

# HOUSE BILL 961

J1

5lr2337  
CF SB 511

---

By: **Delegates Ciliberti, Adams, Afzali, Carozza, Cassilly, Folden, Ghrist, Glass, Grammer, Hornberger, Impallaria, Jacobs, Kipke, Krebs, McComas, McDonough, McKay, Metzgar, W. Miller, Morgan, O'Donnell, Parrott, Reilly, Shoemaker, Simonaire, Szeliga, Vogt, and B. Wilson**

Introduced and read first time: February 13, 2015

Assigned to: Health and Government Operations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Women's Late-Term Pregnancy Health Act**

3 FOR the purpose of providing that, except in the case of a medical emergency, an abortion  
4 may not be performed or induced or be attempted to be performed or induced unless  
5 a certain physician makes a certain determination; providing that, except in the case  
6 of a medical emergency, an individual may not knowingly perform or induce or  
7 attempt to perform or induce an abortion if the probable gestational age of an unborn  
8 child is a certain number of weeks; requiring certain physicians to submit a certain  
9 report to a certain medical facility; requiring certain medical facilities to submit a  
10 certain report to the Department of Health and Mental Hygiene; requiring certain  
11 physicians to submit a certain report to the Department under certain  
12 circumstances; establishing certain penalties for a physician who fails to file a  
13 certain report; establishing certain penalties for an individual who intentionally or  
14 knowingly performs or induces an abortion in violation of this Act, with a certain  
15 result; authorizing certain individuals to bring a certain civil action under certain  
16 circumstances; prohibiting certain individuals from bringing a civil action under  
17 certain circumstances; providing that the relief provided in a certain civil action shall  
18 include certain damages; providing that certain medical facilities are subject to  
19 revocation of a certain license and revocation of State funding for a certain time  
20 period; providing that certain women may not be subject to certain prosecution;  
21 authorizing certain physicians to seek a certain hearing to make a certain  
22 determination; providing that certain findings are admissible at certain trials;  
23 providing for the construction of various provisions of this Act; defining certain  
24 terms; establishing a certain short title; and generally relating to the Women's  
25 Late-Term Pregnancy Health Act.

26 BY adding to  
27 Article – Health – General

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 20–217 through 20–225 to be under the new part “Part V. Women’s  
2 Late–Term Pregnancy Health Act”  
3 Annotated Code of Maryland  
4 (2009 Replacement Volume and 2014 Supplement)

5 Preamble

6 WHEREAS, Abortion has a higher medical risk when the procedure is performed  
7 later in pregnancy; and

8 WHEREAS, Compared to an abortion performed at 8 weeks gestation or earlier, the  
9 relative risk increases exponentially at higher gestations and the incidence of major  
10 complications resulting from a pregnancy is highest after 20 weeks gestation; and

11 WHEREAS, According to the Alan Guttmacher Institute, the risk of death associated  
12 with abortion increases with the length of pregnancy, from one death for every 1,000,000  
13 abortions performed at or before 8 weeks gestation to one death for every 29,000 abortions  
14 performed at 16 to 20 weeks gestation, to one death for every 11,000 abortions performed  
15 at 21 or more weeks gestation; and

16 WHEREAS, After the first trimester, the risk of hemorrhage from an abortion is  
17 greater and the complications of the hemorrhage may require a hysterectomy, other  
18 reparative surgery, or a blood transfusion; and

19 WHEREAS, Maryland has a legitimate concern for the health and safety of the  
20 public; and

21 WHEREAS, Case law supports that Maryland has legitimate interests from the  
22 outset of pregnancy in protecting the health of women and has a legitimate concern with  
23 the health of women who undergo abortions; and

24 WHEREAS, There is substantial and well–documented evidence that an unborn  
25 child by at least 20 weeks gestation has the capacity to feel pain during an abortion; now,  
26 therefore,

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

29 **Article – Health – General**

30 **20–215. RESERVED.**

31 **20–216. RESERVED.**

32 **PART V. WOMEN’S LATE–TERM PREGNANCY HEALTH ACT.**

1 20-217.

