

Legislative Analysis



REPEAL OF CERTAIN ABORTION-RELATED LAWS

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House Bill 4006 as enacted
Public Act 11 of 2023
Sponsor: Rep. Laurie Pohutsky

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4032 as enacted
Public Act 13 of 2023
Sponsor: Rep. Stephanie A. Young

House Committee: Judiciary
Senate Committee: Committee of the Whole
Complete to 1-12-24

SUMMARY:

House Bill 4006 repeals sections 14 and 15 of the Michigan Penal Code.

Section 14 provided that a person who willfully administered to a pregnant individual any medicine, drug, or substance, or used an instrument or any other means, with the intent to cause a miscarriage (except when necessary to protect the life of the pregnant individual) was guilty of a felony. If the pregnant individual died as a result, it was considered manslaughter.

Section 15 provided that a person who advertised, published, sold, or publicly exposed for sale any pills, powder, or drugs designed expressly to procure an abortion, except as described below, was guilty of a misdemeanor. The section required any drug or medicine known to be designed and expressly prepared for producing an abortion to have a written prescription by a practicing physician of the city, village, or township where sold. The druggist or dealer selling the drug or medicine had to register, in a book provided for that purpose, the name of the purchaser, the date of sale, the kind and quantity of the drug sold, and the name and residence of the physician prescribing it.

MCL 750.14 and 750.15 (repealed)

House Bill 4032 amends the sentencing guidelines in the Code of Criminal Procedure to eliminate the guidelines for a violation of section 14 of the Michigan Penal Code to conform with the repeal of that section by HB 4006. Previously, a violation of the prohibition regarding abortion had a maximum term of imprisonment of four years, and abortion causing the death of the pregnant woman had a maximum term of imprisonment of 15 years. Both offenses were Class C felonies against a person.

MCL 777.16a

The bills take effect February 13, 2024.

BACKGROUND:

In 1973, after the U.S. Supreme Court decision in *Roe v Wade*, section 14 of the Michigan Penal Code was declared unconstitutional by the Michigan Supreme Court as it relates to an abortion performed in the first trimester of a pregnancy “as authorized by the pregnant woman’s attending physician in exercise of his medical judgment.”¹

In June 2022, *Roe* was overturned by *Dobbs v Jackson Women’s Health Organization*, in which the U.S. Supreme Court held that “the constitution does not confer a right to abortion” and returned the issue to the states to decide.²

In November 2022, Michigan voters approved Ballot Proposal 3, which added section 28 to Article 1 of the state constitution. Among other things, section 28 provides that “[e]very individual has a fundamental right to reproductive freedom,” which includes “the right to make and effectuate decisions about all matters relating to pregnancy.”

Section 28 allows the state to regulate the provision of abortion care after fetal viability, which it defines as “the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.”

BRIEF DISCUSSION:

The bills were advanced by proponents as largely “clean up” legislation removing laws that were held largely unconstitutional under *Roe*, remained unenforceable by court order after the *Dobbs* decision, and were apparently made moot when voters approved Proposal 3 in the 2022 general election. Proponents also argued that, although now considered unenforceable, those laws should be formally repealed because keeping them on the books creates uncertainty regarding lawful choices pertaining to medical decisions.

Some, however, saw sections 14 and 15 of the code as providing additional protections for a pregnant individual from acts committed by a nonphysician that result in miscarriage or abortion. They pointed to post-*Roe* court decisions that have allowed prosecutions under the 1931 law as recently as 2019. A nonphysician who uses an implement or a drug or other substance to induce a miscarriage or abortion, they argued, or even advertises such methods, should face criminal charges for endangering the health of pregnant individuals.

Supporters of the bills responded that repealing sections 14 and 15 would not endanger the health and safety of pregnant individuals because other laws provide both guidance and sanctions for medical professionals providing health care to pregnant individuals—scope of practice and medical malpractice laws, administrative rules and regulations, medical society standards of care, and sanctions imposed by medical licensing boards. They noted that the Penal Code also prescribes criminal penalties for certain acts committed against a pregnant individual that cause a miscarriage, stillbirth, or harm to the fetus.

¹ *People v Brickner*, 389 Mich 524 (1973).

² *Dobbs v Jackson Women’s Health Organization*, No. 19-1392, 597 U.S. 215 (2022).

FISCAL IMPACT:

The bills would have no fiscal impact on state or local government.

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