

HOUSE BILL No. 6227

June 1, 2010, Introduced by Reps. Haines, Rick Jones, Agema, Lund, Calley, Pearce and Opsommer and referred to the Committee on Health Policy.

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:

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

1 birth, or to remove a dead fetus. Abortion does not include the use
2 or prescription of a drug or device intended as a contraceptive.

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

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

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

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

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

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

1 be performed.

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

8 (i) In person.

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

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

12 (iv) By facsimile transmission.

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

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

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

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

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

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

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

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

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

20 (4) The requirements of subsection (3) may be fulfilled by the
21 physician or a qualified person assisting the physician at a
22 location other than the health facility where the abortion is to be
23 performed. The requirement of subsection (3)(a) that a patient's
24 pregnancy be confirmed may be fulfilled by a local health
25 department under subsection (18). The requirements of subsection
26 (3) cannot be fulfilled by the patient accessing an internet
27 website other than the internet website described in subsection (5)

1 that is maintained through the department.

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

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

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

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

25 (i) The specific risk, if any, to the patient of the
26 complications that have been associated with the procedure the
27 patient will undergo, based on the patient's particular medical

1 condition and history as determined by the physician.

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

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

9 (8) If at any time prior to the performance of an abortion, a
10 patient undergoes an ultrasound examination, or a physician
11 determines that ultrasound imaging will be used during the course
12 of a patient's abortion, the physician or qualified person
13 assisting the physician shall provide the patient with the
14 opportunity to view or decline to view an active ultrasound image
15 of the fetus, and offer to provide the patient with a physical
16 picture of the ultrasound image of the fetus prior to the
17 performance of the abortion. **IN COMPLYING WITH THIS SUBSECTION, THE**
18 **PHYSICIAN OR PERSON ASSISTING THE PHYSICIAN SHALL ENSURE THAT THE**
19 **MOST TECHNOLOGICALLY ADVANCED ULTRASOUND EQUIPMENT AVAILABLE AT**
20 **THAT LOCATION IS USED FOR THE ULTRASOUND EXAMINATION, FOR VIEWING**
21 **AN ACTIVE ULTRASOUND IMAGE, AND FOR CREATING THE PHYSICAL PICTURE**
22 **OF THE ULTRASOUND IMAGE.** Before performing an abortion on a patient
23 who is a pregnant woman, a physician or a qualified person
24 assisting the physician shall do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 in a peer review medical journal, with particular attention paid to
2 the design of the study, and shall consult with the federal centers
3 for disease control **AND PREVENTION**, the American college ~~CONGRESS~~
4 of obstetricians and gynecologists, the Michigan state medical
5 society, or any other source that the department determines
6 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, _____ , hereby authorize Dr.

4 _____ ("the physician") and any assistant designated
5 by the physician to perform upon me the following operation(s) or
6 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 acknowledge that at least 24 hours before the
15 scheduled abortion I have received a physical copy of each of the
16 following:

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

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

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

27 (i) The specific risk to me, if any, of the complications that

1 have been associated with the procedure I am scheduled to undergo.

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

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

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

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

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

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

27 (e) The department shall not develop written summaries for

1 abortion procedures under subdivision (b) that utilize medication
2 that has not been approved by the United States food and drug
3 administration for use in performing an abortion.

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

8 (g) Develop and maintain an internet website that allows a
9 patient considering an abortion to review the information required
10 in subsection (3)(c) through (e). After the patient reviews the
11 required information, the department shall assure that a
12 confirmation form can be printed by the patient from the internet
13 website that will verify the time and date the information was
14 reviewed. A confirmation form printed under this subdivision
15 becomes invalid 14 days after the date and time printed on the
16 confirmation form.

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

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

27 (13) A written consent form meeting the requirements set forth

1 in this section and signed by the patient is presumed valid. The
2 presumption created by this subsection may be rebutted by evidence
3 that establishes, by a preponderance of the evidence, that consent
4 was obtained through fraud, negligence, deception,
5 misrepresentation, coercion, or duress.

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

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

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

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

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

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

1 requirements of subsection (3)(a) have already been met.

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

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

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

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

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