SENATE BILL 1175

J3, J1 4lr3318

By: **Senator Lam**
Introduced and read first time: February 15, 2024
Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Hospitals – Emergency Medical Conditions – Procedures
(Maryland Lifesaving Treatment Access and Abortion Protection Act)

FOR the purpose of requiring a hospital to conduct screening on an individual presenting at an emergency department of the hospital to determine whether the individual has an emergency medical condition; establishing requirements and prohibitions related to the treatment and transfer of an individual who has an emergency medical condition; prohibiting a hospital from taking adverse action against a provider for not transferring a patient who is not stabilized or against a hospital employee if the employee reports a violation of this Act; and generally relating to emergency medical conditions and hospitals.

BY adding to
Article – Health – General
Section 19–342.1
Annotated Code of Maryland
(2023 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 20–214(b)
Annotated Code of Maryland
(2023 Replacement Volume)

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

Article – Health – General

19–342.1.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

(2) "EMERGENCY MEDICAL CONDITION" MEANS:

(I) A MEDICAL CONDITION THAT PRESENTS THROUGH ACUTE SYMPTOMS OF SUFFICIENT SEVERITY, INCLUDING SEVERE PAIN, AND FOR WHICH THE ABSENCE OF IMMEDIATE MEDICAL ATTENTION COULD BE REASONABLY EXPECTED TO RESULT IN:

1. PLACING THE HEALTH OF THE INDIVIDUAL OR, WITH RESPECT TO A PREGNANT WOMAN, THE HEALTH OF THE WOMAN OR HER UNBORN CHILD, IN SERIOUS JEOPARDY;

2. SERIOUS IMPAIRMENT TO BODILY FUNCTIONS; OR

3. SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR BODY PART; OR

(II) WITH RESPECT TO A PREGNANT WOMAN WHO IS HAVING CONTRACTIONS:

1. THERE BEING INADEQUATE TIME TO EFFECT A SAFE TRANSFER TO ANOTHER HOSPITAL BEFORE DELIVERY; OR

2. TRANSFER POSING A THREAT TO THE HEALTH OR SAFETY OF THE WOMAN OR UNBORN CHILD.

(3) "STABILIZE" MEANS:

(I) FOR AN EMERGENCY MEDICAL CONDITION AS DEFINED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, TO PROVIDE THE MEDICAL TREATMENT NECESSARY TO ENSURE, WITHIN REASONABLE MEDICAL PROBABILITY, THAT NO MATERIAL DETERIORATION OF THE CONDITION IS LIKELY TO RESULT FROM OR OCCUR DURING THE TRANSFER OF THE INDIVIDUAL FROM THE FACILITY; OR

(II) FOR AN EMERGENCY MEDICAL CONDITION AS DEFINED IN PARAGRAPH (2)(II) OF THIS SUBSECTION, THE WOMAN HAS DELIVERED THE NEWBORN, INCLUDING DELIVERY OF THE PLACENTA.

(B) THIS SECTION APPLIES ONLY TO A HOSPITAL WITH AN EMERGENCY DEPARTMENT.

(C) ON THE REQUEST OF AN INDIVIDUAL PRESENTING AT A HOSPITAL EMERGENCY DEPARTMENT, OR THE INDIVIDUAL'S REPRESENTATIVE, A HOSPITAL SHALL PROVIDE AN APPROPRIATE MEDICAL SCREENING TO DETERMINE WHETHER THE INDIVIDUAL HAS AN EMERGENCY MEDICAL CONDITION.

(D) IF A HOSPITAL DETERMINES THAT AN INDIVIDUAL HAS AN EMERGENCY MEDICAL CONDITION, THE HOSPITAL SHALL:

(1) USING THE STAFF AND FACILITIES AVAILABLE AT THE HOSPITAL, PROVIDE FURTHER EXAMINATION AND THE TREATMENT REQUIRED TO STABILIZE THE EMERGENCY MEDICAL CONDITION; OR

(2) TRANSFER THE INDIVIDUAL TO ANOTHER MEDICAL FACILITY.

(E) (1) A HOSPITAL IS CONSIDERED TO HAVE MET THE REQUIREMENTS OF THIS SECTION IF, AFTER OFFERING FURTHER EXAMINATION AND TREATMENT OR TRANSFER TO THE INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE, AND INFORMING THE INDIVIDUAL OR INDIVIDUAL'S REPRESENTATIVE OF THE RISKS AND BENEFITS OF FURTHER EXAMINATION AND TREATMENT OR TRANSFER:

(I) AN INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE REFUSES TO CONSENT TO FURTHER EXAMINATION AND TREATMENT; OR

(II) AN INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE REFUSES TO CONSENT TO A TRANSFER TO ANOTHER MEDICAL FACILITY.

(2) A HOSPITAL SHALL TAKE REASONABLE STEPS TO SECURE WRITTEN INFORMED CONSENT TO THE REFUSAL OF AN EXAMINATION OR TREATMENT OR TRANSFER UNDER THIS SUBSECTION FROM THE INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE.

