

HOUSE BILL 1227

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By: **Delegates Boteler, Arikan, Cox, Grammer, Malone, McComas, Parrott, Szeliga, and Wivell**

Introduced and read first time: February 7, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Abortion – Ultrasound Requirement**

3 FOR the purpose of requiring certain physicians or qualified technicians to take certain
4 actions and provide certain information before a woman provides informed consent
5 to having any part of an abortion performed or induced; requiring a certain physician
6 to obtain a certain certification before an abortion is performed or induced and place
7 a copy of the certification in a certain medical record; providing that certain
8 individuals are not in violation of certain provisions of this Act or subject to certain
9 penalties under certain circumstances; authorizing a physician to perform or induce
10 an abortion without meeting certain requirements under certain circumstances;
11 requiring a certain physician to record certain information in a certain record under
12 certain circumstances; establishing certain penalties; requiring a certain court to
13 report a certain violation to the State Board of Physicians under certain
14 circumstances; providing for the construction of certain provisions of this Act;
15 defining certain terms; making conforming changes; and generally relating to
16 ultrasounds and the performance or inducement of an abortion.

17 BY repealing and reenacting, with amendments,
18 Article – Health – General
19 Section 20–209
20 Annotated Code of Maryland
21 (2019 Replacement Volume)

22 BY adding to
23 Article – Health – General
24 Section 20–210
25 Annotated Code of Maryland
26 (2019 Replacement Volume)

27 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Ultrasound requirements serve an essential medical purpose in
2 confirming the presence, location, and gestational age of a pregnancy; and

3 WHEREAS, Ultrasound requirements also serve an essential medical purpose in
4 diagnosing ectopic pregnancies which, if left undiagnosed, can result in infertility or even
5 fatal blood loss; and

6 WHEREAS, It is critical to the psychological and physical well-being of a woman
7 considering an abortion that she receive complete and accurate information on the reality
8 and status of her pregnancy and of her unborn child; and

9 WHEREAS, The decision to abort is “an important, and often a stressful one, and it
10 is desirable and imperative that it be made with full knowledge of its nature and
11 consequences.” *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 67 (1976);
12 and

13 WHEREAS, The knowledgeable exercise of a woman’s right to have an abortion
14 depends on the extent to which the woman receives sufficient information to make an
15 informed choice between the two alternatives of giving birth or having an abortion; and

16 WHEREAS, The purpose of this Act is to protect the physical health and welfare of
17 every woman considering an abortion; and

18 WHEREAS, The purpose of this Act is to ensure that every woman considering an
19 abortion receives complete information on the reality and status of her pregnancy and of
20 her unborn child and that every woman submitting to an abortion do so only after giving
21 her voluntary and informed consent to the abortion procedure; and

22 WHEREAS, The purpose of this Act is to protect the unborn child from a woman’s
23 uninformed decision to have an abortion; and

24 WHEREAS, The purpose of this Act is to reduce “the risk that a woman may elect
25 an abortion, only to discover later, with devastating psychological consequences, that her
26 decision was not fully informed.” *Planned Parenthood of Southeastern Pennsylvania v.*
27 *Casey*, 505 U.S. 833, 882 (1992); now, therefore,

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

30 Article – Health – General

31 20–209.

32 (a) In this section, “viable” means that stage when, in the best medical judgment
33 of the attending physician based on the particular facts of the case before the physician,
34 there is a reasonable likelihood of the fetus’s sustained survival outside the womb.

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

(1) Before the fetus is viable; or

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

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

(ii) The fetus is affected by genetic defect or serious deformity or abnormality.

(c) The Department may adopt regulations that:

(1) Are both necessary and the least intrusive method to protect the life or health of the woman; and

(2) Are not inconsistent with **THIS SUBTITLE AND** established medical practice.

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

20-210.

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

(2) "AUSCULTATE" MEANS TO EXAMINE BY LISTENING FOR SOUNDS MADE BY INTERNAL ORGANS OF THE FETUS, SPECIFICALLY FOR A FETAL HEARTBEAT, USING AN ULTRASOUND TRANSDUCER OR A FETAL HEART RATE MONITOR.

(3) "OBSTETRIC ULTRASOUND" OR "ULTRASOUND" MEANS THE USE OF ULTRASONIC WAVES FOR DIAGNOSTIC OR THERAPEUTIC PURPOSES, SPECIFICALLY TO MONITOR A DEVELOPING FETUS.

