

HOUSE BILL No. 5713

May 31, 2012, Introduced by Rep. Shaughnessy and referred to the Committee on Health Policy.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding sections 213a and 324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 213A. (1) A PERSON HAVING ACTUAL KNOWLEDGE THAT A FEMALE
2 INDIVIDUAL IS PREGNANT SHALL NOT DO ANY OF THE FOLLOWING WITH THE
3 INTENT TO COERCE HER TO HAVE AN ABORTION AGAINST HER WILL:

4 (A) COMMIT, ATTEMPT TO COMMIT, OR MALICIOUSLY THREATEN TO
5 COMMIT ANY OF THE FOLLOWING VIOLATIONS AGAINST HER OR ANY OTHER
6 PERSON:

7 (i) A VIOLATION OF SECTION 411H OR SECTION 411I.

8 (ii) AN ASSAULTIVE CRIME. AS USED IN THIS SUBPARAGRAPH,
9 "ASSAULTIVE CRIME" MEANS THAT TERM AS DEFINED IN SECTION 9A OF
10 CHAPTER X OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL

1 770.9A.

2 (B) AFTER BEING INFORMED BY A PREGNANT FEMALE THAT SHE DOES
3 NOT WANT TO OBTAIN AN ABORTION, ANY OF THE FOLLOWING:

4 (i) DISCONTINUE, ATTEMPT TO DISCONTINUE, OR MALICIOUSLY
5 THREATEN TO DISCONTINUE SUPPORT THAT THE PERSON HAS A LEGAL
6 RESPONSIBILITY TO PROVIDE OR REDUCE THAT SUPPORT TO A LEVEL BELOW
7 HIS OR HER LEGAL RESPONSIBILITY.

8 (ii) WITHDRAW, ATTEMPT TO WITHDRAW, OR MALICIOUSLY THREATEN TO
9 WITHDRAW FROM A CONTRACT OR AGREEMENT OR OTHERWISE VIOLATE THE
10 TERMS OF THAT CONTRACT OR AGREEMENT HAVING PREVIOUSLY ENTERED INTO
11 A CONTRACT OR OTHER LEGALLY BINDING AGREEMENT TO WHICH THE PREGNANT
12 FEMALE IS A PARTY OR BENEFICIARY.

13 (iii) DISCHARGE OR THREATEN TO DISCHARGE HER FROM EMPLOYMENT.

14 (2) FOR PURPOSES OF SUBSECTION (1) (B), INFORMATION THAT A
15 PREGNANT FEMALE DOES NOT WANT TO OBTAIN AN ABORTION INCLUDES ANY
16 STATEMENT OR ACT, INCLUDING INACTION, THAT WOULD CLEARLY
17 DEMONSTRATE TO A REASONABLE PERSON THAT SHE IS UNWILLING TO COMPLY
18 WITH A REQUEST OR DEMAND TO HAVE AN ABORTION.

19 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CRIME AS
20 FOLLOWS:

21 (A) FOR A VIOLATION OF SUBSECTION (1) (A), THE PERSON IS GUILTY
22 OF A CRIME PUNISHABLE IN THE SAME MANNER AS FOR THE UNDERLYING
23 OFFENSE COMMITTED, ATTEMPTED, OR MALICIOUSLY THREATENED.

24 (B) EXCEPT AS PROVIDED IN SUBDIVISION (C), FOR A VIOLATION OF
25 SUBSECTION (1) (B), THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE
26 BY A FINE OF NOT MORE THAN \$5,000.00.

27 (C) IF THE PERSON IS THE FATHER OR PUTATIVE FATHER OF THE

1 UNBORN CHILD, THE PREGNANT INDIVIDUAL IS LESS THAN 18 YEARS OF AGE
2 AT THE TIME OF THE VIOLATION, AND THE PERSON IS 18 YEARS OF AGE OR
3 OLDER AT THE TIME OF THE VIOLATION, THE PERSON IS GUILTY OF A
4 MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000.00.

