

# SENATE BILL No. 357

June 5, 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  
5 other purposes.

6           Sec. 2. As used in this act:

7           (a) "Abortion" means the intentional use of an instrument,

1 drug, or other substance or device to terminate a woman's pregnancy  
2 for a purpose other than to increase the probability of a live  
3 birth, to preserve the life or health of the child after live  
4 birth, or to remove a dead fetus.

5 (b) "Conception" means fertilization.

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

8 (d) "Fetal heartbeat" means cardiac activity or the steady and  
9 repetitive rhythmic contraction of the fetal heart within the  
10 gestational sac.

11 (e) "Fetus" means human offspring developing during pregnancy  
12 from the moment of conception, including the embryonic stage of  
13 development.

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

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

20 (h) "Intrauterine pregnancy" means a pregnancy in which the  
21 fetus is attached to the placenta within the uterus of the pregnant  
22 woman.

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

1 woman as to necessitate the immediate performance or inducement of  
2 an abortion.

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

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

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

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

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

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

1           Sec. 4. (1) Except as otherwise provided in this section, a  
2 person shall not knowingly perform an abortion on a pregnant woman  
3 without first determining under section 3 whether the unborn living  
4 human being the pregnant woman is carrying has a detectable fetal  
5 heartbeat.

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

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

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

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

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

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

26           (4) A person who violates this section is guilty of a felony  
27 and shall be punished by imprisonment for not less than 6 years or

1 more than 15 years if the violation causes the death of the  
2 pregnant woman.

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

5 (a) Violating this section.

6 (b) Attempting to violate this section.

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

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

14 (a) Inform the pregnant woman in writing that the unborn  
15 living human being the pregnant woman is carrying has a fetal  
16 heartbeat.

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

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

27 (2) The requirements described in subsection (1) are in

1 addition to any other informed consent requirement that is required  
2 by law to perform an abortion.

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

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

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

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

15 (a) The person performing the abortion is a physician who  
16 performs a medical procedure that, in the physician's reasonable  
17 medical judgment, is designed or intended to prevent the death of  
18 the pregnant woman or to prevent a serious risk of the substantial  
19 and irreversible impairment of a major bodily function of the  
20 pregnant woman. A physician who performs a medical procedure  
21 described in this subdivision shall declare in writing that the  
22 medical procedure is necessary, to the best of the physician's  
23 reasonable medical judgment, to prevent the death of the pregnant  
24 woman or to prevent a serious risk of the substantial and  
25 irreversible impairment of a major bodily function of the pregnant  
26 woman. In the document, the physician shall specify the pregnant  
27 woman's medical condition that the medical procedure is asserted to

1 address and the medical rationale for the physician's conclusion  
2 that the medical procedure is necessary to prevent the death of the  
3 pregnant woman or to prevent a serious risk of the substantial and  
4 irreversible impairment of a major bodily function of the pregnant  
5 woman. The physician shall place the document in the pregnant  
6 woman's medical record and shall maintain a copy of the document in  
7 the physician's own records for at least 7 years after the date the  
8 document is created.

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

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

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

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

22 (a) Violating this section.

23 (b) Attempting to violate this section.

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

25 Sec. 7. (1) A person who performs an abortion on a pregnant  
26 woman in violation of section 4 or 6, fails to provide a pregnant  
27 woman with the information required under section 5, or fails to

1 obtain the signature of a pregnant woman as required by section 5,  
2 is liable to the pregnant woman in a civil action for all of the  
3 following:

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

7 (b) Reasonable attorney fees.

8 (c) Court costs.

9 (2) An action brought under this section is subject to the  
10 same defenses and requirements of proof as an action for wrongful  
11 death under section 2922 of the revised judicature act of 1961,  
12 1961 PA 236, MCL 600.2922, except for any requirement of a live  
13 birth.

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

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

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

20 (4) Nothing in this act shall be construed to repeal or amend,  
21 explicitly or by implication, any provision of law prohibiting or  
22 regulating abortion, including, but not limited to, section 14, 15,  
23 322, or 323 of the Michigan penal code, 1931 PA 328, MCL 750.14,  
24 750.15, 750.322, and 750.323.

25 (5) This act does not prohibit a person from being charged  
26 with, convicted of, or sentenced for any other violation of law  
27 arising out of the same transaction as the violation of this act in



1 addition to being charged with, convicted of, or sentenced for the  
2 violation of this act.

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

6 (7) If any court issues an order or judgment that restores,  
7 expands, or clarifies the authority of this state to prohibit or  
8 regulate abortion or an amendment to the United States Constitution  
9 is adopted that restores, expands, or clarifies the authority of  
10 this state to prohibit or regulate abortion, the attorney general  
11 may apply to the appropriate state or federal court for 1 or more  
12 of the following:

13 (a) A declaration that a section in this act is  
14 constitutional.

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

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

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