

HOUSE BILL NO. 5374

January 22, 2020, Introduced by Reps. Griffin, Hoitenga, Lightner, VanWoerkom, Frederick, Kahle, Steven Johnson, Maddock, Markkanen, Reilly, Wozniak, Green, Wakeman, Mueller, Howell, Bollin, Whiteford, VanSingel, Bellino, O'Malley, Rendon, Allor, Lilly, Paquette, Brann, Slagh, Wentworth, Filler, Calley, Farrington and Schroeder and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17015 (MCL 333.17015), as amended by 2012 PA
499.

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



1 coercion to abort.

2 (2) For purposes of this section and section 17015a:

3 (a) "Abortion" means the intentional use of an instrument,
4 drug, or other substance or device to terminate a woman's pregnancy
5 for a purpose other than to increase the probability of a live
6 birth, to preserve the life or health of the child after live
7 birth, or to remove a fetus that has died as a result of natural
8 causes, accidental trauma, or a criminal assault on the pregnant
9 woman. Abortion does not include ~~the~~ **any of the following:**

10 (i) **The** use or prescription of a drug or device intended as a
11 contraceptive.

12 (ii) **Any medical treatment that is provided to a woman who is**
13 **experiencing a miscarriage or has been diagnosed with an ectopic**
14 **pregnancy.**

15 (b) "Coercion to abort" means an act committed with the intent
16 to coerce an individual to have an abortion, ~~which act is as~~
17 prohibited by section 213a of the Michigan penal code, 1931 PA 328,
18 MCL 750.213a.

19 (c) "Domestic violence" means that term as defined in section
20 1 of 1978 PA 389, MCL 400.1501.

21 (d) "Fetus" means an individual organism of the species ~~homo~~
22 ~~sapiens~~ **Homo sapiens** in utero.

23 (e) "Local health department representative" means a person
24 who meets 1 or more of the licensing requirements listed in
25 subdivision (h) and who is employed by, or under contract to
26 provide services on behalf of, a local health department.

27 (f) "Medical emergency" means ~~that a condition which, that,~~ on
28 the basis of the physician's ~~good faith~~ **good-faith** clinical
29 judgment, so complicates the medical condition of a pregnant woman



1 as to necessitate the immediate abortion of her pregnancy to avert
2 her death or for which a delay will create serious risk of
3 substantial and irreversible impairment of a major bodily function.

4 (g) "Medical service" means the provision of a treatment,
5 procedure, medication, examination, diagnostic test, assessment, or
6 counseling, including, but not limited to, a pregnancy test,
7 ultrasound, pelvic examination, or an abortion.

8 (h) "Qualified person assisting the physician" means another
9 physician or a physician's assistant licensed under this part or
10 part 175, a fully licensed or limited licensed psychologist
11 licensed under part 182, a professional counselor licensed under
12 part 181, a registered professional nurse or a licensed practical
13 nurse licensed under part 172, or a social worker licensed under
14 part 185.

15 (i) "Probable gestational age of the fetus" means the
16 gestational age of the fetus at the time an abortion is planned to
17 be performed.

18 (j) "Provide the patient with a physical copy" means
19 confirming that the patient accessed the internet website described
20 in subsection (5) and received a printed valid confirmation form
21 from the website and including that form in the patient's medical
22 record or giving a patient a copy of a required document by 1 or
23 more of the following means:

24 (i) In person.

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

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

28 (iv) By facsimile transmission.

29 (3) Subject to subsection (10), a physician or a qualified



1 person assisting the physician shall do all of the following not
2 less than 24 hours before that physician performs an abortion upon
3 a patient who is a pregnant woman:

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

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

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

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

13 (iii) Information about how to obtain pregnancy prevention
14 information through the department of ~~community~~ **health and human**
15 **services**.

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

28 (d) Provide the patient with a physical copy of a medically
29 accurate depiction, illustration, or photograph and description of



1 a fetus supplied by the department of ~~community health pursuant to~~
 2 **and human services under** subsection (11) (a) at the gestational age
 3 nearest the probable gestational age of the patient's fetus.

4 (e) Provide the patient with a physical copy of the prenatal
 5 care and parenting information pamphlet distributed by the
 6 department of ~~community health~~ **and human services** under section
 7 9161.