5 (4) THIS SECTION DOES NOT PROHIBIT THE PERSON FROM BEING
6 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF
7 LAW COMMITTED WHILE VIOLATING THIS SECTION.

8 (5) THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR
9 VIOLATING THIS SECTION TO BE SERVED CONSECUTIVELY TO ANY OTHER TERM
10 OF IMPRISONMENT IMPOSED FOR A VIOLATION OF LAW COMMITTED WHILE
11 VIOLATING THIS SECTION.

12 (6) AS USED IN THIS SECTION:

13 (A) "COURSE OF CONDUCT" MEANS A PATTERN OF CONDUCT COMPOSED OF
14 A SERIES OF 2 OR MORE SEPARATE NONCONTINUOUS ACTS EVIDENCING A
15 CONTINUITY OF PURPOSE.

16 (B) "MALICIOUSLY THREATEN" MEANS TO MAKE 2 OR MORE STATEMENTS
17 OR TO ENGAGE IN A COURSE OF CONDUCT THAT WOULD CAUSE A REASONABLE
18 PERSON TO BELIEVE THAT THE INDIVIDUAL IS LIKELY TO ACT IN
19 ACCORDANCE WITH THE STATEMENTS OR THE COURSE OF CONDUCT.
20 MALICIOUSLY THREATEN DOES NOT INCLUDE CONSTITUTIONALLY PROTECTED
21 SPEECH OR ANY GENERALIZED STATEMENT REGARDING A LAWFUL PREGNANCY
22 OPTION.

23 (C) "UNBORN CHILD" MEANS A LIVE HUMAN BEING IN UTERO
24 REGARDLESS OF HIS OR HER GESTATIONAL STAGE OF DEVELOPMENT.

25 SEC. 324. (1) THE LEGISLATURE MAKES THE FOLLOWING FINDINGS:

26 (A) THERE IS SUBSTANTIAL MEDICAL EVIDENCE THAT AN UNBORN CHILD
27 IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS AFTER FERTILIZATION,

1 INCLUDING ALL OF THE FOLLOWING:

2 (i) THAT PAIN RECEPTORS (NOCICEPTORS) ARE PRESENT THROUGHOUT
3 THE BODY AND ARE LINKED BY FUNCTIONING NERVES TO THE BRAIN'S
4 THALAMUS AND SUBCORTICAL PLATE NO LATER THAN 20 WEEKS POST-
5 FERTILIZATION.

6 (ii) THAT PAIN PERCEPTION IN ADULTS IS ASSOCIATED WITH
7 STIMULATION OR ABLATION OF THE THALAMUS, RATHER THAN THE CEREBRAL
8 CORTEX. THE LEVEL OF FUNCTIONING IN THE CEREBRAL CORTEX OF ADULTS,
9 HYDRANENCEPHALIC CHILDREN BORN WITH LITTLE OR NO CEREBRAL CORTEX,
10 OR THE UNBORN CHILD BY 20 WEEKS' DEVELOPMENT IS NOT RECOGNIZED AS
11 NECESSARY TO EXPERIENCING PAIN.

12 (iii) THAT AFTER 20 WEEKS' DEVELOPMENT, THE UNBORN CHILD REACTS
13 TO STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO
14 ADULTS, AND SUCH STIMULI APPLIED TO AN UNBORN CHILD ARE ASSOCIATED
15 WITH SIGNIFICANT INCREASES IN STRESS HORMONES.

16 (iv) FOR PURPOSES OF SURGERY ON UNBORN CHILDREN, FETAL
17 ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A
18 DECREASE IN STRESS HORMONES COMPARED TO WHEN ANESTHESIA IS NOT
19 ADMINISTERED. ANESTHESIA IS ALSO REQUIRED TO PREVENT A THRASHING
20 REACTION BY THE UNBORN CHILD TO ANY INVASIVE PROCEDURE PERFORMED
21 UPON THE CHILD.

