

HOUSE BILL 1167

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CF SB 841

By: **Delegates Wivell, Aumann, Beidle, Chang, Ciliberti, Grammer, Malone, McComas, McKay, W. Miller, Morgan, Rose, Sophocleus, and Vogt**

Introduced and read first time: February 9, 2017

Assigned to: Health and Government Operations and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Unborn Child Protection From Dismemberment Abortion Act of 2017**

3 FOR the purpose of prohibiting, except under certain circumstances, the performance of or
4 the attempt to perform a dismemberment abortion that kills an unborn child on a
5 pregnant woman; authorizing a certain individual to seek a hearing before the State
6 Board of Physicians on a certain issue; providing that certain findings of the Board
7 from a certain hearing are admissible on that issue at a certain trial; providing for
8 the delay of a certain trial for a certain purpose for a certain number of days;
9 exempting certain individuals from liability for performing or attempting to perform
10 a dismemberment abortion; authorizing certain individuals to bring a civil action
11 under certain circumstances; authorizing certain individuals to apply to a certain
12 court for permanent injunctive relief against a certain individual under certain
13 circumstances; authorizing a certain court to award certain damages; providing that
14 no damages may be awarded under certain circumstances; providing for the award
15 of certain attorney's fees under certain circumstances; requiring a court to issue
16 certain orders under certain circumstances; requiring certain individuals to use a
17 pseudonym to bring a certain action in court under certain circumstances; providing
18 for the construction of various provisions of this Act; establishing a certain short
19 title; defining certain terms; and generally relating to the Unborn Child Protection
20 From Dismemberment Abortion Act.

21 BY adding to

22 Article – Health – General

23 Section 20–217 through 20–223 to be under the new part “Part V. Unborn Child
24 Protection From Dismemberment Abortion Act”

25 Annotated Code of Maryland

26 (2015 Replacement Volume and 2016 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Health – General

20–215. RESERVED.

20–216. RESERVED.

PART V. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION
ACT.

20–217.

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

(B) “ABORTION” MEANS THE USE OF ANY INSTRUMENT, MEDICINE, DRUG,
OR ANY OTHER SUBSTANCE OR DEVICE TO:

(1) PURPOSELY KILL THE UNBORN CHILD OF A PREGNANT WOMAN;
OR

(2) PURPOSELY TERMINATE THE PREGNANCY OF A PREGNANT
WOMAN, WITH A PURPOSE OTHER THAN TO:

(I) AFTER VIABILITY, PRODUCE A LIVE BIRTH AND PRESERVE
THE LIFE AND HEALTH OF THE CHILD BORN ALIVE; OR

(II) REMOVE THE REMAINS OF A DEAD UNBORN CHILD.

(C) (1) “ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION” MEANS
AN ACT OR AN OMISSION OF A STATUTORILY REQUIRED ACT, THAT, UNDER THE
CIRCUMSTANCES AS THE INDIVIDUAL BELIEVES THEM TO BE, CONSTITUTES A
SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE
PERFORMANCE OF A DISMEMBERMENT ABORTION.

(2) “ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION”
INCLUDES:

(I) AGREEING WITH AN INDIVIDUAL TO PERFORM A
DISMEMBERMENT ABORTION ON THE INDIVIDUAL OR ON ANY OTHER INDIVIDUAL,
WHETHER OR NOT:

1. THE TERM “DISMEMBERMENT ABORTION” IS USED IN
THE AGREEMENT; OR

2. THE AGREEMENT IS CONTINGENT ON ANOTHER
FACTOR SUCH AS RECEIPT OF PAYMENT OR A DETERMINATION OF PREGNANCY; AND

(II) SCHEDULING OR PLANNING A TIME TO PERFORM A
DISMEMBERMENT ABORTION ON AN INDIVIDUAL, WHETHER OR NOT:

1. THE TERM “DISMEMBERMENT ABORTION” IS USED;
OR

2. THE PERFORMANCE OF THE DISMEMBERMENT
ABORTION IS CONTINGENT ON ANOTHER FACTOR SUCH AS RECEIPT OF PAYMENT OR
A DETERMINATION OF PREGNANCY.

