

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5971

(As passed the House, May 29, 2002)
(As passed the Senate, December 12, 2002)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16299, 17014, and 17015 (MCL 333.16299,
333.17014, and 333.17015), section 17014 as added by 1993 PA 133
and section 17015 as amended by 2000 PA 345.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16299. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-
2 TION (2), A person who violates or aids or abets another in ~~the~~
3 A violation of this article, other than those matters described
4 in sections 16294 and 16296, is guilty of a misdemeanor ~~—~~ pun-
5 ishable as follows:

6 (a) For the first offense, by imprisonment for not more than
7 90 days, or a fine of not more than \$100.00, or both.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

2

1 (b) For the second or subsequent offense, by imprisonment
2 for not less than 90 days nor more than 6 months, or a fine of
3 not less than \$200.00 nor more than \$500.00, or both.

4 (2) SUBSECTION (1) DOES NOT APPLY TO A VIOLATION OF SECTION
5 17015 OR 17515.

6 Sec. 17014. The legislature recognizes that under federal
7 constitutional law, a state is permitted to enact persuasive mea-
8 sures ~~which~~ THAT favor childbirth over abortion, even if those
9 measures do not further a health interest. Sections 17015 and
10 17515 are nevertheless designed to provide objective, truthful
11 information, and are not intended to be persuasive. The legisla-
12 ture finds that the enactment of sections 17015 and 17515 is
13 essential for all of the following reasons:

14 (a) The knowledgeable exercise of a woman's decision to have
15 an abortion depends on the extent to which the woman receives
16 sufficient information to make an informed choice regarding
17 abortion.

18 (b) The decision to obtain an abortion is an important and
19 often stressful one, and it is in the state's interest that the
20 decision be made with full knowledge of its nature and
21 consequences.

22 (c) Enactment of sections 17015 and 17515 is necessary to
23 ensure that, before an abortion, a woman is provided information
24 regarding her available alternatives, and to ensure that a woman
25 gives her voluntary and informed consent to an abortion.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

3

1 (d) The receipt of accurate information about abortion and
2 its alternatives is essential to the physical and psychological
3 well-being of a woman considering an abortion.

4 (e) Because many abortions in this state are performed in
5 clinics devoted solely to providing abortions, women who seek
6 abortions at these ~~facilities~~ CLINICS normally do not have a
7 prior patient-physician relationship with the physician perform-
8 ing the abortion nor do these women continue a patient-physician
9 relationship with the physician after the abortion. In many
10 instances, the woman's only actual contact with the physician
11 performing the abortion occurs simultaneously with the abortion
12 procedure, with little opportunity to receive counsel concerning
13 her decision. Consequently, certain safeguards are necessary to
14 protect a woman's opportunity to select the option best suited to
15 her particular situation.

16 (f) This state has an interest in protecting women and,
17 subject to United States constitutional limitations and supreme
18 court decisions, this state has an interest in protecting the
19 fetus.

20 (g) Providing a woman with factual, medical, and biological
21 information about the fetus she is carrying is essential to safe-
22 guard the state's interests described in subdivision (f). The
23 dissemination of the information set forth in sections 17015 and
24 17515 is necessary due to the irreversible nature of the act of
25 abortion and the often stressful circumstances under which the
26 abortion decision is made.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

4

1 (H) BECAUSE ABORTION SERVICES ARE MARKETED LIKE MANY OTHER
2 COMMERCIAL ENTERPRISES, AND NEARLY ALL ABORTION PROVIDERS
3 ADVERTISE SOME FREE SERVICES, INCLUDING PREGNANCY TESTS AND COUN-
4 SELING, THE LEGISLATURE FINDS THAT CONSUMER PROTECTION SHOULD BE
5 EXTENDED TO WOMEN CONTEMPLATING AN ABORTION DECISION BY DELAYING
6 ANY FINANCIAL TRANSACTIONS UNTIL AFTER A 24-HOUR WAITING PERIOD.
7 FURTHERMORE, SINCE THE LEGISLATURE AND ABORTION PROVIDERS HAVE
8 DETERMINED THAT A WOMAN'S RIGHT TO GIVE INFORMED CONSENT TO AN
9 ABORTION CAN BE PROTECTED BY MEANS OTHER THAN THE PATIENT HAVING
10 TO TRAVEL TO THE ABORTION FACILITY DURING THE 24-HOUR WAITING
11 PERIOD, THE LEGISLATURE FINDS THAT ABORTION PROVIDERS DO NOT HAVE
12 A LEGITIMATE CLAIM OF NECESSITY IN OBTAINING PAYMENTS DURING THE
13 24-HOUR WAITING PERIOD.

