

SUBSTITUTE FOR
HOUSE BILL NO. 5879

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17015 (MCL 333.17015), as amended by 2006 PA
77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) For purposes of this section **AND SECTION 17015A:**

6 (a) "Abortion" means the intentional use of an instrument,
7 drug, or other substance or device to terminate a woman's pregnancy
8 for a purpose other than to increase the probability of a live
9 birth, to preserve the life or health of the child after live
10 birth, or to remove a dead fetus. Abortion does not include the use

1 or prescription of a drug or device intended as a contraceptive.

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

4 (c) "Local health department representative" means a person,
5 who meets 1 or more of the licensing requirements listed in
6 subdivision (f) and who is employed by, or under contract to
7 provide services on behalf of, a local health department.

8 (d) "Medical emergency" means that condition which, on the
9 basis of the physician's good faith clinical judgment, so
10 complicates the medical condition of a pregnant woman as to
11 necessitate the immediate abortion of her pregnancy to avert her
12 death or for which a delay will create serious risk of substantial
13 and irreversible impairment of a major bodily function.

14 (e) "Medical service" means the provision of a treatment,
15 procedure, medication, examination, diagnostic test, assessment, or
16 counseling, including, but not limited to, a pregnancy test,
17 ultrasound, pelvic examination, or an abortion.

18 (f) "Qualified person assisting the physician" means another
19 physician or a physician's assistant licensed under this part or
20 part 175, a fully licensed or limited licensed psychologist
21 licensed under part 182, a professional counselor licensed under
22 part 181, a registered professional nurse or a licensed practical
23 nurse licensed under part 172, or a social worker licensed under
24 part 185.

25 (g) "Probable gestational age of the fetus" means the
26 gestational age of the fetus at the time an abortion is planned to
27 be performed.

1 (h) "Provide the patient with a physical copy" means
2 confirming that the patient accessed the internet website described
3 in subsection (5) and received a printed valid confirmation form
4 from the website and including that form in the patient's medical
5 record or giving a patient a copy of a required document by 1 or
6 more of the following means:

7 (i) In person.

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

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

11 (iv) By facsimile transmission.

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

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

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

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

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

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

27 (c) Provide the patient with a physical copy of the written

1 summary described in subsection (11)(b) that corresponds to the
2 procedure the patient will undergo and is provided by the
3 department of community health. If the procedure has not been
4 recognized by the department, but is otherwise allowed under
5 Michigan law, and the department has not provided a written summary
6 for that procedure, the physician shall develop and provide a
7 written summary that describes the procedure, any known risks or
8 complications of the procedure, and risks associated with live
9 birth and meets the requirements of subsection (11)(b)(iii) through
10 (vii).

11 (d) Provide the patient with a physical copy of a medically
12 accurate depiction, illustration, or photograph and description of
13 a fetus supplied by the department of community health pursuant to
14 subsection (11)(a) at the gestational age nearest the probable
15 gestational age of the patient's fetus.

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

19 **(F) PERFORM THE COERCION AND INTIMIDATION SCREENING AS**
20 **REQUIRED UNDER SECTION 17015A(1) AND, IF APPLICABLE, COMPLY WITH**
21 **THE REQUIREMENTS UNDER SECTION 17015A(2) AND (3).**

22 (4) The requirements of subsection (3) may be fulfilled by the
23 physician or a qualified person assisting the physician at a
24 location other than the health facility where the abortion is to be
25 performed. The requirement of subsection (3)(a) that a patient's
26 pregnancy be confirmed may be fulfilled by a local health
27 department under subsection (18). The requirements of subsection

1 (3) cannot be fulfilled by the patient accessing an internet
2 website other than the internet website described in subsection (5)
3 that is maintained through the department.

4 (5) The requirements of subsection (3)(c) through (e) may be
5 fulfilled by a patient accessing the internet website maintained
6 and operated through the department and receiving a printed, valid
7 confirmation form from the website that the patient has reviewed
8 the information required in subsection (3)(c) through (e) at least
9 24 hours before an abortion being performed on the patient. The
10 website shall not require any information be supplied by the
11 patient. The department shall not track, compile, or otherwise keep
12 a record of information that would identify a patient who accesses
13 this website. The patient shall supply the valid confirmation form
14 to the physician or qualified person assisting the physician to be
15 included in the patient's medical record to comply with this
16 subsection.