(F) IF AN INDIVIDUAL HAS AN EMERGENCY MEDICAL CONDITION THAT HAS NOT BEEN STABILIZED, THE HOSPITAL MAY NOT TRANSFER THE INDIVIDUAL UNLESS:

(1) THE TRANSFERRING HOSPITAL PROVIDES THE MEDICAL TREATMENT AVAILABLE AT THE HOSPITAL THAT MINIMIZES THE RISKS TO THE INDIVIDUAL'S HEALTH AND, IN THE CASE OF A WOMAN IN LABOR, THE HEALTH OF THE UNBORN CHILD;

(2) THE RECEIVING FACILITY HAS AVAILABLE SPACE AND QUALIFIED PERSONNEL TO TREAT THE INDIVIDUAL AND HAS AGREED TO ACCEPT THE

TRANSFER OF THE INDIVIDUAL AND TO PROVIDE APPROPRIATE MEDICAL TREATMENT;

(3) THE TRANSFERRING HOSPITAL PROVIDES TO THE RECEIVING FACILITY ALL MEDICAL RECORDS OR COPIES OF MEDICAL RECORDS RELATING TO:

(I) THE INDIVIDUAL'S EMERGENCY MEDICAL CONDITION;

(II) OBSERVATION OF SIGNS AND SYMPTOMS;

(III) PRELIMINARY DIAGNOSIS;

(IV) TREATMENT PROVIDED;

(V) TEST RESULTS;

(VI) THE INFORMED WRITTEN CONSENT AND CERTIFICATION REQUIRED UNDER ITEM (5) OF THIS PARAGRAPH; AND

(VII) THE NAME AND ADDRESS OF ANY ON–CALL PHYSICIAN WHO HAS REFUSED OR FAILED TO APPEAR WITHIN A REASONABLE TIME TO PROVIDE NECESSARY STABILIZING TREATMENT;

(4) THE TRANSFER IS EFFECTED THROUGH QUALIFIED PERSONNEL AND TRANSPORTATION EQUIPMENT, INCLUDING THE USE OF NECESSARY AND MEDICALLY APPROPRIATE LIFE SUPPORT MEASURES DURING THE TRANSFER; AND

(5) (I) THE INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE, AFTER BEING INFORMED OF THE HOSPITAL'S RESPONSIBILITIES UNDER THIS SECTION AND THE RISKS OF TRANSFER, REQUESTS IN WRITING THE TRANSFER TO ANOTHER FACILITY; AND

(II) 1. A PHYSICIAN HAS SIGNED A CERTIFICATION THAT:

A. STATES THAT BASED ON THE INFORMATION AVAILABLE AT THE TIME OF TRANSFER, THE MEDICAL BENEFITS REASONABLY EXPECTED FROM THE PROVISION OF APPROPRIATE MEDICAL TREATMENT AT ANOTHER MEDICAL FACILITY OUTWEIGH THE RISKS TO THE INDIVIDUAL AND, IN THE CASE OF LABOR, TO THE UNBORN CHILD FROM EFFECTING THE TRANSFER; AND

B. CONTAINS A SUMMARY OF THE RISKS AND BENEFITS OF TRANSFER; OR

2. IF A PHYSICIAN IS NOT PHYSICALLY PRESENT IN THE EMERGENCY DEPARTMENT AT THE TIME THE INDIVIDUAL IS TRANSFERRED, A QUALIFIED MEDICAL PROVIDER HAS SIGNED A CERTIFICATION THAT:

A. STATES THAT BASED ON THE INFORMATION AVAILABLE AT THE TIME OF TRANSFER, THE MEDICAL BENEFITS REASONABLY EXPECTED FROM THE PROVISION OF APPROPRIATE MEDICAL TREATMENT AT ANOTHER MEDICAL FACILITY OUTWEIGH THE RISKS TO THE INDIVIDUAL AND, IN THE CASE OF LABOR, TO THE UNBORN CHILD FROM EFFECTING THE TRANSFER;

B. CONTAINS A SUMMARY OF THE RISKS AND BENEFITS OF TRANSFER; AND

C. IS SUBSEQUENTLY COUNTERSIGNED BY A PHYSICIAN WHO, IN CONSULTATION WITH THE QUALIFIED MEDICAL PROVIDER, HAS MADE THE DETERMINATION THAT BASED ON THE INFORMATION AVAILABLE AT THE TIME OF TRANSFER, THE MEDICAL BENEFITS REASONABLY EXPECTED FROM THE PROVISION OF APPROPRIATE MEDICAL TREATMENT AT ANOTHER MEDICAL FACILITY OUTWEIGHED THE RISKS TO THE INDIVIDUAL AND, IN THE CASE OF LABOR, TO THE UNBORN CHILD FROM EFFECTING THE TRANSFER.

