

SENATE BILL 504

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By: **Senator Salling**

Introduced and read first time: January 28, 2022

Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Equal Protection of Unborn Human Beings Act of 2022**

3 FOR the purpose of repealing provisions of law providing for the prosecution for murder or
4 manslaughter of a viable fetus under certain circumstances; requiring certain
5 executive, legislative, and judicial officers in the State to fulfill a certain duty to
6 support the United States Constitution and the Maryland Constitution to protect the
7 life of each unborn human being within their jurisdiction; providing that certain
8 persons are subject to prosecution for murder or manslaughter for providing or
9 procuring an abortion except under certain circumstances; prohibiting the Maryland
10 Medical Assistance Program from providing certain services to certain women that
11 cause or attempt to cause an abortion; repealing certain provisions of law relating to
12 the provision of abortion services; and generally relating to the protection of and
13 provision of services for unborn human beings.

14 BY repealing

15 Article – Criminal Law

16 Section 2–103

17 Annotated Code of Maryland

18 (2021 Replacement Volume and 2021 Supplement)

19 BY adding to

20 Article – Criminal Law

21 Section 2.5–101 through 2.5–103 to be under the new title “Title 2.5. Equal
22 Protection of Unborn Human Beings”

23 Annotated Code of Maryland

24 (2021 Replacement Volume and 2021 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – Health – General

27 Section 15–103(a)(1)

28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2019 Replacement Volume and 2021 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Health – General
4 Section 15–103(a)(2)(iv)
5 Annotated Code of Maryland
6 (2019 Replacement Volume and 2021 Supplement)

7 BY repealing
8 Article – Health – General
9 Section 20–103, 20–208, and 20–209
10 Annotated Code of Maryland
11 (2019 Replacement Volume and 2021 Supplement)

12 Preamble

13 WHEREAS, The Declaration of Independence states, “We hold these truths to be
14 self-evident, that all men are created equal, that they are endowed by their Creator with
15 certain unalienable Rights, that among these are Life... That to secure these rights,
16 Governments are instituted among Men ...” and government has a duty to protect and
17 defend the right to life that is the natural right of all human beings; and

18 WHEREAS, To secure the natural right to life of all human persons, government
19 must recognize the right to life of all human persons, without discrimination because of
20 age, race, religion, size, sex, color, ancestry, location, disability, deformity, stage of
21 development, life expectancy, or condition of dependency; and

22 WHEREAS, Article 24 of the Declaration of Rights states, “That no man ought to be
23 taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or
24 exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the
25 judgment of his peers, or by the Law of the land;”; and

26 WHEREAS, Article 8 of the Declaration of Rights states “the Legislative, Executive,
27 and Judicial powers of Government ought to be forever separate and distinct from each
28 other, and no person exercising the functions of one of said Departments shall assume or
29 discharge the duties of any other;”; and

30 WHEREAS, The enactment of State law protecting the right to life of all human
31 persons is the constitutional responsibility of the legislative branch, not the judicial branch;
32 and

33 WHEREAS, The right to equal protection under the law, which is guaranteed to all
34 human persons by the United States Constitution and the Maryland Constitution, is vested
35 in each human being within the jurisdiction of the State; and

36 WHEREAS, Any statute, regulation, rule, or order that has the purpose, intent, or
37 effect of allowing any abortion in the State infringes on an unborn human person’s right to

1 life in violation of the Fourteenth Amendment to the United States Constitution and,
2 therefore, is not made in pursuance of the United States Constitution as is required in
3 Article 6, Section 2: “This Constitution, and the Laws of the United States which shall be
4 made in Pursuance thereof;... and the Judges in every State shall be bound thereby, any
5 Thing in the Constitution or Laws of any State to the Contrary notwithstanding;” and

6 WHEREAS, Abortion is not the supreme law of the land, and consequently is not
7 valid; now, therefore,

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

10 **Article – Criminal Law**

11 [2–103.

12 (a) For purposes of a prosecution under this title, “viable” has the meaning stated
13 in § 20–209 of the Health – General Article.

14 (b) Except as provided in subsections (d) through (f) of this section, a prosecution
15 may be instituted for murder or manslaughter of a viable fetus.