14 (I) ~~(h)~~ The safeguards that will best protect a woman
15 seeking advice concerning abortion include the following:

16 (i) Private, individual counseling, including dissemination
17 of certain information, as the woman's individual circumstances
18 dictate, that affect her decision of whether to choose an
19 abortion.

20 (ii) A 24-hour waiting period between a woman's receipt of
21 that information provided to assist her in making an informed
22 decision, and the actual performance of an abortion, if she
23 elects to undergo an abortion. A 24-hour waiting period affords
24 a woman, in light of the information provided by the physician or
25 a qualified person assisting the physician, an opportunity to
26 reflect on her decision and to seek counsel of family and friends
27 in making her decision.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

5

1 (J) ~~(i)~~ The safeguards identified in subdivision ~~(h)~~ (I)
2 advance a woman's interests in the exercise of her discretion to
3 choose or not to choose an abortion, and are justified by the
4 objectives and interests of this state to protect the health of a
5 pregnant woman and, subject to United States constitutional limi-
6 tations and supreme court decisions, to protect the fetus.

7 Sec. 17015. (1) Subject to subsection (10), a physician
8 shall not perform an abortion otherwise permitted by law without
9 the patient's informed written consent, given freely and without
10 coercion.

11 (2) For purposes of this section:

12 (a) "Abortion" means the intentional use of an instrument,
13 drug, or other substance or device to terminate a woman's preg-
14 nancy for a purpose other than to increase the probability of a
15 live birth, to preserve the life or health of the child after
16 live birth, or to remove a dead fetus. Abortion does not include
17 the use or prescription of a drug or device intended as a
18 contraceptive.

19 (b) "Fetus" means an individual organism of the species homo
20 sapiens in utero.

21 (c) "Local health department representative" means a person
22 employed by, or under contract to provide services on behalf of,
23 a local health department who meets 1 or more of the licensing
24 requirements listed in subdivision ~~(e)~~ (F).

25 (d) "Medical emergency" means that condition which, on the
26 basis of the physician's good faith clinical judgment, so
27 complicates the medical condition of a pregnant woman as to

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

6

1 necessitate the immediate abortion of her pregnancy to avert her
2 death or for which a delay will create serious risk of substan-
3 tial and irreversible impairment of a major bodily function.

4 (E) "MEDICAL SERVICE" MEANS THE PROVISION OF A TREATMENT,
5 PROCEDURE, MEDICATION, EXAMINATION, DIAGNOSTIC TEST, ASSESSMENT,
6 OR COUNSELING, INCLUDING, BUT NOT LIMITED TO, A PREGNANCY TEST,
7 ULTRASOUND, PELVIC EXAMINATION, OR AN ABORTION.

8 (f) ~~(e)~~ "Qualified person assisting the physician" means
9 another physician or a physician's assistant licensed under this
10 part or part 175, a fully licensed or limited licensed psycholo-
11 gist licensed under part 182, a professional counselor licensed
12 under part 181, a registered professional nurse or a licensed
13 practical nurse licensed under part 172, or a social worker reg-
14 istered under part 185.

15 (G) ~~(f)~~ "Probable gestational age of the fetus" means the
16 gestational age of the fetus at the time an abortion is planned
17 to be performed.