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

4 (B) (1) "ABORTION" MEANS THE ACT OF USING OR PRESCRIBING ANY  
5 INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE, DEVICE, OR MEANS  
6 WITH THE INTENT TO TERMINATE THE CLINICALLY DIAGNOSABLE PREGNANCY OF A  
7 WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY THOSE MEANS WILL WITH  
8 REASONABLE LIKELIHOOD CAUSE THE DEATH OF THE UNBORN CHILD.

9 (2) "ABORTION" DOES NOT INCLUDE THE INTENTIONAL  
10 TERMINATION OF A PREGNANCY TO:

11 (I) SAVE THE LIFE OR PRESERVE THE HEALTH OF THE UNBORN  
12 CHILD;

13 (II) REMOVE A DEAD UNBORN CHILD CAUSED BY SPONTANEOUS  
14 ABORTION; OR

15 (III) REMOVE AN ECTOPIC PREGNANCY.

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

21 (D) "CONCEPTION" MEANS THE FUSION OF A HUMAN SPERMATOZOON WITH  
22 A HUMAN OVUM.

23 (E) "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED SINCE THE  
24 FIRST DAY OF A WOMAN'S LAST MENSTRUAL PERIOD.

25 (F) "MAJOR BODILY FUNCTION" INCLUDES FUNCTIONS OF THE IMMUNE  
26 SYSTEM, NORMAL CELL GROWTH, AND DIGESTIVE, BOWEL, BLADDER,  
27 NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE, AND  
28 REPRODUCTIVE FUNCTIONS.

29 (G) "MEDICAL EMERGENCY" MEANS A CONDITION IN WHICH AN ABORTION  
30 IS NECESSARY TO PRESERVE THE LIFE OF A PREGNANT WOMAN WHOSE LIFE IS  
31 ENDANGERED BY A PHYSICAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY,  
32 INCLUDING A LIFE-ENDANGERING PHYSICAL CONDITION CAUSED BY OR ARISING

1 FROM THE PREGNANCY, OR WHEN CONTINUATION OF THE PREGNANCY WILL  
2 CREATE A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A  
3 MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN.

4 (H) "MEDICAL FACILITY" MEANS A PUBLIC OR PRIVATE HOSPITAL, CLINIC,  
5 CENTER, MEDICAL SCHOOL, MEDICAL TRAINING INSTITUTION, HEALTHCARE  
6 FACILITY, PHYSICIAN'S OFFICE, INFIRMARY, DISPENSARY, AMBULATORY SURGICAL  
7 TREATMENT CENTER, OR OTHER INSTITUTION OR LOCATION WHERE MEDICAL CARE  
8 IS PROVIDED TO ANY INDIVIDUAL.

9 (I) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED BY THE STATE BOARD  
10 OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE.

11 (J) "PREGNANT" OR "PREGNANCY" MEANS THE FEMALE REPRODUCTIVE  
12 CONDITION OF HAVING AN UNBORN CHILD IN THE UTERUS.

13 (K) "PROBABLE GESTATIONAL AGE" MEANS THE AGE THAT, IN REASONABLE  
14 MEDICAL JUDGMENT, WILL WITH REASONABLE PROBABILITY BE THE GESTATIONAL  
15 AGE OF AN UNBORN CHILD AT THE TIME AN ABORTION IS CONSIDERED, PERFORMED,  
16 OR ATTEMPTED.

17 (L) "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS FROM  
18 CONCEPTION UNTIL BIRTH.

19 20-218.

20 (A) (1) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN ABORTION  
21 MAY NOT BE PERFORMED OR INDUCED OR BE ATTEMPTED TO BE PERFORMED OR  
22 INDUCED UNLESS THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION HAS  
23 MADE A DETERMINATION OF THE PROBABLE GESTATIONAL AGE OF THE UNBORN  
24 CHILD.

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

27 (I) MAKE INQUIRIES OF THE PREGNANT WOMAN; AND

28 (II) PERFORM OR CAUSE TO BE PERFORMED THE MEDICAL  
29 EXAMINATIONS, IMAGING STUDIES, AND TESTS THAT A REASONABLY PRUDENT  
30 PHYSICIAN, KNOWLEDGEABLE ABOUT THE MEDICAL FACTS AND CONDITIONS OF  
31 THE WOMAN AND THE UNBORN CHILD INVOLVED, WOULD CONSIDER NECESSARY TO  
32 PERFORM IN MAKING AN ACCURATE DIAGNOSIS OF THE GESTATIONAL AGE.

