

SENATE BILL No. 150

February 16, 2011, Introduced by Senator MEEKHOF 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)~~ **(G)** 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) "MOST TECHNOLOGICALLY ADVANCED ULTRASOUND EQUIPMENT**
20 **AVAILABLE AT THAT LOCATION" MEANS ULTRASOUND IMAGING EQUIPMENT THAT**
21 **MEETS BOTH OF THE FOLLOWING REQUIREMENTS:**

22 **(i) IS CAPABLE OF PROVIDING THE MOST VISIBLY CLEAR IMAGE OF THE**
23 **GROSS ANATOMICAL DEVELOPMENT OF THE FETUS.**

24 **(ii) IS PRESENT IN THE CLINICAL AREA WITHIN A BUILDING WHERE**
25 **THE PATIENT COUNSELING, PREOPERATIVE PROCEDURES, AND ABORTION ARE**
26 **TO BE PERFORMED AND THAT IS UNDER THE SUPERVISION AND DISCRETION OF**
27 **THE ATTENDING PHYSICIAN OR QUALIFIED PERSON ASSISTING THE PHYSICIAN**

1 TO UTILIZE FOR DIAGNOSTIC OR OPERATIVE PURPOSES.

2 (G) ~~(f)~~—"Qualified person assisting the physician" means
3 another physician or a physician's assistant licensed under this
4 part or part 175, a fully licensed or limited licensed psychologist
5 licensed under part 182, a professional counselor licensed under
6 part 181, a registered professional nurse or a licensed practical
7 nurse licensed under part 172, or a social worker licensed under
8 part 185.

9 (H) ~~(g)~~—"Probable gestational age of the fetus" means the
10 gestational age of the fetus at the time an abortion is planned to
11 be performed.

12 (I) ~~(h)~~—"Provide the patient with a physical copy" means
13 confirming that the patient accessed the internet website described
14 in subsection (5) and received a printed valid confirmation form
15 from the website and including that form in the patient's medical
16 record or giving a patient a copy of a required document by 1 or
17 more of the following means:

18 (i) In person.

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

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

22 (iv) By facsimile transmission.

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

27 (a) Confirm that, according to the best medical judgment of a

1 physician, the patient is pregnant, and determine the probable
2 gestational age of the fetus.

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

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

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

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

11 (c) Provide the patient with a physical copy of the written
12 summary described in subsection (11)(b) that corresponds to the
13 procedure the patient will undergo and is provided by the
14 department of community health. If the procedure has not been
15 recognized by the department, but is otherwise allowed under
16 Michigan law, and the department has not provided a written summary
17 for that procedure, the physician shall develop and provide a
18 written summary that describes the procedure, any known risks or
19 complications of the procedure, and risks associated with live
20 birth and meets the requirements of subsection (11)(b)(iii) through
21 (vii).

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

27 (e) Provide the patient with a physical copy of the prenatal

1 care and parenting information pamphlet distributed by the
2 department of community health under section 9161.

3 (4) The requirements of subsection (3) may be fulfilled by the
4 physician or a qualified person assisting the physician at a
5 location other than the health facility where the abortion is to be
6 performed. The requirement of subsection (3)(a) that a patient's
7 pregnancy be confirmed may be fulfilled by a local health
8 department under subsection (18). The requirements of subsection
9 (3) cannot be fulfilled by the patient accessing an internet
10 website other than the internet website described in subsection (5)
11 that is maintained through the department.

12 (5) The requirements of subsection (3)(c) through (e) may be
13 fulfilled by a patient accessing the internet website maintained
14 and operated through the department and receiving a printed, valid
15 confirmation form from the website that the patient has reviewed
16 the information required in subsection (3)(c) through (e) at least
17 24 hours before an abortion being performed on the patient. The
18 website shall not require any information be supplied by the
19 patient. The department shall not track, compile, or otherwise keep
20 a record of information that would identify a patient who accesses
21 this website. The patient shall supply the valid confirmation form
22 to the physician or qualified person assisting the physician to be
23 included in the patient's medical record to comply with this
24 subsection.

25 (6) Subject to subsection (10), before obtaining the patient's
26 signature on the acknowledgment and consent form, a physician
27 personally and in the presence of the patient shall do all of the

1 following:

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

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

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

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

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

19 (8) If at any time ~~prior to~~ **BEFORE** the performance of an
20 abortion, a patient undergoes an ultrasound examination, or a
21 physician determines that ultrasound imaging will be used during
22 the course of a patient's abortion, the physician or qualified
23 person assisting the physician shall provide the patient with the
24 opportunity to view or decline to view an active ultrasound image
25 of the fetus, and offer to provide the patient with a physical
26 picture of the ultrasound image of the fetus ~~prior to the~~
27 ~~performance of the abortion.~~ **BEFORE THE PATIENT SIGNS THE**

