

# HOUSE BILL 1299

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By: **Delegates Metzgar, Arian, Chisholm, Cox, Grammer, Hartman, Krebs, Malone, McComas, Morgan, Parrott, Saab, Shoemaker, Szeliga, and Wivell**

Introduced and read first time: February 7, 2020

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Abortions – Modifications**

3 FOR the purpose of prohibiting certain physicians from having a financial relationship with  
4 each other; repealing a provision of law providing that a physician is not liable for  
5 certain damages or subject to a certain penalty under certain circumstances;  
6 prohibiting a physician from performing or inducing or attempting to perform or  
7 induce an abortion before making a certain determination; requiring a physician to  
8 use a certain method for detecting a certain heartbeat; authorizing and requiring the  
9 Maryland Department of Health to adopt certain regulations; requiring a certain  
10 physician to record certain information in a certain medical record; providing that a  
11 certain provision of this Act does not apply under certain circumstances; requiring a  
12 physician to make a certain determination in a certain manner; requiring a  
13 physician to make a certain notation in certain medical records and maintain in the  
14 physician's records a copy of a certain notation for a certain time period under certain  
15 circumstances; providing that a physician is not in violation of certain provisions of  
16 this Act under certain circumstances; establishing certain penalties; providing that  
17 a person who violates certain provisions of this Act is subject to certain disciplinary  
18 action; providing that a pregnant woman on whom an abortion is performed in  
19 violation of certain provisions of this Act may not be criminally prosecuted for certain  
20 reasons and is not subject to certain penalties; authorizing a certain woman to file a  
21 civil action in a certain court under certain circumstances; requiring that a woman  
22 who prevails in a certain action receive certain damages, court costs, and attorney's  
23 fees; requiring that a court award attorney's fees to a defendant in a certain action  
24 under certain circumstances; requiring that a certain defendant be subject to a  
25 certain burden of proof; requiring a health care facility to maintain certain records;  
26 requiring a certain health care facility to annually submit a certain report to the  
27 Department; prohibiting a certain report from including certain information;  
28 authorizing a physician to report certain information to the Department; providing  
29 that a certain report is in addition to certain additional reporting; requiring the  
30 Department to prepare and publish a certain report on or before a certain date each

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



year; providing for the construction of this Act; making conforming changes; defining certain terms; and generally relating to abortions.

BY repealing and reenacting, with amendments,  
Article – Health – General  
Section 20–207 through 20–209  
Annotated Code of Maryland  
(2019 Replacement Volume)

BY adding to  
Article – Health – General  
Section 20–210 through 20–213  
Annotated Code of Maryland  
(2019 Replacement Volume)

### Preamble

WHEREAS, As many as 30% of natural pregnancies end in spontaneous miscarriage;  
and

WHEREAS, Fewer than 5% of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity; and

WHEREAS, Over 90% of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac; and

WHEREAS, Nearly 90% of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac; and

WHEREAS, Fetal heartbeat is a key medical predictor that an unborn human individual will reach live birth; and

WHEREAS, Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac; and

WHEREAS, The State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born; and

WHEREAS, In order to make an informed choice about whether to continue a pregnancy, a pregnant woman has a legitimate interest in knowing the likelihood of the human fetus surviving to full-term birth based on the presence of fetal cardiac activity; now, therefore,

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

**Article – Health – General**

20–207.

(A) In Part II of this subtitle[, the word “physician”] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) **“HEARTBEAT OF AN UNBORN HUMAN INDIVIDUAL” MEANS CARDIAC ACTIVITY OR THE STEADY AND REPETITIVE RHYTHMIC CONTRACTION OF THE HEART OF AN UNBORN HUMAN INDIVIDUAL WITHIN THE GESTATIONAL SAC, WHICH IS THE STRUCTURE THAT COMPRISES THE EXTRAEMBRYONIC MEMBRANES THAT ENVELOP THE UNBORN HUMAN INDIVIDUAL AND THAT IS TYPICALLY VISIBLE BY ULTRASOUND AFTER THE FOURTH WEEK OF PREGNANCY.**

(C) **“MEDICAL EMERGENCY” MEANS A CONDITION THAT, IN REASONABLE MEDICAL JUDGMENT, REQUIRES THE IMMEDIATE PERFORMANCE OR INDUCEMENT OF AN ABORTION BECAUSE THE CONDITION:**

(1) **ENDANGERS THE LIFE OF THE PREGNANT WOMAN; OR**

(2) **POSES A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN.**

(D) **“PHYSICIAN”** means any person, including a doctor of osteopathy, licensed to practice medicine in the State of Maryland in compliance with the provisions of Title 14 of the Health Occupations Article.

