE AND RACE OF THE PREGNANT WOMAN; AND**

(5) IF THE PROBABLE POSTFERTILIZATION AGE WAS DETERMINED TO BE 20 OR MORE WEEKS:

(I) THE BASIS OF THE PHYSICIAN'S DETERMINATION THAT THE PREGNANT WOMAN HAD A CONDITION THAT SO COMPLICATED HER MEDICAL CONDITION AS TO NECESSITATE THE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR TO AVERT SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS; AND

(II) WHETHER OR NOT THE METHOD OF ABORTION USED WAS ONE THAT, IN REASONABLE MEDICAL JUDGMENT, PROVIDED THE BEST OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE AND, IF SUCH A METHOD WAS NOT USED, THE BASIS OF THE DETERMINATION THAT TERMINATION OF THE PREGNANCY IN THAT MANNER WOULD POSE A GREATER RISK OF THE DEATH OF THE PREGNANT WOMAN OR OF THE SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS, OF THE WOMAN THAN OTHER AVAILABLE METHODS OF ABORTION.

(B) (1) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION:

(I) MAY NOT INCLUDE:

1. THE NAME OR THE ADDRESS OF THE WOMAN WHOSE PREGNANCY WAS TERMINATED; OR

2. ANY OTHER PERSONAL INFORMATION THAT COULD IDENTIFY THE PREGNANT WOMAN; AND

(II) SHALL INCLUDE A UNIQUE MEDICAL RECORD IDENTIFYING NUMBER TO ENABLE MATCHING THE PHYSICIAN'S REPORT TO THE INDIVIDUAL'S MEDICAL RECORDS.

(2) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE SUBMITTED ON THE FORMS AND ON A SCHEDULE REQUIRED BY THE DEPARTMENT IN REGULATION.

(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE CONFIDENTIAL AND NOT AVAILABLE FOR PUBLIC INSPECTION.

(II) ON REQUEST, A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE MADE AVAILABLE:

1. TO THE ATTORNEY GENERAL OR A STATE'S ATTORNEY PURSUANT TO A CRIMINAL OR CIVIL INVESTIGATION; OR

2. ON A COURT ORDER.

(C) (1) ON OR BEFORE JUNE 30 EACH YEAR, THE DEPARTMENT SHALL ISSUE A PUBLIC REPORT PROVIDING STATISTICS FOR THE PREVIOUS CALENDAR YEAR COMPILED FROM ALL THE REPORTS COVERING THAT YEAR SUBMITTED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION FOR EACH OF THE ITEMS LISTED IN SUBSECTION (A) OF THIS SECTION.

(2) THE REPORT SHALL INCLUDE THE STATISTICS FOR ALL PREVIOUS CALENDAR YEARS, ADJUSTED TO REFLECT ANY ADDITIONAL INFORMATION FROM LATE OR CORRECTED REPORTS.

(3) THE REPORT MAY NOT INCLUDE PERSONAL IDENTIFYING INFORMATION OF ANY PREGNANT WOMAN ON WHOM AN ABORTION WAS PERFORMED, INDUCED, OR ATTEMPTED.

(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION ON OR BEFORE JANUARY 1, 2021.

(2) THE REGULATIONS SHALL REQUIRE THAT THE REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION INCLUDE ALL ABORTIONS PERFORMED OR INDUCED ON AND AFTER THE FIRST DAY OF THE FIRST CALENDAR MONTH FOLLOWING THE DATE THE REGULATIONS ARE ADOPTED.

(E) (1) A PHYSICIAN MAY NOT KNOWINGLY FAIL TO FILE OR KNOWINGLY MAKE A LATE FILING OF A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(2) ANY PHYSICIAN WHO FAILS TO SUBMIT A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION WITHIN 30 DAYS AFTER THE REPORTING DEADLINE IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF \$1,000 FOR EACH 30-DAY PERIOD OR PORTION OF A 30-DAY PERIOD THE REPORT IS OVERDUE.