18 (H) ~~(g)~~ "Provide the patient with a physical copy" means
19 confirming that the patient accessed the internet website
20 described in subsection (5) and received a printed valid confir-
21 mation form from the website and including that form in the
22 patient's medical record or giving a patient a copy of a required
23 document by 1 or more of the following means:

24 (i) In person.

25 (ii) By registered mail, return receipt requested.

26 (iii) By parcel delivery service that requires the recipient
27 to provide a signature in order to receive delivery of a parcel.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

7

1 (iv) By facsimile transmission.

2 (3) Subject to subsection (10), a physician or a qualified
3 person assisting the physician shall do all of the following not
4 less than 24 hours before that physician performs an abortion
5 upon a patient who is a pregnant woman:

6 (a) Confirm that, according to the best medical judgment of
7 a physician, the patient is pregnant, and determine the probable
8 gestational age of the fetus.

9 (b) Orally describe, in language designed to be understood
10 by the patient, taking into account her age, level of maturity,
11 and intellectual capability, each of the following:

12 (i) The probable gestational age of the fetus she is
13 carrying.

14 (ii) Information about what to do and whom to contact should
15 medical complications arise from the abortion.

16 (iii) Information about how to obtain pregnancy prevention
17 information through the department of community health.

18 (c) Provide the patient with a physical copy of the written
19 summary described in subsection (11)(b) that corresponds to the
20 procedure the patient will undergo and is provided by the depart-
21 ment of community health. IF THE PROCEDURE HAS NOT BEEN RECOG-
22 NIZED BY THE DEPARTMENT, BUT IS OTHERWISE ALLOWED UNDER MICHIGAN
23 LAW, AND THE DEPARTMENT HAS NOT PROVIDED A WRITTEN SUMMARY FOR
24 THAT PROCEDURE, THE PHYSICIAN SHALL DEVELOP AND PROVIDE A WRITTEN
25 SUMMARY THAT DESCRIBES THE PROCEDURE, ANY KNOWN RISKS OR COMPLI-
26 CATIONS OF THE PROCEDURE, AND RISKS ASSOCIATED WITH LIVE BIRTH

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

8

1 AND MEETS THE REQUIREMENTS OF SUBSECTION (11)(B)(iii) THROUGH
2 (vii).

3 (d) Provide the patient with a physical copy of a medically
4 accurate depiction, illustration, or photograph and description
5 of a fetus supplied by the department of community health pursu-
6 ant to subsection (11)(a) at the gestational age nearest the
7 probable gestational age of the patient's fetus.

8 (e) Provide the patient with a physical copy of the prenatal
9 care and parenting information pamphlet distributed by the
10 department of community health under section 9161.

11 (4) The requirements of subsection (3) may be fulfilled by
12 the physician or a qualified person assisting the physician at a
13 location other than the health facility where the abortion is to
14 be performed. The requirement of subsection (3)(a) that a
15 patient's pregnancy be confirmed may be fulfilled by a local
16 health department under subsection (18). The requirements of
17 subsection (3) cannot be fulfilled by the patient accessing an
18 internet website other than the internet website described in
19 subsection (5) that is maintained through the department.

20 (5) The requirements of subsection (3)(c) through (e) may be
21 fulfilled by a patient accessing the internet website maintained
22 and operated through the department and receiving a printed,
23 valid confirmation form from the website that the patient has
24 reviewed the information required in subsection (3)(c) through
25 (e) at least 24 hours before an abortion being performed on the
26 patient. The website shall not require any information be
27 supplied by the patient. The department shall not track,

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

9

1 compile, or otherwise keep a record of information that would
2 identify a patient who accesses this website. The patient shall
3 supply the valid confirmation form to the physician or qualified
4 person assisting the physician to be included in the patient's
5 medical record to comply with this subsection.

6 (6) Subject to subsection (10), before obtaining the
7 patient's signature on the acknowledgment and consent form, a
8 physician personally and in the presence of the patient shall do
9 all of the following:

10 (a) Provide the patient with the physician's name and inform
11 the patient of her right to withhold or withdraw her consent to
12 the abortion at any time before performance of the abortion.

