

SENATE BILL NO. 357

June 05, 2019, Introduced by Senators MCBROOM, THEIS, BARRETT, LASATA and HORN and referred to the Committee on Health Policy and Human Services.

A bill to require testing for a fetal heartbeat before the performance of an abortion; to place certain requirements and restrictions on the performance of an abortion if a fetal heartbeat is detected; to provide for the powers and duties of certain state and local governmental officers and entities; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "fetal heartbeat protection act".

3 (2) The intent of this act is to protect unborn living human
4 beings with beating hearts from being victims of abortion and for

1 other purposes.

2 Sec. 2. As used in this act:

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 dead fetus.

8 (b) "Conception" means fertilization.

9 (c) "Contraceptive" means a drug, device, or chemical that
10 prevents conception.

11 (d) "Fetal heartbeat" means cardiac activity or the steady and
12 repetitive rhythmic contraction of the fetal heart within the
13 gestational sac.

14 (e) "Fetus" means human offspring developing during pregnancy
15 from the moment of conception, including the embryonic stage of
16 development.

17 (f) "Gestational age" means the age of an unborn living human
18 being as calculated from the first day of the last menstrual period
19 of the pregnant woman carrying the unborn living human being.

20 (g) "Gestational sac" means the structure that comprises the
21 extraembryonic membranes that envelop the fetus and that is
22 typically visible by ultrasound after the fourth week of pregnancy.

23 (h) "Intrauterine pregnancy" means a pregnancy in which the
24 fetus is attached to the placenta within the uterus of the pregnant
25 woman.

26 (i) "Medical emergency" means a condition that, in a
27 physician's good-faith medical judgment and based on the facts
28 known to the physician at the time, so endangers the life of the
29 pregnant woman or poses a serious risk of the substantial and

1 irreversible impairment of a major bodily function of the pregnant
2 woman as to necessitate the immediate performance or inducement of
3 an abortion.

4 (j) "Physician" means that term as defined in sections 17001
5 and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and
6 333.17501.

7 (k) "Pregnancy" means the human female reproductive condition
8 that begins with conception, when the woman is carrying the
9 developing human offspring, and that is calculated from the first
10 day of the last menstrual period of the woman.

11 (l) "Standard medical practice" means the degree of skill,
12 care, and diligence that an obstetrician of ordinary learning,
13 judgement, and skill would employ in like circumstances, including
14 employing the appropriate means of detecting a fetal heartbeat
15 depending on the estimated gestational age of the unborn living
16 human being and the condition of the woman and her pregnancy.

17 (m) "Unborn living human being" means an individual of the
18 species *Homo sapiens in utero*.

19 Sec. 3. (1) Subject to subsection (2), before performing an
20 abortion on a pregnant woman, a person shall determine whether a
21 fetal heartbeat is detectable in the unborn living human being the
22 pregnant woman is carrying. The person shall record in the pregnant
23 woman's medical record the estimated gestational age of the unborn
24 living human being, the method used to test for a fetal heartbeat,
25 the date and time of the test, and the result of the test.

26 (2) The person shall make the determination described in
27 subsection (1) in accordance with the person's good-faith
28 understanding of standard medical practice.

29 Sec. 4. (1) Except as otherwise provided in this section, a

1 person shall not knowingly perform an abortion on a pregnant woman
2 without first determining under section 3 whether the unborn living
3 human being the pregnant woman is carrying has a detectable fetal
4 heartbeat.

5 (2) It is not a violation of subsection (1) if any of the
6 following apply:

7 (a) The person performing the abortion is a physician who
8 believes that a medical emergency exists that prevents compliance
9 with subsection (1). A physician who performs an abortion under
10 this subdivision shall note both of the following in the pregnant
11 woman's medical record and shall maintain a copy of the notations
12 in the physician's own records for at least 7 years after the
13 notations are made:

14 (i) The physician's belief that a medical emergency
15 necessitating the abortion existed.

16 (ii) The medical condition of the pregnant woman that prevented
17 compliance with subsection (1).

18 (b) The person performing the abortion tested for the presence
19 of a fetal heartbeat under section 3 and the test did not reveal a
20 fetal heartbeat.

21 (3) Except as otherwise provided in subsection (4), a person
22 who violates this section is guilty of a felony and shall be
23 punished by imprisonment for not less than 2 years or more than 4
24 years.

25 (4) A person who violates this section is guilty of a felony
26 and shall be punished by imprisonment for not less than 6 years or
27 more than 15 years if the violation causes the death of the
28 pregnant woman.

29 (5) A pregnant woman on whom an abortion is performed in

1 violation of this section is not guilty of any of the following:

2 (a) Violating this section.

3 (b) Attempting to violate this section.

4 (c) Conspiring to commit a violation of this section.

5 Sec. 5. (1) Except in the case of a medical emergency that
6 prevents compliance with this section, a person who detects a fetal
7 heartbeat under section 3 in an unborn living human being that a
8 pregnant woman is carrying shall not perform an abortion on the
9 pregnant woman without first complying with all of the following
10 not less than 24 hours before the person performs the abortion:

11 (a) Inform the pregnant woman in writing that the unborn
12 living human being the pregnant woman is carrying has a fetal
13 heartbeat.

14 (b) Inform the pregnant woman, to the best of the person's
15 knowledge, of the statistical probability of bringing the unborn
16 living human being possessing a detectable fetal heartbeat to term
17 based on gestational age.