1           **(B) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, AN INDIVIDUAL MAY**  
2 **NOT KNOWINGLY PERFORM OR INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN**  
3 **ABORTION ON A PREGNANT WOMAN IF THE PROBABLE GESTATIONAL AGE OF THE**  
4 **WOMAN'S UNBORN CHILD HAS BEEN DETERMINED BY A PHYSICIAN TO BE 20 WEEKS**  
5 **OR MORE.**

6 **20-219.**

7           **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A**  
8 **PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO PERFORM OR INDUCE AN**  
9 **ABORTION DUE TO A MEDICAL EMERGENCY SHALL SUBMIT A WRITTEN REPORT TO**  
10 **THE MEDICAL FACILITY IN WHICH THE ABORTION WAS PERFORMED, INDUCED, OR**  
11 **ATTEMPTED, INDICATING THE REASON FOR THE DETERMINATION THAT A MEDICAL**  
12 **EMERGENCY EXISTED.**

13           **(2) THE MEDICAL FACILITY IN WHICH THE ABORTION WAS**  
14 **PERFORMED, INDUCED, OR ATTEMPTED, AFTER RECEIVING A REPORT UNDER**  
15 **PARAGRAPH (1) OF THIS SUBSECTION, SHALL SUBMIT THE WRITTEN REPORT TO THE**  
16 **DEPARTMENT.**

17           **(3) IF A PHYSICIAN PERFORMS OR INDUCES OR ATTEMPTS TO**  
18 **PERFORM OR INDUCE AN ABORTION DUE TO A MEDICAL EMERGENCY IN A LOCATION**  
19 **OTHER THAN A MEDICAL FACILITY, THE PHYSICIAN SHALL SUBMIT A WRITTEN**  
20 **REPORT TO THE DEPARTMENT INDICATING THE REASON FOR THE DETERMINATION**  
21 **THAT A MEDICAL EMERGENCY EXISTED.**

22           **(B) A PHYSICIAN WHO FAILS TO FILE A REPORT UNDER THIS SUBSECTION:**

23           **(1) IS NOT SUBJECT TO THE CRIMINAL OR CIVIL PENALTIES**  
24 **PROVIDED IN §§ 20-220 AND 20-221 OF THIS PART; BUT**

25           **(2) IS SUBJECT TO SANCTIONS, DISCIPLINARY ACTION, OR ANY**  
26 **OTHER APPROPRIATE ACTION BY THE STATE BOARD OF PHYSICIANS.**

27 **20-220.**

28           **AN INDIVIDUAL WHO INTENTIONALLY OR KNOWINGLY PERFORMS OR**  
29 **INDUCES AN ABORTION IN VIOLATION OF THIS PART RESULTING IN THE DEATH OF**  
30 **AN UNBORN CHILD IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A**  
31 **FINE NOT EXCEEDING \$100,000 AND IMPRISONMENT NOT EXCEEDING 10 YEARS OR**  
32 **BOTH.**

33 **20-221.**

1           (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A  
2 WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF THIS  
3 PART, THE FATHER OF THE UNBORN CHILD IF MARRIED TO THE MOTHER AT THE  
4 TIME SHE RECEIVED THE ABORTION, AND THE MATERNAL GRANDPARENTS OF THE  
5 UNBORN CHILD IF THE MOTHER IS A MINOR WHEN THE ABORTION IS PERFORMED  
6 OR INDUCED, MAY BRING A CIVIL ACTION AGAINST THE INDIVIDUAL WHO  
7 PERFORMED OR INDUCED THE ABORTION UNLESS THE PREGNANCY RESULTED  
8 FROM THE PLAINTIFF'S CRIMINAL CONDUCT.

9           (2) THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD MAY NOT  
10 BRING A CIVIL ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE  
11 MATERNAL GRANDPARENTS CONSENTED TO THE ABORTION.

