

HOUSE BILL No. 5343

February 2, 2012, Introduced by Reps. Kowall, Tyler, MacGregor, Genetski, Franz, Price, Zorn, Hooker, Yonker, Haveman, Heise, McMillin, Callton, Kurtz, Potvin, Pscholka, Horn, Somerville, Lund, LaFontaine, Denby, Olson, Goike, Outman, Johnson, Muxlow, Jacobsen, Haines, Rogers, Bumstead, Damrow, LeBlanc, Darany, Brunner, Knollenberg, Crawford, Poleski, O'Brien, Moss, Huuki, MacMaster, Glardon, Liss, Roy Schmidt, Opsommer, Daley, Gilbert, Pettalia, Lori and Lyons 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 section 324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(A) THERE IS SUBSTANTIAL MEDICAL EVIDENCE THAT AN UNBORN CHILD
IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS AFTER FERTILIZATION,
INCLUDING ALL OF THE FOLLOWING:

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

(ii) THAT PAIN PERCEPTION IN ADULTS IS ASSOCIATED WITH
STIMULATION OR ABLATION OF THE THALAMUS, RATHER THAN THE CEREBRAL
CORTEX. THE LEVEL OF FUNCTIONING IN THE CEREBRAL CORTEX OF ADULTS,

1 HYDRANENCEPHALIC CHILDREN BORN WITH LITTLE OR NO CEREBRAL CORTEX,
2 OR THE UNBORN CHILD BY 20 WEEKS' DEVELOPMENT IS NOT RECOGNIZED AS
3 NECESSARY TO EXPERIENCING PAIN.

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

8 (iv) FOR PURPOSES OF SURGERY ON UNBORN CHILDREN, FETAL
9 ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A
10 DECREASE IN STRESS HORMONES COMPARED TO WHEN ANESTHESIA IS NOT
11 ADMINISTERED. ANESTHESIA IS ALSO REQUIRED TO PREVENT A THRASHING
12 REACTION BY THE UNBORN CHILD TO ANY INVASIVE PROCEDURE PERFORMED
13 UPON THE CHILD.

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

18 (i) A CONTINUOUSLY EXISTING AND ENFORCEABLE, OR PARTIALLY
19 ENFORCEABLE, CRIMINAL PROHIBITION ON ABORTION, EXCEPT TO PRESERVE
20 THE LIFE OF THE MOTHER, DATING FROM 1846 TO THE PRESENT.

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

25 (iii) A STATUTE PROVIDING AN OFFICIAL STATE CERTIFICATE OF
26 STILLBIRTH TO FAMILIES EXPERIENCING A STILLBIRTH AT 20 OR MORE
27 WEEKS OF PREGNANCY.

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

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

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

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

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

18 (i) A PROHIBITION AGAINST CRUEL OR UNUSUAL PUNISHMENT OF
19 CONVICTED CRIMINALS.

20 (ii) A SPECIFIC STATUTORY PROHIBITION AGAINST TORTURE.

21 (iii) A STATUTORY PROHIBITION AGAINST CRUELTY TO ANIMALS AND
22 ANIMAL FIGHTS AND A STATUTORY PRESCRIPTION FOR HUMANE METHODS OF
23 LIVESTOCK SLAUGHTER FOR FOOD PRODUCTION.

24 (D) IN LIGHT OF THE CURRENT STATE OF SCIENTIFIC AND MEDICAL
25 KNOWLEDGE, AND IN CONSIDERATION OF THIS STATE'S MULTITUDE OF
26 POLICIES THAT PROTECT UNBORN CHILDREN AND PROHIBIT PAIN-INFLECTING
27 ACTIVITIES, THIS STATE ASSERTS A COMPELLING STATE INTEREST IN

1 PROTECTING THE LIVES OF UNBORN CHILDREN CAPABLE OF EXPERIENCING
2 PAIN IN THE SAME MANNER AS A NEWBORN CHILD OR AN ADULT. THIS
3 COMPELLING STATE INTEREST IS INDEPENDENT AND SEPARATE FROM THE
4 STATE'S INTEREST IN PROTECTING THE LIVES OR OTHER INDIVIDUAL
5 INTERESTS OF UNBORN CHILDREN AT ANY OTHER STAGE OF PREGNANCY.

6 (2) AS USED IN THIS SECTION:

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

9 (B) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOON
10 WITH A HUMAN OVUM.

11 (C) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS
12 OF A PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE
13 MEDICAL CONDITION OF A PREGNANT INDIVIDUAL AS TO NECESSITATE THE
14 IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR
15 NECESSITATES IMMEDIATE TREATMENT OF A PHYSICAL DISORDER, PHYSICAL
16 ILLNESS, OR PHYSICAL INJURY IN A HOSPITAL OR OTHER EMERGENCY CARE
17 FACILITY, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS. A
18 MEDICAL EMERGENCY DOES NOT INCLUDE A CONDITION THAT IS BASED ON A
19 CLAIM OR DIAGNOSIS THAT THE PREGNANT INDIVIDUAL WILL ENGAGE IN
20 CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH.

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

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

27 (3) PRIOR TO PERFORMING AN ABORTION, A PHYSICIAN SHALL MAKE A

1 DETERMINATION OF THE PROBABLE POSTFERTILIZATION AGE OF THE UNBORN
2 CHILD CONSISTENT WITH THE ACCEPTED STANDARD OF CARE FOR MAKING THAT
3 DETERMINATION, EXCEPT IN THE CASE OF A MEDICAL EMERGENCY.

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

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

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

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

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

17 (9) THIS ACT SHALL NOT BE CONSTRUED TO REPEAL BY IMPLICATION
18 OR OTHERWISE, OR IMPAIR ANY FUTURE ENFORCEMENT OF, SECTION 14, 15,
19 322, OR 323, OR ANY OTHER PROVISION OF LAW REGULATING OR
20 RESTRICTING ABORTION.

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