A bill to require testing for a fetal heartbeat before the performance of an abortion; to place certain requirements and restrictions on the performance of an abortion if a fetal heartbeat is detected; to provide for the powers and duties of certain state and local governmental officers and entities; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) This act shall be known and may be cited as the "fetal heartbeat protection act".

(2) The intent of this act is to protect unborn living human beings with beating hearts from being victims of abortion and for
other purposes.

Sec. 2. As used in this act:

(a) "Abortion" means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(b) "Conception" means fertilization.

(c) "Contraceptive" means a drug, device, or chemical that prevents conception.

(d) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(e) "Fetus" means human offspring developing during pregnancy from the moment of conception, including the embryonic stage of development.

(f) "Gestational age" means the age of an unborn living human being as calculated from the first day of the last menstrual period of the pregnant woman carrying the unborn living human being.

(g) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

(h) "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.

(i) "Medical emergency" means a condition that, in a physician's good-faith medical judgment and based on the facts known to the physician at the time, so endangers the life of the pregnant woman or poses a serious risk of the substantial and
irreversible impairment of a major bodily function of the pregnant
woman as to necessitate the immediate performance or inducement of
an abortion.

(j) "Physician" means that term as defined in sections 17001
and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and
333.17501.

(k) "Pregnancy" means the human female reproductive condition
that begins with conception, when the woman is carrying the
developing human offspring, and that is calculated from the first
day of the last menstrual period of the woman.

(l) "Standard medical practice" means the degree of skill,
care, and diligence that an obstetrician of ordinary learning,
judgement, and skill would employ in like circumstances, including
employing the appropriate means of detecting a fetal heartbeat
depending on the estimated gestational age of the unborn living
human being and the condition of the woman and her pregnancy.

(m) "Unborn living human being" means an individual of the
species Homo sapiens in utero.

Sec. 3. (1) Subject to subsection (2), before performing an
abortion on a pregnant woman, a person shall determine whether a
fetal heartbeat is detectable in the unborn living human being the
pregnant woman is carrying. The person shall record in the pregnant
woman's medical record the estimated gestational age of the unborn
living human being, the method used to test for a fetal heartbeat,
the date and time of the test, and the result of the test.

(2) The person shall make the determination described in
subsection (1) in accordance with the person's good-faith
understanding of standard medical practice.

Sec. 4. (1) Except as otherwise provided in this section, a
person shall not knowingly perform an abortion on a pregnant woman
without first determining under section 3 whether the unborn living
human being the pregnant woman is carrying has a detectable fetal
heartbeat.

(2) It is not a violation of subsection (1) if any of the
following apply:

(a) The person performing the abortion is a physician who
believes that a medical emergency exists that prevents compliance
with subsection (1). A physician who performs an abortion under
this subdivision shall note both of the following in the pregnant
woman's medical record and shall maintain a copy of the notations
in the physician's own records for at least 7 years after the
notations are made:

(i) The physician's belief that a medical emergency
necessitating the abortion existed.

(ii) The medical condition of the pregnant woman that prevented
compliance with subsection (1).

(b) The person performing the abortion tested for the presence
of a fetal heartbeat under section 3 and the test did not reveal a
fetal heartbeat.

(3) Except as otherwise provided in subsection (4), a person
who violates this section is guilty of a felony and shall be
punished by imprisonment for not less than 2 years or more than 4
years.

(4) A person who violates this section is guilty of a felony
and shall be punished by imprisonment for not less than 6 years or
more than 15 years if the violation causes the death of the
pregnant woman.

(5) A pregnant woman on whom an abortion is performed in
violation of this section is not guilty of any of the following:

(a) Violating this section.
(b) Attempting to violate this section.
(c) Conspiring to commit a violation of this section.

Sec. 5. (1) Except in the case of a medical emergency that prevents compliance with this section, a person who detects a fetal heartbeat under section 3 in an unborn living human being that a pregnant woman is carrying shall not perform an abortion on the pregnant woman without first complying with all of the following not less than 24 hours before the person performs the abortion:

(a) Inform the pregnant woman in writing that the unborn living human being the pregnant woman is carrying has a fetal heartbeat.