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

21 (a) Provide the patient with the physician's name, **CONFIRM**
22 **WITH THE PATIENT THAT THE COERCION AND INTIMIDATION SCREENING**
23 **REQUIRED UNDER SECTION 17015A WAS PERFORMED**, and inform the patient
24 of her right to withhold or withdraw her consent to the abortion at
25 any time before performance of the abortion.

26 (b) Orally describe, in language designed to be understood by
27 the patient, taking into account her age, level of maturity, and

1 intellectual capability, each of the following:

2 (i) The specific risk, if any, to the patient of the
3 complications that have been associated with the procedure the
4 patient will undergo, based on the patient's particular medical
5 condition and history as determined by the physician.

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

10 (7) To protect a patient's privacy, the information set forth
11 in subsection (3) and subsection (6) shall not be disclosed to the
12 patient in the presence of another patient.

13 (8) If at any time prior to the performance of an abortion, a
14 patient undergoes an ultrasound examination, or a physician
15 determines that ultrasound imaging will be used during the course
16 of a patient's abortion, the physician or qualified person
17 assisting the physician shall provide the patient with the
18 opportunity to view or decline to view an active ultrasound image
19 of the fetus, and offer to provide the patient with a physical
20 picture of the ultrasound image of the fetus prior to the
21 performance of the abortion. ~~Before~~ **AFTER THE EXPIRATION OF THE**
22 **24-HOUR PERIOD PRESCRIBED UNDER SUBSECTION (3) BUT BEFORE**
23 performing an abortion on a patient who is a pregnant woman, a
24 physician or a qualified person assisting the physician shall do
25 all of the following:

26 (a) Obtain the patient's signature on the acknowledgment and
27 consent form described in subsection (11)(c) confirming that she

1 has received the information required under subsection (3).

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

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

8 (9) This subsection does not prohibit notifying the patient
9 that payment for medical services will be required or that
10 collection of payment in full for all medical services provided or
11 planned may be demanded after the 24-hour period described in this
12 subsection has expired. A physician or an agent of the physician
13 shall not collect payment, in whole or in part, for a medical
14 service provided to or planned for a patient before the expiration
15 of 24 hours from the time the patient has done either or both of
16 the following, except in the case of a physician or an agent of a
17 physician receiving capitated payments or under a salary
18 arrangement for providing those medical services:

19 (a) Inquired about obtaining an abortion after her pregnancy
20 is confirmed and she has received from that physician or a
21 qualified person assisting the physician the information required
22 under subsection (3)(c) and (d).

23 (b) Scheduled an abortion to be performed by that physician.

24 (10) If the attending physician, utilizing his or her
25 experience, judgment, and professional competence, determines that
26 a medical emergency exists and necessitates performance of an
27 abortion before the requirements of subsections (1), (3), and (6)

1 can be met, the physician is exempt from the requirements of
2 subsections (1), (3), and (6), may perform the abortion, and shall
3 maintain a written record identifying with specificity the medical
4 factors upon which the determination of the medical emergency is
5 based.

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

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

16 (b) Subject to subdivision (g), develop, draft, and print, in
17 nontechnical English, Arabic, and Spanish, written standardized
18 summaries, based upon the various medical procedures used to abort
19 pregnancies, that do each of the following:

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

23 (ii) Identify the physical complications that have been
24 associated with each procedure described in subparagraph (i) and
25 with live birth, as determined by the department. In identifying
26 these complications, the department shall consider the annual
27 statistical report required under section 2835(6), and shall

1 consider studies concerning complications that have been published
2 in a peer review medical journal, with particular attention paid to
3 the design of the study, and shall consult with the federal centers
4 for disease control, the American college of obstetricians and
5 gynecologists, the Michigan state medical society, or any other
6 source that the department determines appropriate for the purpose.