22 (B) THE POLICIES ENACTED BY THIS STATE HAVE CONSISTENTLY BEEN
23 ORIENTED TOWARD THE PROTECTION AND NURTURING OF UNBORN CHILDREN,
24 DESPITE THE IMPOSITION OF A REGIME OF LEGAL ABORTION BY THE UNITED
25 STATES SUPREME COURT. THOSE POLICIES INCLUDE ALL OF THE FOLLOWING:

26 (i) A CONTINUOUSLY EXISTING AND ENFORCEABLE, OR PARTIALLY
27 ENFORCEABLE, CRIMINAL PROHIBITION ON ABORTION, EXCEPT TO PRESERVE

1 THE LIFE OF THE MOTHER, DATING FROM 1846 TO THE PRESENT.

2 (ii) A STATUTE IMPOSING HEIGHTENED PENALTIES FOR PERFORMING AN
3 ABORTION UPON AN UNBORN CHILD IN LATER STAGES OF PREGNANCY WHEN THE
4 MOTHER HAS BEEN ABLE TO PERCEIVE MOVEMENT OF THE CHILD ("A QUICK
5 CHILD").

6 (iii) A STATUTE PROVIDING AN OFFICIAL STATE CERTIFICATE OF
7 STILLBIRTH TO FAMILIES EXPERIENCING A STILLBIRTH AT 20 OR MORE
8 WEEKS OF PREGNANCY.

9 (iv) A STATUTE PROVIDING FOR SEPARATE CRIMINAL CHARGES APPLYING
10 TO INJURY OR DEATH TO AN UNBORN CHILD RESULTING FROM A CRIMINAL
11 ASSAULT UPON THE MOTHER, REGARDLESS OF THE STAGE OF HER PREGNANCY.

12 (v) A STATUTE ALLOWING FOR A WRONGFUL DEATH TORT AGAINST AN
13 INDIVIDUAL WHOSE CRIMINAL OR NEGLIGENT ACTIONS RESULT IN THE DEATH
14 OF AN UNBORN CHILD.

15 (vi) LAWS RECOGNIZING THE INHERITANCE RIGHTS OF UNBORN CHILDREN
16 AND SECURING THEIR LEGAL REPRESENTATION BY A GUARDIAN AD LITEM
17 PRIOR TO THEIR BIRTH.

18 (vii) A STATUTE PROHIBITING LAWSUITS ASSERTING THE "WRONGFUL
19 BIRTH" OF A CHILD WITH DISABILITIES ON THE BASIS THAT THE CHILD'S
20 PARENTS WERE DENIED AN OPPORTUNITY TO ABORT THE CHILD DUE TO A
21 FAILURE TO DIAGNOSE THE DISABILITIES BEFORE BIRTH.

22 (C) IN ADDITION TO NUMEROUS CRIMINAL STATUTES PROHIBITING
23 ASSAULTIVE ACTIONS THAT RESULT IN PAIN, INJURY, OR DEATH, MICHIGAN
24 POLICIES SPECIFICALLY PROHIBIT ACTIONS THAT INVOLVE THE PURPOSEFUL
25 INFLECTION OF PAIN, INCLUDING ALL OF THE FOLLOWING:

26 (i) A PROHIBITION AGAINST CRUEL OR UNUSUAL PUNISHMENT OF
27 CONVICTED CRIMINALS.

1 (ii) A SPECIFIC STATUTORY PROHIBITION AGAINST TORTURE.

2 (iii) A STATUTORY PROHIBITION AGAINST CRUELTY TO ANIMALS AND
3 ANIMAL FIGHTS AND A STATUTORY PRESCRIPTION FOR HUMANE METHODS OF
4 LIVESTOCK SLAUGHTER FOR FOOD PRODUCTION.