8 (f) Provide the patient with a physical copy of the
 9 prescreening summary on prevention of coercion to abort described
 10 in subsection (11) (i).

11 (4) The requirements of subsection (3) may be fulfilled by the
 12 physician or a qualified person assisting the physician at a
 13 location other than the health facility where the abortion is to be
 14 performed. The requirement of subsection (3) (a) that a patient's
 15 pregnancy be confirmed may be fulfilled by a local health
 16 department under subsection (18). The requirements of subsection
 17 (3) cannot be fulfilled by the patient accessing an internet
 18 website other than the internet website that is maintained and
 19 operated by the department **of health and human services** under
 20 subsection (11) (g).

21 (5) The requirements of subsection (3) (c) ~~through to~~ (f) may
 22 be fulfilled by a patient accessing the internet website that is
 23 maintained and operated by the department **of health and human**
 24 **services** under subsection (11) (g) and receiving a printed, valid
 25 confirmation form from the website that the patient has reviewed
 26 the information required in subsection (3) (c) ~~through to~~ (f) at
 27 least 24 hours before an abortion being performed on the patient.
 28 The website ~~shall~~ **must** not require any information be supplied by
 29 the patient. The department **of health and human services** shall not



1 track, compile, or otherwise keep a record of information that
2 would identify a patient who accesses this website. The patient
3 shall supply the valid confirmation form to the physician or
4 qualified person assisting the physician to be included in the
5 patient's medical record to comply with this subsection.

6 (6) Subject to subsection (10), before obtaining the patient's
7 signature on the acknowledgment and consent form **described in**
8 **section (11) (c)**, a physician personally and in the presence of the
9 patient shall do all of the following:

10 (a) Provide the patient with the physician's name, confirm
11 with the patient that the coercion to abort screening required
12 under section 17015a was performed, and inform the patient of her
13 right to withhold or withdraw her consent to the abortion at any
14 time before **the** performance of the abortion.

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

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

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

26 (iii) **If the patient will undergo a procedure that utilizes the**
27 **drugs known as mifepristone and misoprostol, information about the**
28 **existence of treatment to reverse the effects of mifepristone**
29 **before ingesting misoprostol to increase the possibility of**



1 **maintaining the pregnancy if the patient changes her mind about**
2 **terminating the pregnancy.**

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

6 (8) If at any time before the performance of an abortion, a
7 patient undergoes an ultrasound examination, or a physician
8 determines that ultrasound imaging will be used during the course
9 of a patient's abortion, the physician or qualified person
10 assisting the physician shall provide the patient with the
11 opportunity to view or decline to view an active ultrasound image
12 of the fetus, and offer to provide the patient with a physical
13 picture of the ultrasound image of the fetus before the performance
14 of the abortion. After the expiration of the 24-hour period
15 prescribed under subsection (3) but before performing an abortion
16 on a patient who is a pregnant woman, a physician or a qualified
17 person assisting the physician shall do all of the following:

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

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

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

27 (9) This subsection does not prohibit notifying the patient
28 that payment for medical services will be required or that
29 collection of payment in full for all medical services provided or



1 planned may be demanded after the 24-hour period described in this
2 subsection has expired. A physician or an agent of the physician
3 shall not collect payment, in whole or in part, for a medical
4 service provided to or planned for a patient before the expiration
5 of 24 hours from the time the patient has done either or both of
6 the following, except in the case of a physician or an agent of a
7 physician receiving capitated payments or under a salary
8 arrangement for providing those medical services:

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

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

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

23 (11) The department of ~~community health~~ **and human services**
24 shall do each of the following:

25 (a) Produce medically accurate depictions, illustrations, or
26 photographs of the development of a human fetus that indicate by
27 scale the actual size of the fetus at 2-week intervals from the
28 fourth week through the twenty-eighth week of gestation. Each
29 depiction, illustration, or photograph ~~shall~~ **must** be accompanied by



1 a printed description, in nontechnical English, Arabic, and
2 Spanish, of the probable anatomical and physiological
3 characteristics of the fetus at that particular state of
4 gestational development.

