

SENATE BILL No. 1253

April 30, 2002, Introduced by Senators GOSCHKA, GARCIA, BULLARD, EMMONS, SHUGARS, SIKKEMA, DUNASKISS, STEIL, HAMMERSTROM, STILLE, HOFFMAN, GOUGEON, MC MANUS, KOIVISTO, SANBORN, SCHUETTE, MC COTTER, HART, MILLER and VAN REGENMORTER and referred to the Committee on Health Policy.

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:

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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.

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.

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.

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.

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

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.

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 MEETS THE REQUIREMENTS OF SUBSECTION (11)(B).

26 (d) Provide the patient with a physical copy of a medically
27 accurate depiction, illustration, or photograph and description

1 of a fetus supplied by the department of community health
2 pursuant to subsection (11)(a) at the gestational age nearest the
3 probable gestational age of the patient's fetus.

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

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

16 (5) The requirements of subsection (3)(c) through (e) may be
17 fulfilled by a patient accessing the internet website maintained
18 and operated through the department and receiving a printed,
19 valid confirmation form from the website that the patient has
20 reviewed the information required in subsection (3)(c) through
21 (e) at least 24 hours before an abortion being performed on the
22 patient. The website shall not require any information be sup-
23 plied by the patient. The department shall not track, compile,
24 or otherwise keep a record of information that would identify a
25 patient who accesses this website. The patient shall supply the
26 valid confirmation form to the physician or qualified person

1 assisting the physician to be included in the patient's medical
2 record to comply with this subsection.

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

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

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

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

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

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

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

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

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

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

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

14 THIS SUBSECTION DOES NOT PROHIBIT NOTIFYING THE PATIENT THAT PAY-
15 MENT FOR MEDICAL SERVICES WILL BE REQUIRED OR THAT COLLECTION OF
16 PAYMENT IN FULL FOR ALL MEDICAL SERVICES PROVIDED OR PLANNED MAY
17 BE DEMANDED AFTER THE 24-HOUR PERIOD DESCRIBED IN THIS SUBSECTION
18 HAS EXPIRED. A PHYSICIAN OR AN AGENT OF THE PHYSICIAN SHALL NOT
19 COLLECT PAYMENT, IN WHOLE OR IN PART, FOR A MEDICAL SERVICE PRO-
20 VIDED TO OR PLANNED FOR A PATIENT BEFORE THE EXPIRATION OF 24
21 HOURS FROM THE TIME THE PATIENT HAS DONE EITHER OR BOTH OF THE
22 FOLLOWING:

23 (A) INQUIRED ABOUT OBTAINING AN ABORTION AFTER HER PREGNANCY
24 IS CONFIRMED AND SHE HAS RECEIVED THE INFORMATION REQUIRED UNDER
25 SUBSECTION (3)(C) AND (D).

26 (B) SCHEDULED AN ABORTION TO BE PERFORMED BY THE PHYSICIAN.

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

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

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

21 (b) Subject to subdivision (g), develop, draft, and print,
22 in nontechnical English, Arabic, and Spanish, written standard-
23 ized summaries, based upon the various medical procedures used to
24 abort pregnancies, that do each of the following:

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

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

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

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

21 (v) Identify services available through public agencies to
22 assist the patient during her pregnancy and after the birth of
23 her child, should she choose to give birth and maintain custody
24 of her child.

25 (vi) Identify services available through public agencies to
26 assist the patient in placing her child in an adoptive or foster

1 home, should she choose to give birth but not maintain custody of
2 her child.

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

6 (c) Develop, draft, and print, in nontechnical English,
7 Arabic, and Spanish, an acknowledgment and consent form that
8 includes only the following language above a signature line for
9 the patient:

10 "I, _____, hereby authorize
11 Dr. _____ ("the physician") and any assistant
12 designated by the physician to perform upon me the follow-
13 ing operation(s) or procedure(s):

14 _____
15 (Name of operation(s) or procedure(s))

16 _____

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

24 (a) A medically accurate depiction, illustration, or photo-
25 graph of a fetus at the probable gestational age of the fetus I
26 am carrying.

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

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

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

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

13 I acknowledge that I have received all of the following
14 information:

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

17 (e) Information pertaining to available pregnancy related
18 services.

19 I have been given an opportunity to ask questions about the
20 operation(s) or procedure(s). I certify that I have not been
21 required to make any payments for an abortion or any ~~abortion~~
22 ~~related~~ medical service before the expiration of 24 hours after
23 I received the written materials listed in paragraphs (a), (b),
24 and (c) above, or 24 hours after the time and date listed on the
25 confirmation form if paragraphs (a), (b), and (c) were viewed
26 from the STATE OF MICHIGAN internet website." ~~described in~~
27 ~~subsection (5)."~~

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

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

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

19 (g) Develop and maintain an internet website that allows a
20 patient considering an abortion to review the information
21 required in subsection (3)(c) through (e). After the patient
22 reviews the required information, the department shall assure
23 that a confirmation form can be printed by the patient from the
24 internet website that will verify the time and date the informa-
25 tion was reviewed. A confirmation form printed under this subdi-
26 vision becomes invalid 14 days after the date and time printed on
27 the confirmation form.

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

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

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

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

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

21 (17) If any portion of this act or the application of this
22 act to any person or circumstances is found invalid by a court,
23 that invalidity does not affect the remaining portions or appli-
24 cations of the act that can be given effect without the invalid
25 portion or application, if those remaining portions are not
26 determined by the court to be inoperable.

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

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

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

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

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

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

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