13 (b) Orally describe, in language designed to be understood
14 by the patient, taking into account her age, level of maturity,
15 and intellectual capability, each of the following:

16 (i) The specific risk, if any, to the patient of the compli-
17 cations that have been associated with the procedure the patient
18 will undergo, based on the patient's particular medical condition
19 and history as determined by the physician.

20 (ii) The specific risk of complications, if any, to the
21 patient if she chooses to continue the pregnancy based on the
22 patient's particular medical condition and history as determined
23 by a physician.

24 (7) To protect a patient's privacy, the information set
25 forth in subsection (3) and subsection (6) shall not be dis-
26 closed to the patient in the presence of another patient.

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

10

1 (8) Before performing an abortion on a patient who is a
2 pregnant woman, a physician or a qualified person assisting the
3 physician shall do all of the following:

4 (a) Obtain the patient's signature on the acknowledgment and
5 consent form described in subsection (11)(c) confirming that she
6 has received the information required under subsection (3).

7 (b) Provide the patient with a physical copy of the signed
8 acknowledgment and consent form described in subsection (11)(c).

9 (c) Retain a copy of the signed acknowledgment and consent
10 form described in subsection (11)(c) and, if applicable, a copy
11 of the pregnancy certification form completed under subsection
12 (18)(b), in the patient's medical record.

13 ~~(9) A physician shall not require or obtain payment for an~~
14 ~~abortion related medical service provided to a patient who has~~
15 ~~inquired about an abortion or scheduled an abortion until the~~
16 ~~expiration of the 24-hour period required in subsection (3).~~

17 THIS SUBSECTION DOES NOT PROHIBIT NOTIFYING THE PATIENT THAT PAY-
18 MENT FOR MEDICAL SERVICES WILL BE REQUIRED OR THAT COLLECTION OF
19 PAYMENT IN FULL FOR ALL MEDICAL SERVICES PROVIDED OR PLANNED MAY
20 BE DEMANDED AFTER THE 24-HOUR PERIOD DESCRIBED IN THIS SUBSECTION
21 HAS EXPIRED. A PHYSICIAN OR AN AGENT OF THE PHYSICIAN SHALL NOT
22 COLLECT PAYMENT, IN WHOLE OR IN PART, FOR A MEDICAL SERVICE PRO-
23 VIDED TO OR PLANNED FOR A PATIENT BEFORE THE EXPIRATION OF 24
24 HOURS FROM THE TIME THE PATIENT HAS DONE EITHER OR BOTH OF THE
25 FOLLOWING, EXCEPT IN THE CASE OF A PHYSICIAN OR AN AGENT OF A
26 PHYSICIAN RECEIVING CAPITATED PAYMENTS OR UNDER A SALARY
27 ARRANGEMENT FOR PROVIDING THOSE MEDICAL SERVICES:

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

11

1 (A) INQUIRED ABOUT OBTAINING AN ABORTION AFTER HER PREGNANCY
2 IS CONFIRMED AND SHE HAS RECEIVED FROM THAT PHYSICIAN OR A QUALI-
3 FIED PERSON ASSISTING THE PHYSICIAN THE INFORMATION REQUIRED
4 UNDER SUBSECTION (3)(C) AND (D).

5 (B) SCHEDULED AN ABORTION TO BE PERFORMED BY THAT PHYSICIAN.

6 (10) If the attending physician, utilizing his or her
7 experience, judgment, and professional competence, determines
8 that a medical emergency exists and necessitates performance of
9 an abortion before the requirements of subsections (1), (3), and
10 (6) can be met, the physician is exempt from the requirements of
11 subsections (1), (3), and (6), may perform the abortion, and
12 shall maintain a written record identifying with specificity the
13 medical factors upon which the determination of the medical emer-
14 gency is based.

15 (11) The department of community health shall do each of the
16 following:

17 (a) Produce medically accurate depictions, illustrations, or
18 photographs of the development of a human fetus that indicate by
19 scale the actual size of the fetus at 2-week intervals from the
20 fourth week through the twenty-eighth week of gestation. Each
21 depiction, illustration, or photograph shall be accompanied by a
22 printed description, in nontechnical English, Arabic, and
23 Spanish, of the probable anatomical and physiological character-
24 istics of the fetus at that particular state of gestational
25 development.