5 (b) Subject to subdivision (e), develop, draft, and print, in
6 nontechnical English, Arabic, and Spanish, written standardized
7 summaries, based upon the various medical procedures used to abort
8 pregnancies, that do each of the following:

9 (i) Describe, individually and on separate documents, those
10 medical procedures used to perform abortions in this state that are
11 recognized by the department **of health and human services**.

12 (ii) Identify the physical complications that have been
13 associated with each procedure described in subparagraph (i) and
14 with live birth, as determined by the department **of health and**
15 **human services**. In identifying these complications, the department
16 **of health and human services** shall consider the annual statistical
17 report required under section 2835, and shall consider studies
18 concerning complications that have been published in a peer review
19 medical journal, with particular attention paid to the design of
20 the study, and shall consult with the federal ~~centers~~**Centers** for
21 ~~disease control~~**Disease Control** and ~~prevention~~**Prevention**, the
22 American ~~congress~~**Congress** of ~~obstetricians~~**Obstetricians** and
23 ~~gynecologists~~**Gynecologists**, the Michigan ~~state medical society~~**,**
24 **State Medical Society**, or any other source that the department **of**
25 **health and human services** determines appropriate for the purpose.

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



1 recommended.

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

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

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

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

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

20 "I, _____ , voluntarily and willfully
21 hereby authorize Dr. _____ ("the physician") and any
22 assistant designated by the physician to perform upon me the
23 following operation(s) or procedure(s):

24 _____
25 (Name of operation(s) or procedure(s))

26 _____

27 A. I understand that I am approximately _____ weeks pregnant.
28 I consent to an abortion procedure to terminate my pregnancy. I
29 understand that I have the right to withdraw my consent to the

1 abortion procedure at any time before performance of that
2 procedure.

3 B. I understand that it is illegal for anyone to coerce me
4 into seeking an abortion.

5 C. I acknowledge that at least 24 hours before the scheduled
6 abortion I have received a physical copy of each of the following:

7 1. A medically accurate depiction, illustration, or photograph
8 of a fetus at the probable gestational age of the fetus I am
9 carrying.

10 2. A written description of the medical procedure that will be
11 used to perform the abortion.

12 3. A prenatal care and parenting information pamphlet.

13 D. If any of the documents listed in paragraph C were
14 transmitted by facsimile, I certify that the documents were clear
15 and legible.

16 E. I acknowledge that the physician who will perform the
17 abortion has orally described all of the following to me:

18 1. The specific risk to me, if any, of the complications that
19 have been associated with the procedure I am scheduled to undergo.

20 2. The specific risk to me, if any, of the complications if I
21 choose to continue the pregnancy.

22 F. I acknowledge that I have received all of the following
23 information:

24 1. Information about what to do and whom to contact in the
25 event that complications arise from the abortion.

26 2. Information pertaining to available pregnancy related
27 services.

28 G. I have been given an opportunity to ask questions about the
29 operation(s) or procedure(s).



1 H. I certify that I have not been required to make any
 2 payments for an abortion or any medical service before the
 3 expiration of 24 hours after I received the written materials
 4 listed in paragraph C, or 24 hours after the time and date listed
 5 on the confirmation form if the information described in paragraph
 6 C was viewed from the state of Michigan internet ~~website.~~ **website.**

7 **I. If an ultrasound procedure was performed upon me, I certify**
 8 **that I was offered the opportunity to view, or decline to view, an**
 9 **active ultrasound image of the fetus or receive a physical picture**
 10 **of the ultrasound image of the fetus that I am carrying.**

11 **J. If I am undergoing a procedure that utilizes the drugs**
 12 **known as mifepristone and misoprostol, I have been informed about**
 13 **the existence of treatment to reverse the effects of mifepristone**
 14 **before ingesting misoprostol to increase the possibility of**
 15 **maintaining my pregnancy if I change my mind about terminating the**
 16 **pregnancy."**

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

27 (e) ~~The department shall not develop~~ **In developing the** written
 28 standardized summaries for abortion procedures under subdivision
 29 (b), ~~that utilize~~ **include in the summaries only** medication that has



1 not been approved by the United States ~~food~~**Food** and ~~drug~~
 2 ~~administration~~**Drug Administration** for use in performing an
 3 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, operate, and maintain an internet website that
 9 allows a patient considering an abortion to review the information
 10 required in subsection (3)(c) ~~through~~**to** (f). After the patient
 11 reviews the required information, the department **of health and**
 12 **human services** shall ~~assure~~**ensure** that a confirmation form can be
 13 printed by the patient from the internet website that will verify
 14 the time and date the information was reviewed. A confirmation form
 15 printed under this subdivision becomes invalid 14 days after the
 16 date and time printed on the confirmation form.