16 (c) A person prosecuted for murder or manslaughter as provided in subsection (b)
17 of this section must have:

18 (1) intended to cause the death of the viable fetus;

19 (2) intended to cause serious physical injury to the viable fetus; or

20 (3) wantonly or recklessly disregarded the likelihood that the person’s
21 actions would cause the death of or serious physical injury to the viable fetus.

22 (d) Nothing in this section applies to or infringes on a woman’s right to terminate
23 a pregnancy as stated in § 20–209 of the Health – General Article.

24 (e) Nothing in this section subjects a physician or other licensed medical
25 professional to liability for fetal death that occurs in the course of administering lawful
26 medical care.

27 (f) Nothing in this section applies to an act or failure to act of a pregnant woman
28 with regard to her own fetus.

29 (g) Nothing in this section shall be construed to confer personhood or any rights
30 on the fetus.]

31 **TITLE 2.5. EQUAL PROTECTION OF UNBORN HUMAN BEINGS.**

1 **2.5-101.**

2 IN THIS TITLE, "ABORTION" MEANS THE INTENTIONAL KILLING OF AN
3 UNBORN HUMAN BEING BY USE OR PRESCRIPTION OF ANY PROCEDURE,
4 INSTRUMENT, OR DRUG OR ANY OTHER SUBSTANCE, DEVICE, OR MEANS TO CAUSE
5 OR INTEND TO CAUSE THE DEATH OF AN UNBORN HUMAN BEING.

6 **2.5-102.**

7 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY, IN ACCORDANCE WITH
8 ITS OBLIGATIONS UNDER THE UNITED STATES CONSTITUTION AND THE MARYLAND
9 CONSTITUTION:

10 (1) TO PROVIDE FOR THE EQUAL PROTECTION OF ALL UNBORN
11 HUMAN BEINGS WITHIN THE STATE; AND

12 (2) TO RECOGNIZE THAT A LIVING HUMAN CHILD, FROM THE MOMENT
13 OF FERTILIZATION ON THE FUSION OF A HUMAN SPERMATOZOON WITH A HUMAN
14 OVUM, OR IN THE CASE OF ASEXUAL REPRODUCTION, AT THE EQUIVALENT STAGE
15 OF DEVELOPMENT WHEN A NEW HUMAN ORGANISM IS PRESENT, IS A PERSON AND IS
16 ENTITLED TO THE SAME PROTECTION OF THE LAWS OF THE STATE AS ANY OTHER
17 HUMAN BEING.

18 (B) (1) BASED ON THE FINDINGS UNDER SUBSECTION (A) OF THIS
19 SECTION, THE GENERAL ASSEMBLY ACKNOWLEDGES AS VOID AND OF NO EFFECT
20 ANY AND ALL FEDERAL OR STATE COURT OPINIONS THAT WOULD DEPRIVE AN
21 UNBORN HUMAN PERSON OF THE UNBORN HUMAN PERSON'S UNALIENABLE RIGHT
22 TO LIFE AS PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE
23 UNITED STATES CONSTITUTION.

24 (2) ANY FEDERAL REGULATION, EXECUTIVE ORDER, OR COURT
25 DECISION THAT PURPORTS TO SUPERSEDE, STAY, OR OVERRULE THE PROVISIONS
26 OF THIS TITLE IS IN VIOLATION OF THE UNITED STATES CONSTITUTION AND THE
27 MARYLAND CONSTITUTION AND IS THEREFORE NULL AND VOID.

28 (C) (1) EACH EXECUTIVE, LEGISLATIVE, AND JUDICIAL OFFICER IN THE
29 STATE SHALL FULFILL THEIR SWORN DUTY TO SUPPORT THE UNITED STATES
30 CONSTITUTION IN ACCORDANCE WITH ARTICLE VI OF THE UNITED STATES
31 CONSTITUTION, AND SHALL, THEREFORE, AS EXPLICITLY REQUIRED BY THE
32 UNITED STATES CONSTITUTION, USE ALL LAWFUL MEANS TO PROTECT THE LIFE OF
33 EACH UNBORN HUMAN BEING WITHIN THEIR JURISDICTION.