(D) (1) “DISMEMBERMENT ABORTION” MEANS, WITH THE INTENT TO
CAUSE THE DEATH OF THE UNBORN CHILD, TO PURPOSELY DISMEMBER A LIVING
UNBORN CHILD BY USING CLAMPS, GRASPING FORCEPS, TONGS, SCISSORS, OR
SIMILAR INSTRUMENTS THAT, THROUGH THE CONVERGENCE OF TWO RIGID LEVERS,
SLICE, CRUSH, OR GRASP A PORTION OF THE UNBORN CHILD’S BODY TO CUT OR RIP
IT OFF AND TO EXTRACT THE PIECES OF THE BODY OF THE UNBORN CHILD ONE AT
A TIME WITH THE AFOREMENTIONED DEVICES OR TOOLS OR BY USE OF A SUCTION
DEVICE.

(2) “DISMEMBERMENT ABORTION” DOES NOT INCLUDE AN ABORTION
THAT ONLY USES SUCTION TO DISMEMBER THE BODY OF THE UNBORN CHILD BY
SUCKING FETAL PARTS IN THEIR ENTIRETY INTO A COLLECTION CONTAINER.

(E) “PHYSICIAN” HAS THE MEANING STATED IN § 20–207 OF THIS SUBTITLE.

(F) “PURPOSELY” MEANS:

(1) REGARDING A MATERIAL ELEMENT OF A VIOLATION, AN
INDIVIDUAL’S CHOICE TO CONSCIOUSLY ENGAGE IN CONDUCT OF THAT NATURE OR
TO CAUSE THAT RESULT; OR

(2) REGARDING AN ELEMENT THAT INVOLVES THE ATTENDANT
CIRCUMSTANCES OF A VIOLATION, THE INDIVIDUAL IS AWARE OF THE EXISTENCE
OF THOSE CIRCUMSTANCES OR BELIEVES OR HOPES THAT THOSE CIRCUMSTANCES
EXIST.

(G) (1) “SERIOUS HEALTH RISK TO THE PREGNANT WOMAN” MEANS
THAT, IN THE REASONABLE MEDICAL JUDGMENT OF A PHYSICIAN, THE PREGNANT
WOMAN HAS A CONDITION THAT SO COMPLICATES HER MEDICAL CONDITION THAT
IT NECESSITATES THE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR TO

1 AVERT A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL
2 IMPAIRMENT OF A MAJOR BODILY FUNCTION.

3 (2) "SERIOUS HEALTH RISK TO THE PREGNANT WOMAN" DOES NOT
4 INCLUDE A PSYCHOLOGICAL OR EMOTIONAL CONDITION, INCLUDING A CONDITION
5 THAT IS BASED ON A CLAIM OR DIAGNOSIS THAT THE PREGNANT WOMAN WILL
6 ENGAGE IN CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH OR IN
7 SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY
8 FUNCTION.

9 (H) "WOMAN" MEANS A FEMALE HUMAN BEING OF ANY AGE.

10 20-218.

11 AN INDIVIDUAL MAY NOT PURPOSELY PERFORM OR ATTEMPT TO PERFORM A
12 DISMEMBERMENT ABORTION THAT KILLS AN UNBORN CHILD UNLESS THE
13 ABORTION IS NECESSARY TO PREVENT A SERIOUS HEALTH RISK TO THE PREGNANT
14 WOMAN.

15 20-219.

16 (A) AN INDIVIDUAL ACCUSED IN ANY PROCEEDING OF A VIOLATION OF §
17 20-218 OF THIS SUBTITLE MAY SEEK A HEARING BEFORE THE STATE BOARD OF
18 PHYSICIANS ON WHETHER THE DISMEMBERMENT ABORTION WAS NECESSARY TO
19 PREVENT A SERIOUS HEALTH RISK TO THE PREGNANT WOMAN.