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

12 (iv) State that not all of the complications listed in
13 subparagraph (ii) may pertain to that particular patient and refer
14 the patient to her physician for more personalized information.

15 (v) Identify services available through public agencies to
16 assist the patient during her pregnancy and after the birth of her
17 child, should she choose to give birth and maintain custody of her
18 child.

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

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

26 (c) Develop, draft, and print, in nontechnical English,
27 Arabic, and Spanish, an acknowledgment and consent form that

1 includes only the following language above a signature line for the
2 patient:

3 "I, _____ , **VOLUNTARILY AND WILLFULLY**
4 hereby authorize Dr. _____ ("the physician") and any
5 assistant designated by the physician to perform upon me the
6 following operation(s) or procedure(s):

7 _____
8 (Name of operation(s) or procedure(s))
9 _____

10 I understand that I am approximately _____ weeks pregnant. I
11 consent to an abortion procedure to terminate my pregnancy. I
12 understand that I have the right to withdraw my consent to the
13 abortion procedure at any time prior to performance of that
14 procedure. **I UNDERSTAND THAT IT IS ILLEGAL FOR ANYONE TO COERCE OR**
15 **INTIMIDATE ME INTO SEEKING AN ABORTION.** I acknowledge that at least
16 24 hours before the scheduled abortion I have received a physical
17 copy of each of the following:

18 (a) A medically accurate depiction, illustration, or
19 photograph of a fetus at the probable gestational age of the fetus
20 I am carrying.

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

23 (c) A prenatal care and parenting information pamphlet. If any
24 of the above listed documents were transmitted by facsimile, I
25 certify that the documents were clear and legible. I acknowledge
26 that the physician who will perform the abortion has orally
27 described all of the following to me:

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

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

5 I acknowledge that I have received all of the following
6 information:

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

9 (e) Information pertaining to available pregnancy related
10 services.

11 I have been given an opportunity to ask questions about the
12 operation(s) or procedure(s). I certify that I have not been
13 required to make any payments for an abortion or any medical
14 service before the expiration of 24 hours after I received the
15 written materials listed in paragraphs (a), (b), and (c) above, or
16 24 hours after the time and date listed on the confirmation form if
17 paragraphs (a), (b), and (c) were viewed from the state of Michigan
18 internet website."

19 (d) Make available to physicians through the Michigan board of
20 medicine and the Michigan board of osteopathic medicine and
21 surgery, and any person upon request the copies of medically
22 accurate depictions, illustrations, or photographs described in
23 subdivision (a), the standardized written summaries described in
24 subdivision (b), the acknowledgment and consent form described in
25 subdivision (c), the prenatal care and parenting information
26 pamphlet described in section 9161, and the pregnancy certification
27 form described in subdivision (f).

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

5 (f) Develop, draft, and print a certification form to be
6 signed by a local health department representative at the time and
7 place a patient has a pregnancy confirmed, as requested by the
8 patient, verifying the date and time the pregnancy is confirmed.

9 (g) Develop and maintain an internet website that ~~allows~~
10 **OPENS WITH THE NOTICE DESCRIBED UNDER SECTION 17015A(4) BEFORE**
11 **ALLOWING** a patient considering an abortion to review the
12 information required in subsection (3)(c) through (e). After the
13 patient reviews the required information, the department shall
14 assure that a confirmation form can be printed by the patient from
15 the internet website that will verify the time and date the
16 information was reviewed. A confirmation form printed under this
17 subdivision becomes invalid 14 days after the date and time printed
18 on the confirmation form.

19 (h) Include on the informed consent website developed under
20 subdivision (g) a list of health care providers, facilities, and
21 clinics that offer to perform ultrasounds free of charge. The list
22 shall be organized geographically and shall include the name,
23 address, and telephone number of each health care provider,
24 facility, and clinic.

