

# SENATE BILL No. 1283

April 22, 2010, Introduced by Senators KUIPERS, CROPSEY, BROWN, JANSEN and GLEASON and referred to the Committee on Judiciary.

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.