20 (B) (1) THE STATE BOARD OF PHYSICIANS' FINDINGS FROM A HEARING
21 UNDER SUBSECTION (A) OF THIS SECTION ARE ADMISSIBLE ON THAT ISSUE AT ANY
22 TRIAL IN WHICH A VIOLATION OF § 20-218 OF THIS SUBTITLE IS ALLEGED.

23 (2) ON A MOTION OF THE DEFENDANT, THE COURT SHALL DELAY THE
24 BEGINNING OF THE TRIAL FOR NOT MORE THAN 30 DAYS TO ALLOW FOR A HEARING
25 UNDER SUBSECTION (A) OF THIS SECTION.

26 (C) THE FOLLOWING INDIVIDUALS MAY NOT BE HELD LIABLE FOR
27 PERFORMING OR ATTEMPTING TO PERFORM A DISMEMBERMENT ABORTION:

28 (1) THE PREGNANT WOMAN ON WHOM THE DISMEMBERMENT
29 ABORTION WAS PERFORMED OR ATTEMPTED;

30 (2) ANY NURSE, TECHNICIAN, SECRETARY, RECEPTIONIST OR OTHER
31 EMPLOYEE OR AGENT OF A PHYSICIAN WHO PERFORMED OR ATTEMPTED TO
32 PERFORM A DISMEMBERMENT ABORTION WHO ACTS AT THE DIRECTION OF THE
33 PHYSICIAN; OR

(3) ANY PHARMACIST OR OTHER INDIVIDUAL WHO IS NOT A PHARMACIST BUT WHO FILLS A PRESCRIPTION OR PROVIDES INSTRUMENTS OR MATERIALS USED IN A DISMEMBERMENT ABORTION AT THE DIRECTION OF OR TO A PHYSICIAN WHO PERFORMED OR ATTEMPTED TO PERFORM A DISMEMBERMENT ABORTION.

(D) THIS PART MAY NOT BE CONSTRUED TO PREVENT AN ABORTION FOR ANY REASON, INCLUDING RAPE AND INCEST, OR BY ANY OTHER METHOD.

20-220.

(A) (1) ANY OF THE FOLLOWING INDIVIDUALS MAY BRING AN ACTION TO OBTAIN A PERMANENT INJUNCTION AGAINST AN INDIVIDUAL WHO HAS PERFORMED OR ATTEMPTED TO PERFORM A DISMEMBERMENT ABORTION IN VIOLATION OF § 20-218 OF THIS SUBTITLE IN THE CIRCUIT COURT OF THE COUNTY WHERE THE INDIVIDUAL RESIDES OR WHERE THE DISMEMBERMENT ABORTION WAS PERFORMED:

(I) A PREGNANT WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED;

(II) AN INDIVIDUAL WHO IS THE SPOUSE, THE PARENT OR GUARDIAN OF, OR A LICENSED OR FORMERLY LICENSED HEALTH CARE PROVIDER OF A WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED; OR

(III) A PROSECUTING ATTORNEY WITH APPROPRIATE JURISDICTION.

(2) THE INJUNCTION SHALL PREVENT THE DEFENDANT FROM PERFORMING OR ATTEMPTING TO PERFORM DISMEMBERMENT ABORTIONS IN VIOLATION OF § 20-218 OF THIS SUBTITLE.

(B) (1) THE FOLLOWING INDIVIDUALS MAY BRING A CIVIL ACTION AGAINST AN INDIVIDUAL WHO PERFORMED A DISMEMBERMENT ABORTION IN VIOLATION OF § 20-218 OF THIS SUBTITLE:

(I) ANY WOMAN ON WHOM A DISMEMBERMENT ABORTION HAS BEEN PERFORMED IN VIOLATION OF § 20-218 OF THIS SUBTITLE;

(II) THE FATHER OF THE UNBORN CHILD, IF MARRIED TO THE WOMAN AT THE TIME THE DISMEMBERMENT ABORTION WAS PERFORMED; OR

(III) IF THE PREGNANT WOMAN WAS A MINOR AT THE TIME OF THE DISMEMBERMENT ABORTION OR DIED AS A RESULT OF THE DISMEMBERMENT ABORTION, THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD.