12           (B) THE RELIEF PROVIDED UNDER SUBSECTION (A) OF THIS SECTION  
13 SHALL INCLUDE:

14           (1) DAMAGES FOR PSYCHOLOGICAL AND PHYSICAL INJURIES  
15 RESULTING FROM THE VIOLATION OF THIS PART; AND

16           (2) DAMAGES EQUAL TO THREE TIMES THE COST OF THE ABORTION  
17 PERFORMED OR INDUCED IN VIOLATION OF THIS PART.

18 **20-222.**

19           (A) A MEDICAL FACILITY IN WHICH AN ABORTION IS PERFORMED OR  
20 INDUCED IN VIOLATION OF THIS PART IS SUBJECT TO IMMEDIATE REVOCATION OF  
21 THE FACILITY'S LICENSE BY THE DEPARTMENT AND REVOCATION OF STATE  
22 FUNDING FOR 5 YEARS.

23           (B) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED IN  
24 VIOLATION OF THIS PART MAY NOT BE PROSECUTED FOR A CONSPIRACY TO VIOLATE  
25 THIS PART.

26 **20-223.**

27           (A) A PHYSICIAN ACCUSED OF VIOLATING THIS PART MAY SEEK A HEARING  
28 BEFORE THE STATE BOARD OF PHYSICIANS TO DETERMINE WHETHER:

29           (1) THE PHYSICIAN'S CONDUCT WAS NECESSARY TO SAVE THE LIFE  
30 OF THE MOTHER WHOSE LIFE WAS ENDANGERED BY A PHYSICAL DISORDER,  
31 PHYSICAL ILLNESS, OR PHYSICAL INJURY, INCLUDING A LIFE-ENDANGERING  
32 PHYSICAL CONDITION CAUSED BY OR ARISING FROM THE PREGNANCY; OR

1           **(2) THE CONTINUATION OF THE PREGNANCY WOULD HAVE CREATED**  
2 **A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR**  
3 **BODILY FUNCTION OF THE PREGNANT WOMAN.**

4           **(B) ANY FINDINGS MADE AT THE HEARING HELD UNDER SUBSECTION (A) OF**  
5 **THIS SECTION ARE ADMISSIBLE AT ANY TRIAL RELATED TO A VIOLATION OF THIS**  
6 **PART IN WHICH THE PHYSICIAN IS A DEFENDANT.**

7 **20-224.**

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

11           **(B) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF § 20-218 OF**  
12 **THIS PART BUT VIOLATES THE PROVISIONS OF § 20-209(B)(1) OF THIS SUBTITLE OR**  
13 **ANY OTHER APPLICABLE PROVISION OF LAW SHALL BE DEEMED UNLAWFUL AS**  
14 **PROVIDED IN THE APPLICABLE PROVISION OF LAW.**

15           **(C) AN ABORTION THAT COMPLIES WITH THE PROVISIONS OF §**  
16 **20-209(B)(1) OF THIS SUBTITLE OR ANY OTHER APPLICABLE PROVISION OF LAW**  
17 **REGULATING OR RESTRICTING ABORTION BUT VIOLATES THE PROVISIONS OF THIS**  
18 **PART SHALL BE DEEMED UNLAWFUL.**

19           **(D) IF SOME OR ALL OF THE PROVISIONS OF THIS PART ARE TEMPORARILY**  
20 **OR PERMANENTLY RESTRAINED OR ENJOINED BY JUDICIAL ORDER, ALL OTHER**  
21 **PROVISIONS OF LAW REGULATING OR RESTRICTING ABORTION SHALL BE**  
22 **ENFORCED AS THOUGH THE RESTRAINED OR ENJOINED PROVISIONS HAD NOT BEEN**  
23 **ADOPTED, EXCEPT THAT WHENEVER THE TEMPORARY OR PERMANENT**  
24 **RESTRAINING ORDER OR INJUNCTION IS STAYED OR DISSOLVED, OR OTHERWISE**  
25 **CEASES TO HAVE EFFECT, THE AFFECTED PROVISIONS SHALL HAVE FULL FORCE**  
26 **AND EFFECT.**

27 **20-225.**

28           **THIS PART MAY BE CITED AS THE WOMEN'S LATE-TERM PREGNANCY**  
29 **HEALTH ACT.**

30           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
31 **October 1, 2015.**