(E) **“PREGNANT” MEANS THE HUMAN FEMALE REPRODUCTIVE CONDITION IN WHICH A WOMAN CARRIES DEVELOPING HUMAN OFFSPRING, BEGINNING WITH FERTILIZATION AND CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE WOMAN.**

(F) **“UNBORN HUMAN INDIVIDUAL” MEANS THE OFFSPRING OF A HUMAN BEING FROM CONCEPTION UNTIL BIRTH, INCLUDING AN EMBRYO OR A FETUS.**

20–208.

(A) An abortion must be performed by a licensed physician.

(B) **A PHYSICIAN WHO REFERS A WOMAN TO A PHYSICIAN FOR AN ABORTION AND THE PHYSICIAN WHO PERFORMS THE ABORTION UNDER THIS SUBTITLE MAY NOT HAVE A FINANCIAL RELATIONSHIP WITH EACH OTHER.**

20–209.

(a) In this section, “viable” means that stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the [fetus’s] **UNBORN HUMAN INDIVIDUAL’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] **UNBORN HUMAN INDIVIDUAL** 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] **UNBORN HUMAN INDIVIDUAL** 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 OR** 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) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION, A PHYSICIAN MAY NOT PERFORM OR INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION ON A PREGNANT WOMAN BEFORE A PHYSICIAN DETERMINES IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION WHETHER THE UNBORN HUMAN INDIVIDUAL HAS A DETECTABLE HEARTBEAT.**

**(B) (1) SUBJECT TO PARAGRAPH (2)(I) OF THIS SUBSECTION, A PHYSICIAN SHALL USE A METHOD FOR DETECTING THE HEARTBEAT OF AN UNBORN HUMAN INDIVIDUAL CONSISTENT WITH GENERALLY ACCEPTED MEDICAL STANDARDS OF CARE TO MAKE THE DETERMINATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.**

1                   (2) (I) THE DEPARTMENT MAY ADOPT REGULATIONS FOR THE  
2 METHOD TO BE USED BY PHYSICIANS TO DETECT THE HEARTBEAT OF UNBORN  
3 HUMAN INDIVIDUALS.

4                   (II) IF THE DEPARTMENT ADOPTS REGULATIONS UNDER  
5 SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PHYSICIAN SHALL USE THE METHOD  
6 FOR DETECTING THE HEARTBEAT OF AN UNBORN HUMAN INDIVIDUAL THAT IS  
7 REQUIRED BY THE REGULATIONS.

8                   (3) THE PHYSICIAN WHO DETERMINES WHETHER THE HEARTBEAT OF  
9 AN UNBORN HUMAN INDIVIDUAL IS PRESENT UNDER PARAGRAPH (1) OF THIS  
10 SUBSECTION SHALL RECORD IN THE PREGNANT WOMAN'S MEDICAL RECORD:

11                   (I) THE ESTIMATED AGE OF THE UNBORN HUMAN INDIVIDUAL,  
12 AS CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE  
13 PREGNANT WOMAN;

14                   (II) THE METHOD USED TO TEST FOR THE HEARTBEAT OF THE  
15 UNBORN HUMAN INDIVIDUAL;

16                   (III) THE DATE AND TIME OF THE TEST; AND

17                   (IV) THE RESULT OF THE TEST.

18                   (C) (1) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO A  
19 PHYSICIAN WHO PERFORMS OR INDUCES AN ABORTION IF THE PHYSICIAN  
20 DETERMINES IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION THAT A  
21 MEDICAL EMERGENCY EXISTS THAT PREVENTS COMPLIANCE WITH SUBSECTION (A)  
22 OF THIS SECTION.

23                   (2) A PHYSICIAN SHALL DETERMINE WHETHER A MEDICAL  
24 EMERGENCY EXISTS USING THE DEGREE OF SKILL, CARE, AND DILIGENCE THAT A  
25 PHYSICIAN OF THE SAME MEDICAL SPECIALTY WOULD USE IN SIMILAR  
26 CIRCUMSTANCES.