(3) (I) A PHYSICIAN WHO FAILS TO FILE A REPORT OR KNOWINGLY FILES AN INCOMPLETE REPORT MORE THAN 6 MONTHS AFTER JUNE 30 OF THE REPORTING YEAR MAY, IN AN ACTION BROUGHT BY THE DEPARTMENT, BE

1 DIRECTED BY A COURT OF COMPETENT JURISDICTION TO SUBMIT A COMPLETE
2 REPORT WITHIN A PERIOD OF TIME STATED BY COURT ORDER OR BE CITED FOR
3 CIVIL CONTEMPT.

4 (II) A WILLFUL FAILURE BY ANY PHYSICIAN TO CONFORM TO
5 ANY REQUIREMENT OF THIS SECTION, OTHER THAN LATE FILING OF A REPORT,
6 SHALL BE DEEMED "UNPROFESSIONAL CONDUCT" UNDER § 14-404 OF THE HEALTH
7 OCCUPATIONS ARTICLE.

8 (III) A WILLFUL FAILURE BY ANY PHYSICIAN TO SUBMIT A
9 COMPLETE REPORT IN ACCORDANCE WITH A COURT ORDER UNDER SUBPARAGRAPH
10 (I) OF THIS PARAGRAPH SHALL BE DEEMED "UNPROFESSIONAL CONDUCT" UNDER §
11 14-404 OF THE HEALTH OCCUPATIONS ARTICLE.

12 (4) (I) A PHYSICIAN MAY NOT WILLFULLY FALSIFY A REPORT
13 REQUIRED UNDER THIS SECTION.

14 (II) A PHYSICIAN WHO VIOLATES THIS PARAGRAPH IS GUILTY
15 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
16 \$1,000.

17 20-222.

18 (A) (1) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED
19 OR THE FATHER OF THE UNBORN CHILD WHO WAS THE SUBJECT OF AN ABORTION
20 PERFORMED IN VIOLATION OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE
21 PERSON WHO PERFORMED OR INDUCED THE ABORTION IN INTENTIONAL OR
22 RECKLESS VIOLATION OF THIS PART FOR COMPENSATORY AND PUNITIVE DAMAGES.

23 (2) A WOMAN ON WHOM AN ABORTION WAS ATTEMPTED IN VIOLATION
24 OF THIS PART MAY BRING A CIVIL ACTION AGAINST THE PERSON WHO ATTEMPTED
25 TO PERFORM OR INDUCE THE ABORTION IN INTENTIONAL OR RECKLESS VIOLATION
26 OF THIS PART FOR COMPENSATORY AND PUNITIVE DAMAGES.

27 (B) A WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR
28 ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF THIS PART, THE
29 WOMAN'S SPOUSE, PARENT, GUARDIAN, OR SIBLING, OR THE WOMAN'S CURRENT OR
30 FORMER LICENSED HEALTH CARE PROVIDER, THE DEPARTMENT, THE ATTORNEY
31 GENERAL, OR THE STATE'S ATTORNEY FOR THE COUNTY WHERE THE ABORTION
32 WAS PERFORMED MAY APPLY TO THE APPROPRIATE COURT FOR A TEMPORARY OR
33 PERMANENT INJUNCTION TO RESTRAIN THE PERSON THAT PERFORMED OR
34 INDUCED THE ABORTION OR ATTEMPTED TO PERFORM OR INDUCE AN ABORTION ON
35 THE WOMAN FOR VIOLATING THIS PART:

1 (1) WHETHER OR NOT AN ADEQUATE REMEDY AT LAW EXISTS;

2 (2) IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW; AND

3 (3) NOTWITHSTANDING ANY OTHER LAW.

4 (C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN AN
5 ACTION TAKEN UNDER THIS SECTION, THE COURT ALSO SHALL RENDER JUDGMENT
6 FOR REASONABLE ATTORNEY'S FEES IN FAVOR OF THE PLAINTIFF AGAINST THE
7 DEFENDANT.

8 (2) IF JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT AND
9 THE COURT FINDS THAT THE PLAINTIFF'S ACTION WAS FRIVOLOUS AND BROUGHT
10 IN BAD FAITH, THE COURT SHALL RENDER JUDGMENT FOR REASONABLE
11 ATTORNEY'S FEES IN FAVOR OF THE DEFENDANT AGAINST THE PLAINTIFF.