(b) Inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn living human being possessing a detectable fetal heartbeat to term based on gestational age.

(c) Obtain the signature of the pregnant woman on a form acknowledging that she has received information from the person that the unborn living human being she is carrying has a fetal heartbeat and that she is aware of the statistical probability of bringing the unborn living human being that she is carrying to term.

(2) The requirements described in subsection (1) are in addition to any other informed consent requirement that is required by law to perform an abortion.

(3) Except as otherwise provided in subsection (4), a person who violates this section is guilty of a felony punishable by imprisonment for not more than 2 years.
(4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 6 years if the violation causes the death of the pregnant woman.

Sec. 6. (1) Except as otherwise provided in this section, a person shall not knowingly perform an abortion on a pregnant woman who is carrying an unborn living human being whose fetal heartbeat has been detected under section 3.

(2) It is not a violation of subsection (1) if any of the following apply:

(a) The person performing the abortion is a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. A physician who performs a medical procedure described in this subdivision shall declare in writing that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The physician shall place the document in the pregnant woman's medical record and shall maintain a copy of the document in the physician's own records for at least 7 years after the date the
document is created.

(b) The person performing the abortion tested for the presence of a fetal heartbeat under section 3 and the test did not reveal a fetal heartbeat.

(3) Except as otherwise provided in subsection (4), a person who violates this section is guilty of a felony and shall be punished by imprisonment for not less than 2 years or more than 4 years.

(4) A person who violates this section is guilty of a felony and shall be punished by imprisonment for not less than 6 years or more than 15 years if the violation causes the death of the pregnant woman.

(5) A pregnant woman on whom an abortion is performed in violation of this section is not guilty of any of the following:
   (a) Violating this section.
   (b) Attempting to violate this section.
   (c) Conspiring to commit a violation of this section.

Sec. 7. (1) A person who performs an abortion on a pregnant woman in violation of section 4 or 6, fails to provide a pregnant woman with the information required under section 5, or fails to obtain the signature of a pregnant woman as required by section 5, is liable to the pregnant woman in a civil action for all of the following:
   (a) At the pregnant woman's election at any time before final judgment, damages in the amount of $10,000.00 or the amount determined by the trier of fact.
   (b) Reasonable attorney fees.
   (c) Court costs.

(2) An action brought under this section is subject to the
same defenses and requirements of proof as an action for wrongful
death under section 2922 of the revised judicature act of 1961,
1961 PA 236, MCL 600.2922, except for any requirement of a live
birth.

Sec. 8. (1) This act only applies to intrauterine pregnancies.
(2) This act does not prohibit the sale, use, prescription, or
administration of a drug, device, or chemical for contraceptive
purposes.
(3) Nothing in this act shall be construed as authorizing any
abortion that is illegal under any other provision of state law.
(4) Nothing in this act shall be construed to repeal or amend,
explicitly or by implication, any provision of law prohibiting or
regulating abortion, including, but not limited to, section 14, 15,
322, or 323 of the Michigan penal code, 1931 PA 328, MCL 750.14,
750.15, 750.322, and 750.323.
(5) This act does not prohibit a person from being charged
with, convicted of, or sentenced for any other violation of law
arising out of the same transaction as the violation of this act in
addition to being charged with, convicted of, or sentenced for the
violation of this act.
(6) This act only applies to abortions that intentionally,
knowingly, or recklessly cause the death of an unborn living human
being.
(7) If any court issues an order or judgment that restores,
expands, or clarifies the authority of this state to prohibit or
regulate abortion or an amendment to the United States Constitution
is adopted that restores, expands, or clarifies the authority of
this state to prohibit or regulate abortion, the attorney general
may apply to the appropriate state or federal court for 1 or more
of the following:

(a) A declaration that a section in this act is constitutional.

(b) A judgment or order lifting an injunction against the enforcement of a section of this act.

(8) If the attorney general fails to apply for the relief described in subsection (7) within 30 days after an event described in that subsection occurs, a county prosecutor may apply to the appropriate state or federal court for the relief described in that subsection.

Enacting section 1. This act takes effect 90 days after the date it is enacted into law.