26 (b) Subject to subdivision (g), develop, draft, and print,
27 in nontechnical English, Arabic, and Spanish, written

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

12

1 standardized summaries, based upon the various medical procedures
2 used to abort pregnancies, that do each of the following:

3 (i) Describe, individually and on separate documents, those
4 medical procedures used to perform abortions in this state that
5 are recognized by the department.

6 (ii) Identify the physical complications that have been
7 associated with each procedure described in subparagraph (i) and
8 with live birth, as determined by the department. In identifying
9 these complications, the department shall consider the annual
10 statistical report required under section 2835(6), and shall con-
11 sider studies concerning complications that have been published
12 in a peer review medical journal, with particular attention paid
13 to the design of the study, and shall consult with the federal
14 centers for disease control, the American college of obstetri-
15 cians and gynecologists, the Michigan state medical society, or
16 any other source that the department determines appropriate for
17 the purpose.

18 (iii) State that as the result of an abortion, some women
19 may experience depression, feelings of guilt, sleep disturbance,
20 loss of interest in work or sex, or anger, and that if these
21 symptoms occur and are intense or persistent, professional help
22 is recommended.

23 (iv) State that not all of the complications listed in sub-
24 paragraph (ii) may pertain to that particular patient and refer
25 the patient to her physician for more personalized information.

26 (v) Identify services available through public agencies to
27 assist the patient during her pregnancy and after the birth of

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

13

1 her child, should she choose to give birth and maintain custody
2 of her child.

3 (vi) Identify services available through public agencies to
4 assist the patient in placing her child in an adoptive or foster
5 home, should she choose to give birth but not maintain custody of
6 her child.

7 (vii) Identify services available through public agencies to
8 assist the patient and provide counseling should she experience
9 subsequent adverse psychological effects from the abortion.

10 (c) Develop, draft, and print, in nontechnical English,
11 Arabic, and Spanish, an acknowledgment and consent form that
12 includes only the following language above a signature line for
13 the patient:

14 "I, _____, hereby authorize
15 Dr. _____ ("the physician") and any assistant
16 designated by the physician to perform upon me the follow-
17 ing operation(s) or procedure(s):

18 _____
19 (Name of operation(s) or procedure(s))

20 _____

21 I understand that I am approximately _____ weeks pregnant.
22 I consent to an abortion procedure to terminate my
23 pregnancy. I understand that I have the right to withdraw
24 my consent to the abortion procedure at any time prior to
25 performance of that procedure. I acknowledge that at least
26 24 hours before the scheduled abortion I have received a
27 physical copy of each of the following:

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

14

1 (a) A medically accurate depiction, illustration, or
2 photograph of a fetus at the probable gestational age of the
3 fetus I am carrying.

4 (b) A written description of the medical procedure that will
5 be used to perform the abortion.

6 (c) A prenatal care and parenting information pamphlet. If
7 any of the above listed documents were transmitted by facsimile,
8 I certify that the documents were clear and legible. I acknowl-
9 edge that the physician who will perform the abortion has orally
10 described all of the following to me:

11 (i) The specific risk to me, if any, of the complications
12 that have been associated with the procedure I am scheduled to
13 undergo.

14 (ii) The specific risk to me, if any, of the complications
15 if I choose to continue the pregnancy.

16 I acknowledge that I have received all of the following
17 information:

18 (d) Information about what to do and whom to contact in the
19 event that complications arise from the abortion.

20 (e) Information pertaining to available pregnancy related
21 services.