12 (D) (1) NO DAMAGES OR ATTORNEY'S FEES MAY BE ASSESSED AGAINST
13 THE WOMAN ON WHOM AN ABORTION WAS PERFORMED OR INDUCED OR ATTEMPTED
14 TO BE PERFORMED OR INDUCED EXCEPT UNDER SUBSECTION (C)(2) OF THIS
15 SECTION.

16 (2) NO DAMAGES MAY BE AWARDED TO A PLAINTIFF IF THE COURT
17 FINDS THAT PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

18 20-223.

19 (A) IN A CIVIL ACTION OR CRIMINAL PROCEEDING BROUGHT UNDER THIS
20 PART, THE COURT SHALL DETERMINE WHETHER THE ANONYMITY OF A WOMAN ON
21 WHOM AN ABORTION HAS BEEN PERFORMED OR INDUCED OR ATTEMPTED TO BE
22 PERFORMED OR INDUCED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF SHE
23 DOES NOT GIVE HER CONSENT TO DISCLOSURE.

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

26 (I) ISSUE A GAG ORDER TO THE PARTIES, WITNESSES, AND
27 COUNSEL;

28 (II) SEAL THE RECORD; AND

29 (III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM
30 COURTROOMS OR HEARING ROOMS TO THE EXTENT NECESSARY TO SAFEGUARD THE
31 WOMAN'S IDENTITY FROM PUBLIC DISCLOSURE.

1 **(2) EACH ORDER ISSUED UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL BE ACCOMPANIED BY A SPECIFIC WRITTEN FINDING**
3 **EXPLAINING:**

4 **(I) WHY THE ANONYMITY OF THE WOMAN SHOULD BE**
5 **PRESERVED FROM PUBLIC DISCLOSURE;**

6 **(II) WHY THE ORDER IS ESSENTIAL TO PRESERVING THE**
7 **WOMAN'S ANONYMITY;**

8 **(III) HOW THE ORDER IS NARROWLY TAILORED TO SERVE THE**
9 **WOMAN'S INTERESTS; AND**

10 **(IV) WHY NO REASONABLE LESS RESTRICTIVE ALTERNATIVE**
11 **EXISTS.**

12 **(C) IF A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED OR**
13 **INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED REFUSES TO CONSENT TO**
14 **DISCLOSURE OF HER NAME IN A COURT PROCEEDING UNDER SUBSECTION (A) OF**
15 **THIS SECTION, ANY PERSON LISTED IN § 20-222 OF THIS PART, OTHER THAN A**
16 **PUBLIC OFFICIAL, WHO BRINGS AN ACTION UNDER THIS PART SHALL USE A**
17 **PSEUDONYM FOR THE WOMAN.**

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

21 **20-224.**

22 **(A) THIS PART MAY NOT BE CONSTRUED TO REPEAL § 20-209 OF THIS**
23 **SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF STATE LAW REGULATING OR**
24 **RESTRICTING ABORTION.**

25 **(B) (1) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §§**
26 **20-219 AND 20-220 OF THIS PART BUT VIOLATES THE PROVISIONS OF §**
27 **20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW**
28 **SHALL BE DEEMED UNLAWFUL AS PROVIDED IN THE APPLICABLE PROVISION OF**
29 **LAW.**

30 **(2) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §**
31 **20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW**
32 **REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS OF THIS**
33 **PART SHALL BE DEEMED UNLAWFUL.**

1 **(3) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE**
2 **TEMPORARILY OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL ORDER,**
3 **ALL OTHER PROVISIONS OF LAW REGULATING OR RESTRICTING ABORTION SHALL**
4 **BE ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED PROVISIONS HAD NOT**
5 **BEEN ADOPTED, EXCEPT THAT WHENEVER THE TEMPORARY OR PERMANENT**
6 **RESTRAINING ORDER OR INJUNCTION IS STAYED OR DISSOLVED, OR OTHERWISE**
7 **CEASES TO HAVE EFFECT, THE AFFECTED PROVISIONS SHALL HAVE FULL FORCE**
8 **AND EFFECT.**

9 **20-225.**

10 **THIS PART MAY BE CITED AS THE PAIN-CAPABLE UNBORN CHILD**
11 **PROTECTION ACT.**

12 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
13 **October 1, 2020.**