27                   (3) (I) IF A PHYSICIAN PERFORMS OR INDUCES AN ABORTION ON A  
28 PREGNANT WOMAN UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PHYSICIAN  
29 SHALL MAKE A WRITTEN NOTATION IN THE PREGNANT WOMAN'S MEDICAL RECORDS  
30 OF:

31                   1. THE PHYSICIAN'S BELIEF THAT A MEDICAL  
32 EMERGENCY EXISTED AND THE REASONS FOR THAT BELIEF; AND

1                               **2. THE MEDICAL CONDITION OF THE PREGNANT WOMAN**  
2 **THAT PREVENTED COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION.**

3                               **(II) IF THE REASON FOR THE ABORTION WAS OTHER THAN TO**  
4 **PRESERVE THE HEALTH OF THE PREGNANT WOMAN, THE WRITTEN NOTATION**  
5 **REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL SPECIFY THAT**  
6 **PRESERVING THE HEALTH OF THE PREGNANT WOMAN WAS NOT THE PURPOSE OF**  
7 **THE ABORTION.**

8                               **(III) A PHYSICIAN SHALL MAINTAIN IN THE PHYSICIAN'S**  
9 **RECORDS A COPY OF ANY WRITTEN NOTATION REQUIRED UNDER SUBPARAGRAPH**  
10 **(I) OF THIS PARAGRAPH FOR AT LEAST 7 YEARS AFTER THE DATE ON WHICH THE**  
11 **NOTATION WAS MADE.**

12                               **(D) A PHYSICIAN IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS SECTION**  
13 **IF:**

14                               **(1) THE PHYSICIAN COMPLIES WITH SUBSECTION (B) OF THIS**  
15 **SECTION; AND**

16                               **(2) THE METHOD USED TO TEST FOR THE PRESENCE OF THE**  
17 **HEARTBEAT OF AN UNBORN HUMAN INDIVIDUAL DOES NOT DETECT A HEARTBEAT.**

18                               **(E) THIS SECTION MAY NOT BE CONSTRUED TO:**

19                               **(1) LIMIT ANY PROVISIONS OF LAW RELATING TO THE PERFORMANCE**  
20 **OR INDUCEMENT OF AN ABORTION BY A PARTICULAR METHOD OR DURING A**  
21 **PARTICULAR STAGE OF PREGNANCY; OR**

22                               **(2) PROHIBIT THE SALE, USE, PRESCRIPTION, OR ADMINISTRATION**  
23 **OF A DRUG, DEVICE, OR CHEMICAL THAT IS DESIGNED TO PREVENT FERTILIZATION.**

24                               **(F) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO:**

25                               **(1) A CIVIL PENALTY OF UP TO \$2,500 FOR EACH VIOLATION; AND**

26                               **(2) DISCIPLINARY ACTION BY THE DEPARTMENT OR THE**  
27 **APPROPRIATE HEALTH OCCUPATIONS BOARD UNDER THE HEALTH OCCUPATIONS**  
28 **ARTICLE.**

29 **20-211.**

1           (A) A PREGNANT WOMAN ON WHOM AN ABORTION IS PERFORMED OR  
2 INDUCED IN VIOLATION OF § 20–210 OF THIS SUBTITLE:

3           (1) MAY NOT BE CRIMINALLY PROSECUTED FOR VIOLATING ANY OF  
4 THE PROVISIONS OF THIS SUBTITLE OR FOR ATTEMPTING TO COMMIT, CONSPIRING  
5 TO COMMIT, OR COMPLICITY IN COMMITTING A VIOLATION OF ANY OF THE  
6 PROVISIONS OF THIS SUBTITLE; AND

7           (2) IS NOT SUBJECT TO A CIVIL OR CRIMINAL PENALTY BASED ON THE  
8 ABORTION BEING PERFORMED OR INDUCED.

9           (B) A WOMAN MAY FILE A CIVIL ACTION IN A COURT OF COMPETENT  
10 JURISDICTION IF AN ABORTION WAS PERFORMED OR INDUCED ON THE WOMAN IN  
11 VIOLATION OF § 20–210 OF THIS SUBTITLE.

12           (C) A WOMAN WHO PREVAILS IN AN ACTION FILED UNDER SUBSECTION (B)  
13 OF THIS SECTION SHALL BE AWARDED BY THE COURT THE FOLLOWING TO BE PAID  
14 BY THE INDIVIDUAL WHO COMMITTED THE VIOLATION:

15           (1) (I) DAMAGES IN AN AMOUNT EQUAL TO \$10,000; OR

16                       (II) IF THE WOMAN CHOOSES AT ANY TIME BEFORE THE FINAL  
17 DETERMINATION, AN AMOUNT DETERMINED BY THE COURT AFTER CONSIDERATION  
18 OF THE EVIDENCE;

19           (2) COURT COSTS; AND

20           (3) REASONABLE ATTORNEY'S FEES.

21           (D) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES TO A  
22 DEFENDANT IN AN ACTION FILED UNDER SUBSECTION (B) OF THIS SECTION IF:

23           (1) THE DEFENDANT PREVAILS; AND

24           (2) THE COURT FINDS THAT:

25                       (I) COMMENCEMENT OF THE ACTION CONSTITUTES  
26 FRIVOLOUS CONDUCT; AND

27                       (II) THE DEFENDANT WAS ADVERSELY AFFECTED BY THE  
28 FRIVOLOUS CONDUCT.