5 (D) IN LIGHT OF THE CURRENT STATE OF SCIENTIFIC AND MEDICAL
6 KNOWLEDGE, AND IN CONSIDERATION OF THIS STATE'S MULTITUDE OF
7 POLICIES THAT PROTECT UNBORN CHILDREN AND PROHIBIT PAIN-INFLICTING
8 ACTIVITIES, THIS STATE ASSERTS A COMPELLING STATE INTEREST IN
9 PROTECTING THE LIVES OF UNBORN CHILDREN CAPABLE OF EXPERIENCING
10 PAIN IN THE SAME MANNER AS A NEWBORN CHILD OR AN ADULT. THIS
11 COMPELLING STATE INTEREST IS INDEPENDENT AND SEPARATE FROM THE
12 STATE'S INTEREST IN PROTECTING THE LIVES OR OTHER INDIVIDUAL
13 INTERESTS OF UNBORN CHILDREN AT ANY OTHER STAGE OF PREGNANCY.

14 (2) AS USED IN THIS SECTION:

15 (A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015 OF
16 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17015.

17 (B) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOON
18 WITH A HUMAN OVUM.

19 (C) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS
20 OF A PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE
21 MEDICAL CONDITION OF A PREGNANT INDIVIDUAL AS TO NECESSITATE THE
22 IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR
23 NECESSITATES IMMEDIATE TREATMENT OF A PHYSICAL DISORDER, PHYSICAL
24 ILLNESS, OR PHYSICAL INJURY IN A HOSPITAL OR OTHER EMERGENCY CARE
25 FACILITY, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS. A
26 MEDICAL EMERGENCY DOES NOT INCLUDE A CONDITION THAT IS BASED ON A
27 CLAIM OR DIAGNOSIS THAT THE PREGNANT INDIVIDUAL WILL ENGAGE IN

1 CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH.

2 (D) "PROBABLE POSTFERTILIZATION AGE" MEANS THE EXPECTED
3 POSTFERTILIZATION AGE OF THE UNBORN CHILD AT THE TIME AN ABORTION
4 IS PLANNED TO BE PERFORMED AS DETERMINED BY THE GOOD FAITH CLINICAL
5 JUDGMENT OF THE ATTENDING PHYSICIAN.

6 (E) "UNBORN CHILD" MEANS AN INDIVIDUAL ORGANISM OF THE SPECIES
7 HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.

8 (3) PRIOR TO PERFORMING AN ABORTION, A PHYSICIAN SHALL MAKE A
9 DETERMINATION OF THE PROBABLE POSTFERTILIZATION AGE OF THE UNBORN
10 CHILD CONSISTENT WITH THE ACCEPTED STANDARD OF CARE FOR MAKING THAT
11 DETERMINATION, EXCEPT IN THE CASE OF A MEDICAL EMERGENCY.

12 (4) A PERSON SHALL NOT PERFORM OR ATTEMPT TO PERFORM AN
13 ABORTION UPON A PREGNANT INDIVIDUAL IF IT IS DETERMINED THAT THE
14 UNBORN CHILD HAS A PROBABLE POSTFERTILIZATION AGE OF 20 OR MORE
15 WEEKS, UNLESS IN THE REASONABLE CLINICAL JUDGMENT OF A PHYSICIAN
16 THE ABORTION IS NECESSARY TO AVERT THE PREGNANT INDIVIDUAL'S DEATH.

17 (5) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
18 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF
19 NOT MORE THAN \$7,500.00, OR BOTH.

20 (6) THIS SECTION DOES NOT APPLY TO ACTIONS TAKEN BY A PREGNANT
21 INDIVIDUAL.

22 (7) THIS SECTION DOES NOT CREATE A RIGHT TO ABORTION.

23 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
24 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

25 (9) THIS ACT SHALL NOT BE CONSTRUED TO REPEAL BY IMPLICATION
26 OR OTHERWISE, OR IMPAIR ANY FUTURE ENFORCEMENT OF, SECTION 14, 15,
27 322, OR 323, OR ANY OTHER PROVISION OF LAW REGULATING OR

1 RESTRICTING ABORTION.

2 (10) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
3 "PAIN-CAPABLE UNBORN CHILD PROTECTION ACT".

4 Enacting section 1. This amendatory act takes effect January
5 1, 2013.