1 ACKNOWLEDGMENT AND CONSENT FORM DESCRIBED IN SUBSECTION (11)(C) AND
2 BEFORE ANY PREOPERATIVE SEDATIVE OR ANESTHETIC MEDICATIONS ARE
3 ADMINISTERED TO THE PATIENT. IN COMPLYING WITH THIS SUBSECTION, THE
4 PHYSICIAN OR QUALIFIED PERSON ASSISTING THE PHYSICIAN SHALL ENSURE
5 THAT THE MOST TECHNOLOGICALLY ADVANCED ULTRASOUND EQUIPMENT
6 AVAILABLE AT THAT LOCATION IS USED FOR THE ULTRASOUND EXAMINATION,
7 FOR THE PATIENT'S VIEWING AN ACTIVE ULTRASOUND IMAGE, AND FOR
8 CREATING THE PHYSICAL PICTURE OF THE ULTRASOUND IMAGE AND THAT THE
9 ULTRASOUND IMAGE OF THE FETUS IS OF A QUALITY CONSISTENT WITH THE
10 CURRENT MEDICAL STANDARD OF CARE FOR PRENATAL DIAGNOSTIC PURPOSES
11 GIVEN THE PATIENT'S GESTATIONAL STAGE OF PREGNANCY AND THE
12 EQUIPMENT USED. HOWEVER, IF, IN THE BEST MEDICAL JUDGMENT OF THE
13 PHYSICIAN, THE USE OF THE MOST TECHNOLOGICALLY ADVANCED ULTRASOUND
14 EQUIPMENT AVAILABLE AT THAT LOCATION WOULD JEOPARDIZE THE PATIENT'S
15 PHYSICAL HEALTH OR OTHERWISE HARM THE BEST INTERESTS OF THE PATIENT
16 OR THE FETUS, OR BOTH, THE PHYSICIAN OR QUALIFIED PERSON ASSISTING
17 THE PHYSICIAN MAY USE ALTERNATIVE ULTRASOUND EQUIPMENT. Before
18 performing an abortion on a patient who is a pregnant woman, a
19 physician or a qualified person assisting the physician shall do
20 all of the following:

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

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

26 (c) Retain a copy of the signed acknowledgment and consent
27 form described in subsection (11)(c) and, if applicable, a copy of

1 the pregnancy certification form completed under subsection
2 (18)(b), in the patient's medical record.

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

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

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

19 (10) If the attending physician, utilizing his or her
20 experience, judgment, and professional competence, determines that
21 a medical emergency exists and necessitates performance of an
22 abortion before the requirements of subsections (1), (3), and (6)
23 can be met, the physician is exempt from the requirements of
24 subsections (1), (3), and (6), may perform the abortion, and shall
25 maintain a written record identifying with specificity the medical
26 factors upon which the determination of the medical emergency is
27 based.

1 (11) The department of community health shall do each of the
2 following:

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

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

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

18 (ii) Identify the physical complications that have been
19 associated with each procedure described in subparagraph (i) and
20 with live birth, as determined by the department. In identifying
21 these complications, the department shall consider the annual
22 statistical report required under section ~~2835(6)~~ **2835**, and shall
23 consider studies concerning complications that have been published
24 in a peer review medical journal, with particular attention paid to
25 the design of the study, and shall consult with the federal centers
26 for disease control **AND PREVENTION**, the American ~~college~~ **CONGRESS**
27 of obstetricians and gynecologists, the Michigan state medical

society, or any other source that the department determines appropriate for the purpose.

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

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

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

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

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

(c) Develop, draft, and print, in nontechnical English, Arabic, and Spanish, an acknowledgment and consent form that includes only the following language above a signature line for the patient:

"I, _____, hereby authorize Dr.

_____ ("the physician") and any assistant designated

1 by the physician to perform upon me the following operation(s) or
2 procedure(s) :

3

4 _____
(Name of operation(s) or procedure(s))

5 _____

6 **A.** I understand that I am approximately _____ weeks pregnant.
7 I consent to an abortion procedure to terminate my pregnancy. I
8 understand that I have the right to withdraw my consent to the
9 abortion procedure at any time prior to performance of that
10 procedure.

11 **B.** I acknowledge that at least 24 hours before the scheduled
12 abortion I have received a physical copy of each of the following:

13 1. ~~(a)~~ A medically accurate depiction, illustration, or
14 photograph of a fetus at the probable gestational age of the fetus
15 I am carrying.

16 2. ~~(b)~~ A written description of the medical procedure that
17 will be used to perform the abortion.

18 3. ~~(c)~~ A prenatal care and parenting information pamphlet. If
19 any of the above listed documents were transmitted by facsimile, I
20 certify that the documents were clear and legible.