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

23 (i) After considering the standards and recommendations of the
 24 ~~joint commission~~**Joint Commission** on ~~accreditation~~**Accreditation** of
 25 ~~healthcare organizations,~~**Healthcare Organizations**, the Michigan
 26 ~~domestic~~**Domestic** and ~~sexual violence prevention~~**Sexual Violence**
 27 **Prevention** and ~~treatment board,~~**Treatment Board**, the Michigan
 28 ~~coalition~~**Coalition** to end domestic ~~and sexual~~**End Domestic** and ~~sexual~~
 29 ~~violence~~**Sexual Violence** or successor organization, and the



1 American ~~medical association,~~ **Medical Association**, do all of the
2 following:

3 (i) Develop, draft, and print or make available in printable
4 format, in nontechnical English, Arabic, and Spanish, a notice that
5 is required to be posted in facilities and clinics under section
6 17015a. The notice ~~shall~~**must** be at least 8-1/2 inches by 14
7 inches, ~~shall~~**must** be printed in at least 44-point type, and ~~shall~~
8 **must** contain at a minimum all of the following:

9 (A) A statement that it is illegal under Michigan law to
10 coerce a woman to have an abortion.

11 (B) A statement that help is available if a woman is being
12 threatened or intimidated; is being physically, emotionally, or
13 sexually harmed; or feels afraid for any reason.

14 (C) The telephone number of at least 1 domestic violence
15 hotline and 1 sexual assault hotline.

16 (ii) Develop, draft, and print or make available in printable
17 format, in nontechnical English, Arabic, and Spanish, a
18 prescreening summary on prevention of coercion to abort that, at a
19 minimum, contains the information required under subparagraph (i)
20 and notifies the patient that an oral screening for coercion to
21 abort will be conducted before her giving written consent to obtain
22 an abortion.

23 (iii) Develop, draft, and print screening and training tools and
24 accompanying training materials to be utilized by a physician or
25 qualified person assisting the physician while performing the
26 coercion to abort screening required under section 17015a. The
27 screening tools ~~shall~~**must** instruct the physician or qualified
28 person assisting the physician to orally communicate information to
29 the patient regarding coercion to abort and to document the



1 findings from the coercion to abort screening in the patient's
2 medical record.

3 (iv) Develop, draft, and print protocols and accompanying
4 training materials to be utilized by a physician or a qualified
5 person assisting the physician if a patient discloses coercion to
6 abort or that domestic violence is occurring, or both, during the
7 coercion to abort screening. The protocols ~~shall~~**must** instruct the
8 physician or qualified person assisting the physician to do, at a
9 minimum, all of the following:

10 (A) Follow the requirements of section 17015a as applicable.

11 (B) Assess the patient's current level of danger.

12 (C) Explore safety options with the patient.

13 (D) Provide referral information to the patient regarding law
14 enforcement and domestic violence and sexual assault support
15 organizations.

16 (E) Document any referrals in the patient's medical record.

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

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

27 (14) A completed certification form described in subsection
28 (11)(f) that is signed by a local health department representative
29 is presumed valid. The presumption created by this subsection may



1 be rebutted by evidence that establishes, by a preponderance of the
2 evidence, that the physician who relied upon the certification had
3 actual knowledge that the certificate contained a false or
4 misleading statement or signature.

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

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

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

14 (18) Upon a patient's request, ~~each~~**a** local health department
15 shall **comply with the following:**

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

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

24 (19) The identity and address of a patient who is provided
25 information or who consents to an abortion ~~pursuant to~~**under** this
26 section is confidential and is subject to disclosure only with the
27 consent of the patient or by judicial process.

28 (20) A local health department with a file containing the
29 identity and address of a patient described in subsection (19) who



1 has been assisted by the local health department under this section
2 shall do both of the following:

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

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