(G) IF A PHYSICIAN DETERMINES AFTER THE MEDICAL SCREENING THAT AN INDIVIDUAL REQUIRES THE SERVICES OF A PHYSICIAN ON THE HOSPITAL'S LIST OF ON–CALL PHYSICIANS, AND THE ON–CALL PHYSICIAN REFUSES OR FAILS TO APPEAR WITHIN A REASONABLE PERIOD OF TIME AFTER NOTIFICATION FROM THE PHYSICIAN, THE PHYSICIAN WHO PROVIDED NOTIFICATION TO THE ON–CALL PHYSICIAN IS NOT LIABLE FOR A PENALTY UNDER THIS SECTION FOR A TRANSFER THAT OTHERWISE MET THE REQUIREMENTS OF SUBSECTION (F) OF THIS SECTION.

(H) A HOSPITAL THAT HAS SPECIALIZED CAPABILITIES OR FACILITIES OR A REGIONAL REFERRAL CENTER MAY NOT REFUSE AN APPROPRIATE TRANSFER OF AN INDIVIDUAL WHO REQUIRES THE HOSPITAL'S SPECIALIZED CAPABILITIES OR FACILITIES IF THE HOSPITAL HAS THE CAPACITY TO TREAT THE INDIVIDUAL.

(I) A HOSPITAL MAY NOT DELAY PROVIDING AN APPROPRIATE MEDICAL SCREENING EXAMINATION OR FURTHER MEDICAL EXAMINATION TO INQUIRE ABOUT THE INDIVIDUAL'S METHOD OF PAYMENT OR INSURANCE STATUS.

(J) A HOSPITAL MAY NOT PENALIZE OR TAKE OTHER ADVERSE ACTION AGAINST:

(1) A QUALIFIED MEDICAL PROVIDER IF THE PROVIDER REFUSES TO AUTHORIZE THE TRANSFER OF AN INDIVIDUAL WITH AN EMERGENCY MEDICAL CONDITION THAT HAS NOT BEEN STABILIZED; OR

(2) A HOSPITAL EMPLOYEE IF THE EMPLOYEE REPORTS A VIOLATION OF THIS SECTION.

(K) A HOSPITAL THAT NEGLIGENTLY VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF:

(1) FOR A HOSPITAL WITH 100 OR MORE BEDS, NOT MORE THAN $50,000 FOR EACH VIOLATION; OR

(2) FOR A HOSPITAL WITH FEWER THAN 100 BEDS, NOT MORE THAN $25,000 FOR EACH VIOLATION.

(L) (1) A PHYSICIAN, INCLUDING AN ON–CALL PHYSICIAN, WHO IS RESPONSIBLE FOR THE EXAMINATION, TREATMENT, OR TRANSFER OF AN INDIVIDUAL UNDER THIS SECTION AND WHO NEGLIGENTLY VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN $50,000 FOR EACH VIOLATION.

(2) IF A PHYSICIAN, INCLUDING AN ON–CALL PHYSICIAN, WHO IS RESPONSIBLE FOR THE EXAMINATION, TREATMENT, OR TRANSFER OF AN INDIVIDUAL UNDER THIS SECTION IS FOUND TO BE GROSSLY NEGLIGENT IN A VIOLATION OF THIS SECTION OR IS FOUND TO HAVE REPEATEDLY VIOLATED THIS SECTION, THE PHYSICIAN IS SUBJECT TO EXCLUSION FROM PARTICIPATION IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM.

(M) (1) IN A CIVIL ACTION AGAINST A HOSPITAL FOR A VIOLATION OF THIS SECTION, AN INDIVIDUAL WHO INCURS PERSONAL HARM AS A DIRECT RESULT OF THE VIOLATION MAY OBTAIN DAMAGES AVAILABLE FOR PERSONAL INJURY AND APPROPRIATE EQUITABLE RELIEF.

(2) IN A CIVIL ACTION AGAINST A HOSPITAL FOR A VIOLATION OF THIS SECTION, A MEDICAL FACILITY THAT INCURS A FINANCIAL LOSS AS THE RESULT OF THE VIOLATION MAY OBTAIN DAMAGES FOR FINANCIAL LOSS AND APPROPRIATE EQUITABLE RELIEF.

(3) A CIVIL ACTION AUTHORIZED UNDER THIS PARAGRAPH SHALL BE FILED WITHIN 2 YEARS AFTER THE DATE THE CAUSE OF ACTION OCCURS.

20–214.

(b) (1) **[**A**]** **EXCEPT AS PROVIDED IN § 19–342.1 OF THIS ARTICLE, A** licensed hospital, hospital director, or hospital governing board may not be required:

(i) To **[**permit**]** **AUTHORIZE**, within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy; or

(ii) To refer to any source for these medical procedures.

(2) The refusal to **[**permit**]** **AUTHORIZE** or to refer to a source for these procedures may not be grounds for:

(i) Civil liability to another person; or

(ii) Disciplinary or other recriminatory action against the person by this State or any person.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.