21 **C.** I acknowledge that the physician who will perform the
22 abortion has orally described all of the following to me:

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

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

1 D. I acknowledge that I have received all of the following
2 information:

3 1. ~~(d)~~—Information about what to do and whom to contact in the
4 event that complications arise from the abortion.

5 2. ~~(e)~~—Information pertaining to available pregnancy related
6 services.

7 E. I ACKNOWLEDGE THAT THE PHYSICIAN OR QUALIFIED PERSON
8 ASSISTING THE PHYSICIAN HAS INFORMED ME OF THE FOLLOWING [SELECT 1
9 OF THE FOLLOWING BY PLACING YOUR INITIALS AFTER THE APPLICABLE
10 SENTENCE]:

11 1. AN ULTRASOUND EXAMINATION OR IMAGING WILL BE PERFORMED
12 BEFORE OR USED DURING THE ABORTION. _____

13 2. AN ULTRASOUND EXAMINATION OR IMAGING WILL NOT BE PERFORMED
14 BEFORE OR USED DURING THE ABORTION. _____

15 F. IF I HAVE SELECTED PARAGRAPH E1 ABOVE INDICATING THAT AN
16 ULTRASOUND EXAMINATION OR IMAGING WILL BE PERFORMED BEFORE OR USED
17 DURING THE ABORTION, I ACKNOWLEDGE THAT THE PHYSICIAN OR QUALIFIED
18 PERSON ASSISTING THE PHYSICIAN HAS DONE ALL OF THE FOLLOWING:

19 1. PROVIDED ME WITH AN OPPORTUNITY TO VIEW OR DECLINE TO VIEW
20 AN ACTIVE ULTRASOUND IMAGE OF THE FETUS.

21 2. OFFERED TO PROVIDE ME WITH A PHYSICAL PICTURE OF THE
22 ULTRASOUND IMAGE OF THE FETUS.

23 3. OFFERED AN EXPLANATION OF THE ULTRASOUND IMAGE OF THE
24 FETUS.

25 G. I have been given an opportunity to ask questions about the
26 operation(s) or procedure(s). I certify that I have not been
27 required to make any payments for an abortion or any medical

1 service before the expiration of 24 hours after I received the
2 written materials listed in ~~paragraphs (a), (b), and (c)~~ **PARAGRAPH**
3 **B** above, or 24 hours after the time and date listed on the
4 confirmation form if ~~paragraphs (a), (b), and (c) were~~ **THE**
5 **INFORMATION DESCRIBED IN PARAGRAPH B WAS** viewed from the state of
6 Michigan internet website.".

7 (d) Make available to physicians through the Michigan board of
8 medicine and the Michigan board of osteopathic medicine and
9 surgery, and any person upon request the copies of medically
10 accurate depictions, illustrations, or photographs described in
11 subdivision (a), the standardized written summaries described in
12 subdivision (b), the acknowledgment and consent form described in
13 subdivision (c), the prenatal care and parenting information
14 pamphlet described in section 9161, and the pregnancy certification
15 form described in subdivision (f).

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

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

24 (g) Develop and maintain an internet website that allows a
25 patient considering an abortion to review the information required
26 in subsection (3)(c) through (e). After the patient reviews the
27 required information, the department shall assure that a

1 confirmation form can be printed by the patient from the internet
2 website that will verify the time and date the information was
3 reviewed. A confirmation form printed under this subdivision
4 becomes invalid 14 days after the date and time printed on the
5 confirmation form.

6 (h) Include on the informed consent website developed under
7 subdivision (g) a list of health care providers, facilities, and
8 clinics that offer to perform ultrasounds free of charge. The list
9 shall be organized geographically and shall include the name,
10 address, and telephone number of each health care provider,
11 facility, and clinic.

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

16 (13) A written consent form meeting the requirements set forth
17 in this section and signed by the patient is presumed valid. The
18 presumption created by this subsection may be rebutted by evidence
19 that establishes, by a preponderance of the evidence, that consent
20 was obtained through fraud, negligence, deception,
21 misrepresentation, coercion, or duress.

22 (14) A completed certification form described in subsection
23 (11)(f) that is signed by a local health department representative
24 is presumed valid. The presumption created by this subsection may
25 be rebutted by evidence that establishes, by a preponderance of the
26 evidence, that the physician who relied upon the certification had
27 actual knowledge that the certificate contained a false or

1 misleading statement or signature.

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

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

5 (17) If any portion of this act or the application of this act
6 to any person or circumstances is found invalid by a court, that
7 invalidity does not affect the remaining portions or applications
8 of the act that can be given effect without the invalid portion or
9 application, if those remaining portions are not determined by the
10 court to be inoperable.

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

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

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

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

25 (20) A local health department with a file containing the
26 identity and address of a patient described in subsection (19) who
27 has been assisted by the local health department under this section

1 shall do both of the following:

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

5 (b) Destroy the information containing the identity and
6 address of the patient within 30 days after assisting the patient
7 under this section.