(2) (I) A CIVIL ACTION TAKEN UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY SEEK THE IMPOSITION OF DAMAGES AS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN INJUNCTION TO PROHIBIT THE INDIVIDUAL FROM CONTINUING THE VIOLATION, OR BOTH.

(II) THE COURT MAY AWARD:

1. MONETARY DAMAGES FOR ALL INJURIES INCURRED BY THE INDIVIDUAL AS A RESULT OF THE DISMEMBERMENT ABORTION, INCLUDING PSYCHOLOGICAL AND PHYSICAL INJURIES; AND

2. STATUTORY DAMAGES EQUAL TO 3 TIMES THE COST OF THE DISMEMBERMENT ABORTION.

(3) NO DAMAGES MAY BE AWARDED TO A PLAINTIFF IF THE PREGNANCY RESULTED FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

(C) (1) IF A JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF IN AN ACTION TAKEN UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE COURT ALSO SHALL ORDER A REASONABLE ATTORNEY'S FEE FOR THE PLAINTIFF AGAINST THE DEFENDANT.

(2) IF A JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT IN AN ACTION TAKEN UNDER SUBSECTION (A) OR (B) OF THIS SECTION AND THE COURT FINDS THAT THE PLAINTIFF'S SUIT WAS FRIVOLOUS AND BROUGHT IN BAD FAITH, THE COURT SHALL ORDER A REASONABLE ATTORNEY'S FEE IN FAVOR OF THE DEFENDANT AGAINST THE PLAINTIFF.

(3) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A COURT MAY NOT ASSESS AN ATTORNEY'S FEE AGAINST THE WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED.

20-221.

(A) IN ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING OR ACTION BROUGHT UNDER THIS PART, THE COURT SHALL DETERMINE WHETHER THE IDENTITY OF ANY WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS

PERFORMED OR ATTEMPTED SHALL BE PRESERVED FROM PUBLIC DISCLOSURE IF SHE DOES NOT GIVE HER CONSENT TO THE DISCLOSURE.

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

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

(II) SEAL THE RECORD; AND

(III) EXCLUDE UNAUTHORIZED INDIVIDUALS FROM THE COURTROOM OR HEARING ROOM TO THE EXTENT NECESSARY TO SAFEGUARD HER IDENTITY FROM PUBLIC DISCLOSURE.

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

(I) WHY THE IDENTITY OF THE WOMAN SHOULD BE PRESERVED FROM PUBLIC DISCLOSURE;

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

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

(IV) WHY NO REASONABLE, LESS RESTRICTIVE ALTERNATIVE EXISTS.

(C) IN THE ABSENCE OF THE WRITTEN CONSENT OF THE WOMAN ON WHOM A DISMEMBERMENT ABORTION WAS PERFORMED OR ATTEMPTED, ANY INDIVIDUAL OTHER THAN A PUBLIC OFFICIAL WHO BRINGS AN ACTION UNDER § 20-220 OF THIS SUBTITLE SHALL DO SO UNDER A PSEUDONYM.

(D) THIS SECTION MAY NOT BE CONSTRUED TO CONCEAL THE IDENTITY OF THE PLAINTIFF OR OF A WITNESS FROM THE DEFENDANT OR FROM AN ATTORNEY FOR THE DEFENDANT.

20-222.

1 **THIS PART MAY NOT BE CONSTRUED TO CREATE OR RECOGNIZE A RIGHT TO**
2 **AN ABORTION OR A RIGHT TO A PARTICULAR METHOD OF ABORTION.**

3 **20–223.**

4 **THIS PART MAY BE CITED AS THE “MARYLAND UNBORN CHILD PROTECTION**
5 **FROM DISMEMBERMENT ABORTION ACT”.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2017.