25 **(I) DEVELOP, DRAFT, AND PRINT, IN NONTECHNICAL ENGLISH,**
26 **ARABIC, AND SPANISH, THE NOTICE AS DESCRIBED UNDER SECTION**
27 **17015A(4) THAT IS REQUIRED TO BE POSTED AND PROVIDED TO THE**

1 PATIENT. THE NOTICE SHALL BE AT LEAST 8-1/2 INCHES BY 14 INCHES
2 AND THE STATEMENT REQUIRED UNDER SECTION 17015A(4) SHALL BE PRINTED
3 IN AT LEAST 44-POINT TYPE. THE NOTICE SHALL BE MADE AVAILABLE TO
4 PHYSICIANS THROUGH THE MICHIGAN BOARD OF MEDICINE AND THE MICHIGAN
5 BOARD OF OSTEOPATHIC MEDICINE AND SURGERY.

6 (J) DEVELOP, DRAFT, AND PRINT PROTOCOLS AND ASSESSMENT
7 MATERIALS TO BE UTILIZED BY A PHYSICIAN OR A QUALIFIED PERSON
8 ASSISTING THE PHYSICIAN WHILE PERFORMING THE INTIMIDATION AND
9 COERCION SCREENING AS REQUIRED UNDER SECTION 17015A. IN DEVELOPING
10 THE PROTOCOLS AND ASSESSMENT MATERIALS, THE DEPARTMENT SHALL
11 CONSIDER THE STANDARDS AND RECOMMENDATIONS OF THE JOINT COMMITTEE
12 ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS AND THE AMERICAN
13 MEDICAL ASSOCIATION. THE PROTOCOLS AND ASSESSMENT MATERIALS SHALL
14 ADDRESS, AT A MINIMUM, EACH OF THE FOLLOWING:

- 15 (i) DANGER ASSESSMENTS.
16 (ii) PHYSICAL AND PSYCHOLOGICAL ASSESSMENTS.
17 (iii) SAFETY PLANS.
18 (iv) DISCHARGE INSTRUCTIONS.
19 (v) REFERRALS TO LAW ENFORCEMENT AND SUPPORT ORGANIZATIONS.
20 (vi) PRIVATE ACCESS TO A TELEPHONE AND SAFE TRANSPORTATION.

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

25 (13) A written consent form meeting the requirements set forth
26 in this section and signed by the patient is presumed valid. The
27 presumption created by this subsection may be rebutted by evidence

1 that establishes, by a preponderance of the evidence, that consent
2 was obtained through fraud, negligence, deception,
3 misrepresentation, coercion, or duress.

4 (14) A completed certification form described in subsection
5 (11)(f) that is signed by a local health department representative
6 is presumed valid. The presumption created by this subsection may
7 be rebutted by evidence that establishes, by a preponderance of the
8 evidence, that the physician who relied upon the certification had
9 actual knowledge that the certificate contained a false or
10 misleading statement or signature.

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

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

14 (17) If any portion of this act or the application of this act
15 to any person or circumstances is found invalid by a court, that
16 invalidity does not affect the remaining portions or applications
17 of the act that can be given effect without the invalid portion or
18 application, if those remaining portions are not determined by the
19 court to be inoperable.

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

22 (a) Provide a pregnancy test for that patient to confirm the
23 pregnancy as required under subsection (3)(a) and determine the
24 probable gestational stage of the fetus. The local health
25 department need not comply with this subdivision if the
26 requirements of subsection (3)(a) have already been met.

27 (b) If a pregnancy is confirmed, ensure that the patient is

1 provided with a completed pregnancy certification form described in
2 subsection (11)(f) at the time the information is provided.

3 (19) The identity and address of a patient who is provided
4 information or who consents to an abortion pursuant to this section
5 is confidential and is subject to disclosure only with the consent
6 of the patient or by judicial process.

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

11 (a) Only release the identity and address of the patient to a
12 physician or qualified person assisting the physician in order to
13 verify the receipt of the information required under this section.

14 (b) Destroy the information containing the identity and
15 address of the patient within 30 days after assisting the patient
16 under this section.

17 Enacting section 1. This amendatory act takes effect October
18 1, 2006.

19 Enacting section 2. This amendatory act does not take effect
20 unless all of the following bills of the 93rd Legislature are
21 enacted into law:

22 (a) House Bill No. 5880.

23 (b) House Bill No. 5881.

24 (c) House Bill No. 5882.

25 (d) House Bill No. 5883.