22 I have been given an opportunity to ask questions about the
23 operation(s) or procedure(s). I certify that I have not been
24 required to make any payments for an abortion or any ~~abortion~~
25 ~~related~~ medical service before the expiration of 24 hours after
26 I received the written materials listed in paragraphs (a), (b),
27 and (c) above, or 24 hours after the time and date listed on the

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

15

1 confirmation form if paragraphs (a), (b), and (c) were viewed
2 from the STATE OF MICHIGAN internet website." ~~described in sub-~~
3 ~~section (5).~~"

4 (d) Make available to physicians through the Michigan board
5 of medicine and the Michigan board of osteopathic medicine and
6 surgery, and any person upon request the copies of medically
7 accurate depictions, illustrations, or photographs described in
8 subdivision (a), the standardized written summaries described in
9 subdivision (b), the acknowledgment and consent form described in
10 subdivision (c), the prenatal care and parenting information pam-
11 phlet described in section 9161, and the pregnancy certification
12 form described in subdivision (f).

13 (e) The department shall not develop written summaries for
14 abortion procedures under subdivision (b) that utilize medication
15 that has not been approved by the United States food and drug
16 administration for use in performing an abortion.

17 (f) Develop, draft, and print a certification form to be
18 signed by a local health department representative at the time
19 and place a patient has a pregnancy confirmed, as requested by
20 the patient, verifying the date and time the pregnancy is
21 confirmed.

22 (g) Develop and maintain an internet website that allows a
23 patient considering an abortion to review the information
24 required in subsection (3)(c) through (e). After the patient
25 reviews the required information, the department shall assure
26 that a confirmation form can be printed by the patient from the
27 internet website that will verify the time and date the

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

16

1 information was reviewed. A confirmation form printed under this
2 subdivision becomes invalid 14 days after the date and time
3 printed on the confirmation form.

4 (12) A physician's duty to inform the patient under this
5 section does not require disclosure of information beyond what a
6 reasonably well-qualified physician licensed under this article
7 would possess.

8 (13) A written consent form meeting the requirements set
9 forth in this section and signed by the patient is presumed
10 valid. The presumption created by this subsection may be
11 rebutted by evidence that establishes, by a preponderance of the
12 evidence, that consent was obtained through fraud, negligence,
13 deception, misrepresentation, coercion, or duress.

14 (14) A completed certification form described in subsection
15 (11)(f) that is signed by a local health department representa-
16 tive is presumed valid. The presumption created by this subsec-
17 tion may be rebutted by evidence that establishes, by a prepon-
18 derance of the evidence, that the physician who relied upon the
19 certification had actual knowledge that the certificate contained
20 a false or misleading statement or signature.

21 (15) This section does not create a right to abortion.

22 (16) Notwithstanding any other provision of this section, a
23 person shall not perform an abortion that is prohibited by law.

24 (17) If any portion of this act or the application of this
25 act to any person or circumstances is found invalid by a court,
26 that invalidity does not affect the remaining portions or
27 applications of the act that can be given effect without the

HB 5971, As Passed Senate, December 12, 2002

House Bill No. 5971

17

1 invalid portion or application, if those remaining portions are
2 not determined by the court to be inoperable.

3 (18) Upon a patient's request, each local health department
4 shall:

5 (a) Provide a pregnancy test for that patient to confirm the
6 pregnancy as required under subsection (3)(a) and determine the
7 probable gestational stage of the fetus. The local health
8 department need not comply with this subdivision if the require-
9 ments of subsection (3)(a) have already been met.

10 (b) If a pregnancy is confirmed, ensure that the patient is
11 provided with a completed pregnancy certification form described
12 in subsection (11)(f) at the time the information is provided.

13 (19) The identity and address of a patient who is provided
14 information or who consents to an abortion pursuant to this sec-
15 tion is confidential and is subject to disclosure only with the
16 consent of the patient or by judicial process.

17 (20) A local health department with a file containing the
18 identity and address of a patient described in subsection (19)
19 who has been assisted by the local health department under this
20 section shall do both of the following:

21 (a) Only release the identity and address of the patient to
22 a physician or qualified person assisting the physician in order
23 to verify the receipt of the information required under this
24 section.

25 (b) Destroy the information containing the identity and
26 address of the patient within 30 days after assisting the patient
27 under this section.