34 (2) THE ATTORNEY GENERAL SHALL MONITOR THE ENFORCEMENT

1 OF THIS TITLE AND DIRECT STATE AGENCIES TO ADHERE TO THE REQUIREMENTS
2 OF THIS TITLE REGARDLESS OF ANY CONTRARY OR CONFLICTING FEDERAL COURT
3 OPINIONS.

4 (3) THE STATE OR ITS POLITICAL SUBDIVISIONS, AND AGENTS OF THE
5 STATE OR ITS POLITICAL SUBDIVISIONS, MAY NOT ENTER AN APPEARANCE, SPECIAL
6 OR OTHERWISE, IN ANY FEDERAL SUIT CHALLENGING THIS TITLE.

7 2.5-103.

8 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY
9 PERSON WHO PROVIDES OR PROCURES AN ABORTION BY ANY MEANS, WHETHER
10 CHEMICAL, SURGICAL, OR BY ANY OTHER INTENTIONAL ACT, OR WHO
11 INTENTIONALLY DESTROYS A LIVING HUMAN ZYGOTE, EMBRYO, OR FETUS FOR ANY
12 REASON IS SUBJECT TO PROSECUTION FOR MURDER OR MANSLAUGHTER UNDER
13 TITLE 2 OF THIS ARTICLE.

14 (B) IF THE PREGNANCY OF A WOMAN PRESENTS A CLEAR AND IMMEDIATE
15 OR PROXIMATE THREAT TO THE LIFE OF THE WOMAN AND A MEDICAL
16 PROFESSIONAL USES ALL MEANS TO EXHAUST ALL MEDICAL RESOURCES TO SAVE
17 THE LIVES OF THE WOMAN AND THE EMBRYO OR FETUS, THE MEDICAL
18 PROFESSIONAL MAY NOT BE SUBJECT TO PROSECUTION UNDER THIS SECTION.

19 Article - Health - General

20 15-103.

21 (a) (1) The Secretary shall administer the Maryland Medical Assistance
22 Program.

23 (2) The Program:

24 (iv) Beginning on January 1, 2012, shall provide, subject to the
25 limitations of the State budget, family planning services, **EXCEPT FOR THE PROVISION**
26 **OF ANY DEVICE, PROCEDURE, OR DRUG TO CAUSE OR ATTEMPT TO CAUSE AN**
27 **ABORTION**, to all women whose family income is at or below 200 percent of the poverty
28 level, as permitted by federal law;

29 [20-103.

30 (a) Except as provided in subsections (b) and (c) of this section, a physician may
31 not perform an abortion on an unmarried minor unless the physician first gives notice to a
32 parent or guardian of the minor.

33 (b) The physician may perform the abortion without notice to a parent or

1 guardian if:

2 (1) The minor does not live with a parent or guardian; and

3 (2) A reasonable effort to give notice to a parent or guardian is
4 unsuccessful.

5 (c) (1) The physician may perform the abortion, without notice to a parent or
6 guardian of a minor if, in the professional judgment of the physician:

7 (i) Notice to the parent or guardian may lead to physical or
8 emotional abuse of the minor;

9 (ii) The minor is mature and capable of giving informed consent to
10 an abortion; or

11 (iii) Notification would not be in the best interest of the minor.

12 (2) The physician is not liable for civil damages or subject to a criminal
13 penalty for a decision under this subsection not to give notice.

14 (d) The postal receipt that shows an article of mail was sent by certified mail,
15 return receipt requested, bearing a postmark from the United States Postal Service, to the
16 last known address of a parent or guardian and that is attached to a copy of the notice letter
17 that was sent in that article of mail shall be conclusive evidence of notice or a reasonable
18 effort to give notice, as the case may be.

19 (e) A physician may not provide notice to a parent or guardian if the minor decides
20 not to have the abortion.]

21 [20–208.

22 An abortion must be performed by a licensed physician.]

23 [20–209.

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

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

29 (1) Before the fetus is viable; or

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

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

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

5 (c) The Department may adopt regulations that:

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

8 (2) Are not inconsistent with established medical practice.

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the
14 provisions of § 1–210 of the General Provisions Article, the provisions of this Act are not
15 severable, and if any provision of this Act or the application thereof to any person or
16 circumstance is held invalid for any reason in a court of competent jurisdiction, no other
17 provision or application of this Act may be given effect.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2022.