(4) "QUALIFIED TECHNICIAN" MEANS:

(I) A REGISTERED DIAGNOSTIC MEDICAL SONOGRAPHER WHO IS CERTIFIED IN OBSTETRICS GYNECOLOGY BY THE AMERICAN REGISTRY FOR

DIAGNOSTIC MEDICAL SONOGRAPHY;

**(II) A NURSE LICENSED BY THE STATE BOARD OF NURSING AND
CERTIFIED AS A NURSE MIDWIFE; OR**

**(III) AN ADVANCED PRACTICE NURSE IN OBSTETRICS LICENSED
BY THE STATE BOARD OF NURSING WITH CERTIFICATION IN OBSTETRICAL
ULTRASONOGRAPHY.**

**(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,
BEFORE A WOMAN PROVIDES INFORMED CONSENT TO HAVING ANY PART OF AN
ABORTION PERFORMED OR INDUCED, THE PHYSICIAN PERFORMING OR INDUCING
THE ABORTION OR A QUALIFIED TECHNICIAN TO WHOM THE RESPONSIBILITY HAS
BEEN DESIGNATED BY THE PHYSICIAN SHALL:**

**(I) PERFORM AN OBSTETRIC ULTRASOUND ON THE PREGNANT
WOMAN;**

**(II) DURING THE ULTRASOUND, PROVIDE A VERBAL
EXPLANATION OF WHAT THE ULTRASOUND IS DEPICTING, INCLUDING THE
PRESENCE AND LOCATION OF THE EMBRYO OR FETUS WITHIN THE UTERUS AND THE
NUMBER OF EMBRYOS OR FETUSES DETECTED;**

(III) INFORM THE WOMAN IF THE FETUS IS NOT ALIVE;

**(IV) DISPLAY THE ULTRASOUND IMAGES SO THAT THE
PREGNANT WOMAN MAY VIEW THEM;**

**(V) AUSCULTATE THE FETAL HEARTBEAT SO THAT THE
PREGNANT WOMAN MAY HEAR IT IF IT IS AUDIBLE; AND**

**(VI) PROVIDE A MEDICAL DESCRIPTION OF THE ULTRASOUND
IMAGES, INCLUDING THE DIMENSIONS OF THE EMBRYO OR FETUS AND THE
PRESENCE OF EXTERNAL MEMBERS AND INTERNAL ORGANS, IF PRESENT AND
VIEWABLE.**

**(2) THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION
SHALL:**

**(I) BEFORE THE ABORTION IS PERFORMED OR INDUCED,
OBTAIN A WRITTEN CERTIFICATION ON A FORM PRESCRIBED BY THE DEPARTMENT
FROM THE WOMAN THAT THE REQUIREMENTS OF PARAGRAPH (1) HAVE BEEN MET
AND THAT:**

1 1. THE WOMAN HAS VIEWED THE ULTRASOUND IMAGES
2 AND LISTENED TO THE FETAL HEARTBEAT, IF IT WAS AUDIBLE; OR

3 2. THE WOMAN DECLINED TO VIEW THE ULTRASOUND
4 IMAGES OR LISTEN TO THE FETAL HEARTBEAT, IF IT WAS AUDIBLE; AND

5 (II) PLACE A COPY OF THE WRITTEN CERTIFICATION REQUIRED
6 UNDER ITEM (I) OF THIS PARAGRAPH IN THE WOMAN'S MEDICAL RECORD.

7 (3) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE
8 PREGNANT WOMAN FROM:

9 (I) AVERTING HER EYES FROM ANY ULTRASOUND IMAGES;

10 (II) NOT LISTENING TO THE FETAL HEARTBEAT; OR

11 (III) REQUESTING THAT THE VOLUME BE TURNED DOWN OR OFF
12 IF THE FETAL HEARTBEAT IS AUDIBLE.

13 (4) THE PHYSICIAN AND THE WOMAN ARE NOT IN VIOLATION OF THIS
14 SECTION OR SUBJECT TO ANY PENALTY IF THE WOMAN REFUSES TO LOOK AT ANY
15 ULTRASOUND IMAGES OR LISTEN TO THE FETAL HEARTBEAT.

16 (C) (1) A PHYSICIAN MAY PERFORM OR INDUCE AN ABORTION WITHOUT
17 MEETING THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION IF:

18 (I) A MEDICAL EMERGENCY OR MEDICAL NECESSITY COMPELS
19 THE PERFORMANCE OR INDUCEMENT OF AN ABORTION; AND

20 (II) THE PHYSICIAN INFORMS THE WOMAN, BEFORE
21 PERFORMING OR INDUCING THE ABORTION, IF POSSIBLE, OF THE MEDICAL
22 INDICATIONS SUPPORTING THE PHYSICIAN'S JUDGMENT THAT AN ABORTION IS
23 NECESSARY.

24 (2) IF A PHYSICIAN PERFORMS OR INDUCES AN ABORTION UNDER
25 PARAGRAPH (1) OF THIS SUBSECTION, THE PHYSICIAN SHALL RECORD THE
26 REASONS FOR THE PHYSICIAN'S CONCLUSION THAT A MEDICAL EMERGENCY OR
27 MEDICAL NECESSITY EXISTED IN THE WOMAN'S MEDICAL RECORD.

28 (D) (1) A PHYSICIAN OR QUALIFIED TECHNICIAN WHO VIOLATES
29 SUBSECTION (B) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF:

1 **(I) \$100,000 FOR A FIRST OFFENSE; AND**

2 **(II) \$250,000 FOR A SECOND OR SUBSEQUENT OFFENSE.**

3 **(2) IF A COURT IMPOSES A FINE UNDER PARAGRAPH (1) OF THIS**
4 **SUBSECTION ON A PHYSICIAN, THE COURT SHALL REPORT THE VIOLATION TO THE**
5 **STATE BOARD OF PHYSICIANS.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2020.