18 (c) Obtain the signature of the pregnant woman on a form
19 acknowledging that she has received information from the person
20 that the unborn living human being she is carrying has a fetal
21 heartbeat and that she is aware of the statistical probability of
22 bringing the unborn living human being that she is carrying to
23 term.

24 (2) The requirements described in subsection (1) are in
25 addition to any other informed consent requirement that is required
26 by law to perform an abortion.

27 (3) Except as otherwise provided in subsection (4), a person
28 who violates this section is guilty of a felony punishable by
29 imprisonment for not more than 2 years.

1 (4) A person who violates this section is guilty of a felony
2 punishable by imprisonment for not more than 6 years if the
3 violation causes the death of the pregnant woman.

4 Sec. 6. (1) Except as otherwise provided in this section, a
5 person shall not knowingly perform an abortion on a pregnant woman
6 who is carrying an unborn living human being whose fetal heartbeat
7 has been detected under section 3.

8 (2) It is not a violation of subsection (1) if any of the
9 following apply:

10 (a) The person performing the abortion is a physician who
11 performs a medical procedure that, in the physician's reasonable
12 medical judgment, is designed or intended to prevent the death of
13 the pregnant woman or to prevent a serious risk of the substantial
14 and irreversible impairment of a major bodily function of the
15 pregnant woman. A physician who performs a medical procedure
16 described in this subdivision shall declare in writing that the
17 medical procedure is necessary, to the best of the physician's
18 reasonable medical judgment, to prevent the death of the pregnant
19 woman or to prevent a serious risk of the substantial and
20 irreversible impairment of a major bodily function of the pregnant
21 woman. In the document, the physician shall specify the pregnant
22 woman's medical condition that the medical procedure is asserted to
23 address and the medical rationale for the physician's conclusion
24 that the medical procedure is necessary to prevent the death of the
25 pregnant woman or to prevent a serious risk of the substantial and
26 irreversible impairment of a major bodily function of the pregnant
27 woman. The physician shall place the document in the pregnant
28 woman's medical record and shall maintain a copy of the document in
29 the physician's own records for at least 7 years after the date the

1 document is created.

2 (b) The person performing the abortion tested for the presence
3 of a fetal heartbeat under section 3 and the test did not reveal a
4 fetal heartbeat.

5 (3) Except as otherwise provided in subsection (4), a person
6 who violates this section is guilty of a felony and shall be
7 punished by imprisonment for not less than 2 years or more than 4
8 years.

9 (4) A person who violates this section is guilty of a felony
10 and shall be punished by imprisonment for not less than 6 years or
11 more than 15 years if the violation causes the death of the
12 pregnant woman.

13 (5) A pregnant woman on whom an abortion is performed in
14 violation of this section is not guilty of any of the following:

15 (a) Violating this section.

16 (b) Attempting to violate this section.

17 (c) Conspiring to commit a violation of this section.

18 Sec. 7. (1) A person who performs an abortion on a pregnant
19 woman in violation of section 4 or 6, fails to provide a pregnant
20 woman with the information required under section 5, or fails to
21 obtain the signature of a pregnant woman as required by section 5,
22 is liable to the pregnant woman in a civil action for all of the
23 following:

24 (a) At the pregnant woman's election at any time before final
25 judgment, damages in the amount of \$10,000.00 or the amount
26 determined by the trier of fact.

27 (b) Reasonable attorney fees.

28 (c) Court costs.

29 (2) An action brought under this section is subject to the

1 same defenses and requirements of proof as an action for wrongful
2 death under section 2922 of the revised judicature act of 1961,
3 1961 PA 236, MCL 600.2922, except for any requirement of a live
4 birth.

5 Sec. 8. (1) This act only applies to intrauterine pregnancies.

6 (2) This act does not prohibit the sale, use, prescription, or
7 administration of a drug, device, or chemical for contraceptive
8 purposes.

9 (3) Nothing in this act shall be construed as authorizing any
10 abortion that is illegal under any other provision of state law.

11 (4) Nothing in this act shall be construed to repeal or amend,
12 explicitly or by implication, any provision of law prohibiting or
13 regulating abortion, including, but not limited to, section 14, 15,
14 322, or 323 of the Michigan penal code, 1931 PA 328, MCL 750.14,
15 750.15, 750.322, and 750.323.

16 (5) This act does not prohibit a person from being charged
17 with, convicted of, or sentenced for any other violation of law
18 arising out of the same transaction as the violation of this act in
19 addition to being charged with, convicted of, or sentenced for the
20 violation of this act.

21 (6) This act only applies to abortions that intentionally,
22 knowingly, or recklessly cause the death of an unborn living human
23 being.

24 (7) If any court issues an order or judgment that restores,
25 expands, or clarifies the authority of this state to prohibit or
26 regulate abortion or an amendment to the United States Constitution
27 is adopted that restores, expands, or clarifies the authority of
28 this state to prohibit or regulate abortion, the attorney general
29 may apply to the appropriate state or federal court for 1 or more

1 of the following:

2 (a) A declaration that a section in this act is
3 constitutional.

4 (b) A judgment or order lifting an injunction against the
5 enforcement of a section of this act.

6 (8) If the attorney general fails to apply for the relief
7 described in subsection (7) within 30 days after an event described
8 in that subsection occurs, a county prosecutor may apply to the
9 appropriate state or federal court for the relief described in that
10 subsection.

11 Enacting section 1. This act takes effect 90 days after the
12 date it is enacted into law.