29           (E) A DEFENDANT IN AN ACTION FILED UNDER SUBSECTION (B) OF THIS

SECTION SHALL BE SUBJECT TO THE SAME BURDEN OF PROOF AS WOULD APPLY TO  
A CIVIL ACTION FOR THE WRONGFUL DEATH OF A CHILD.

**20–212.**

(A) IN THIS SECTION, “HEALTH CARE FACILITY” MEANS A FACILITY OR  
OFFICE WHERE ABORTIONS ARE PROVIDED BY A PHYSICIAN IN ACCORDANCE WITH  
THIS SUBTITLE, INCLUDING:

(1) A HEALTH CARE FACILITY AS DEFINED IN § 19–114(D)(1) OF THIS  
ARTICLE;

(2) A FACILITY OPERATED BY THE DEPARTMENT OR A HEALTH  
OFFICER; AND

(3) THE OFFICE OF A PHYSICIAN.

(B) A HEALTH CARE FACILITY SHALL MAINTAIN RECORDS OF ABORTIONS  
PROVIDED OR INDUCED AT THE FACILITY.

(C) A HEALTH CARE FACILITY THAT PROVIDES ABORTIONS IN ACCORDANCE  
WITH THIS SUBTITLE SHALL ANNUALLY SUBMIT TO THE DEPARTMENT IN A FORM  
PRESCRIBED BY THE DEPARTMENT A REPORT THAT INCLUDES:

(1) THE NUMBER OF PREGNANCIES TERMINATED DURING THE TIME  
PERIOD COVERED BY THE REPORT;

(2) THE TYPE OF HEALTH CARE FACILITY IN WHICH THE  
PREGNANCIES WERE TERMINATED;

(3) THE MEDICAL DIAGNOSES AND CONDITIONS THAT REQUIRED THE  
ABORTIONS, IF APPLICABLE;

(4) A SWORN STATEMENT BY EACH PHYSICIAN AT A HEALTH CARE  
FACILITY WHO REFERRED A WOMAN TO A PHYSICIAN AT THE HEALTH CARE FACILITY  
FOR AN ABORTION AND EACH PHYSICIAN WHO PERFORMED OR INDUCED AN  
ABORTION ON THE REFERRAL THAT THE PHYSICIANS DO NOT HAVE A FINANCIAL  
AFFILIATION WITH EACH OTHER; AND

(5) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.



1           **(D) THE REPORT SUBMITTED UNDER SUBSECTION (C) OF THIS SECTION MAY**  
2 **NOT INCLUDE THE NAMES OF THE INDIVIDUALS ON WHOM ABORTIONS WERE**  
3 **PERFORMED OR INDUCED.**

4           **(E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS**  
5 **SECTION.**

6 **20-213.**

7           **(A) (1) A PHYSICIAN MAY REPORT TO THE DEPARTMENT ALLEGED**  
8 **SEXUAL ABUSE REPORTED TO THE PHYSICIAN IN THE PROCESS OF DETECTING THE**  
9 **HEARTBEAT OF AN UNBORN HUMAN INDIVIDUAL OR PERFORMING OR INDUCING AN**  
10 **ABORTION UNDER THIS SUBTITLE.**

11                   **(2) THE REPORT AUTHORIZED UNDER PARAGRAPH (1) OF THIS**  
12 **SUBSECTION IS IN ADDITION TO ANY REPORTING THE PHYSICIAN IS REQUIRED TO**  
13 **MAKE UNDER FEDERAL OR STATE LAW.**

14           **(B) (1) ON OR BEFORE FEBRUARY 1 EACH YEAR, THE DEPARTMENT**  
15 **SHALL PREPARE AND PUBLISH A REPORT, TO THE EXTENT AUTHORIZED BY LAW, ON**  
16 **THE NUMBER OF REPORTS THE DEPARTMENT RECEIVED IN ACCORDANCE WITH**  
17 **SUBSECTION (A) OF THIS SECTION DURING THE YEAR.**

18                   **(2) THE REPORT PUBLISHED UNDER PARAGRAPH (1) OF THIS**  
19 **SUBSECTION:**

20                           **(I) SHALL LIST THE DATA BY THE MONTH IN WHICH THE**  
21 **REPORT WAS SUBMITTED TO THE DEPARTMENT AND BY THE AGE OF THE ALLEGED**  
22 **VICTIM; AND**

23                                   **(II) MAY NOT INCLUDE THE NAME OF AN ALLEGED VICTIM.**

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