



Senate Fiscal Agency
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Senate Bill 2 (as enacted)
House Bill 4006 (as enacted)
House Bill 4032 (as enacted)
Sponsor: Senator Erika Geiss (S.B. 2)
Representative Laurie Pohutsky (H.B. 4006)
Representative Stephanie Young (H.B. 4032)
Senate Committee: Health Policy (S.B. 2)
Committee of the Whole (H.B. 4006 & 4032)
House Committee: Judiciary

PUBLIC ACT 12 of 2023
PUBLIC ACT 11 of 2023
PUBLIC ACT 13 of 2023

Date Completed: 7-31-23

RATIONALE

During the 2022 election cycle, a group called Reproductive Freedom for All circulated petitions and collected enough signatures for a proposed constitutional amendment to be placed on the 2022 November general election ballot. The passage of Proposal 22-3, which enshrined the individual right to reproductive freedom and abortion procedures in the Michigan Constitution, invalidated State laws that conflicted with the Proposal's amendments. It was suggested that Sections 14, 15, and 40 of the Michigan Penal Code (see **CONTENT**) be repealed to agree with the Proposal's provisions.

CONTENT

Senate Bill 2

The bill repeals Section 40 of the Michigan Penal Code, which prohibits the publication or sale of a publication that contains recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes for compounds to prevent conception or that tend to produce miscarriage or abortion. Section 40 also specifies that a seller or publisher of these documents is guilty of a misdemeanor for a violation.

House Bill 4006

Under Section 14 of the Penal Code, a person who willfully administers to any pregnant individual any medicine, drug, substance, or thing whatever, or employs any instrument or other means, with intent to procure a miscarriage, unless it is necessary to preserve the life of the individual, is guilty of a felony. If this transaction causes the death of a pregnant individual, the offense is manslaughter.

Additionally, under Section 15 of the Code, any person who advertises, publishes, or sells any pills, powder, drugs or combination of drugs, designed expressly for the use of female individuals for the purpose of procuring an abortion is guilty of a misdemeanor unless the drug or medicine is sold upon the written prescription of a practicing physician, and the dealer or druggist registers certain information pertaining to the purchaser, medicine, and physician in their records.

The bill repeals Sections 14 and 15 of the Michigan Penal Code.

House Bill 4032

Under the Code of Criminal Procedure, administering an abortion is a Class G felony against a person with a statutory maximum sentence of four years' imprisonment. Administering an abortion resulting in the death of the individual is a Class C felony against a person with a statutory maximum sentence of 15 years' imprisonment.

The bill repeals these sentencing guidelines.

Each bill will take effect 91 days after the Legislature adjourns sine die.

MCL 750.40 (S.B. 2) (repealed)

MCL 750.14 & 750.15 (H.B. 4006) (repealed)

MCL 777.16a (H.B. 4032) (repealed)

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

House Bill 4006 and House Bill 4032 are companion bills to Senate Bills 39 and 37, respectively, from the 2023-2024 Legislative Session. Senate Bills 39 and 37 were passed by the Senate on March 8, 2023, but received no further action.

BACKGROUND

In 1973, the United States Supreme Court issued its decision in *Roe v. Wade*, in which the Court struck down a Texas law making abortion illegal except when necessary to save the mother's life.¹ Following this decision, the abortion ban under Section 14 of the Michigan Penal Code went dormant. In June 2022, the US Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe* on the grounds that the US Constitution makes no reference to abortion, and the right is not implicitly protected by any constitutional provision, including the Fourteenth Amendment.² Following the *Dobbs* decision, Michigan's abortion ban went back into effect; however, a lawsuit was filed seeking to block the enforcement of the law and that lawsuit resulted in a court of claims judge ruling that the abortion ban was unconstitutional.

Proposal 22-3 establishes an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allows the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibits State discrimination in enforcement of the right; prohibits the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the amendment; and invalidates State laws that conflict with the proposed amendment.³ Proposal 22-3 passed with 56.66% of electors in favor of the proposal.⁴

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

¹ 410 US 113 (1973)

² 597 US ____.

³ "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.

⁴ "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: https://mielections.us/election/results/2022GEN_CENR.html. Retrieved on 2-28-2023.

Supporting Argument

Repealing Sections 14, 15, and 40 will safeguard abortion procedures from any future efforts to limit them. If a court, constitutional convention, or referendum overturns or limits Proposal 22-3, some believe it should be up to the voters at that time to determine what laws govern them. Future residents of Michigan should not be forced to adhere to a law from 1931 that may not reflect their contemporary values and so Sections 14, 15, and 40 should have been deleted.

Supporting Argument

According to testimony before the Senate Committee on Health Policy, some of the provisions to be repealed disproportionately harm the safety and health of young people. Over a third of patients who undergo an abortion procedure are 18-24 years old. Additionally, some people expressed concerns that young people are excluded from decision-making that affects their bodies with regards to abortion procedures. Sections 14, 15, and 40 should be repealed to end the disparate effect that a lack of reproductive freedom has on young people.

Supporting Argument

Sections 14, 15, and 40 make it difficult for doctors to make good medical decisions. According to testimony before the Senate Committee on Health Policy, doctors only have a few minutes to make decisions regarding the medical treatment of a patient. In one study published by the National Institute of Health, 93% of Wisconsin doctors surveyed were worried that further restrictions on abortion access would affect the ability of physicians to offer timely and appropriate care.⁵ Additionally, the World Health Organization claims that criminalizing abortion often leads to an unnecessary progression of life-threatening circumstances for pregnant individuals because doctors may have to wait to make certain the procedure is medically necessary and therefore legal.⁶ Sections 14, 15, and 40 of the Michigan Penal Code should be repealed in the interest of facilitating good medical decisions related to abortion.

Response: These sections are the only sections of law that allow doctors to be criminally prosecuted if they administer an abortion poorly.

Supporting Argument

State law should not allow one religion's belief system to be elevated above others. According to testimony before the Senate Committee on Health Policy, abortion values in America are based largely on a Christian concept of when life begins. Given there is no scientific or religious consensus on when life begins, reflecting this concept in law constitutes faith-based discrimination and so Sections 14, 15, and 40 should be repealed.

Response: According to testimony before the Senate Committee on Health Policy, Professor William Wagner suggests that it is clear both scientifically and medically that life begins at conception.⁷ In addition, an overwhelming number of biologists believe that conception, or fertilization, is a measurable beginning to human life.⁸

Supporting Argument

Abortion is an avenue by which people may liberate themselves from otherwise abusive life circumstances. For example, the leading cause of death among pregnant individuals is homicide, oftentimes stemming from instances of domestic violence.⁹ One in six pregnant women are abused by a domestic partner.¹⁰ Guaranteeing access to abortion by removing

⁵ Higgins et al., "The Importance of Physician Concern and Expertise in Increasing Abortion Health Care Access in Local Contexts", January 2021.

⁶ World Health Organization, Abortion care guideline, pg. 24, 2023

⁷ Scott Klusendorf, *The Case for Life*, Pages 36 & 44, 2009

⁸ *Id.*

⁹ Sanctuary for Families, *Access to Abortion – A Lifeline for Survivors of Domestic Violence*, June 24, 2022.

¹⁰ *Id.*

prohibitions that disagree with Proposal 22-3's provisions may help an abused, pregnant individual leave an abusive relationship.

Opposing Argument

Repealing Sections 14, 15, and 40 may place women and their health at risk. Abortion is not always safe and can result in physical and mental side effects, including death. If Sections 14, 15, and 40 were not invalidated, they may help to limit access to abortion services in the future. Limiting access to abortion services would aid in preventing harmful side effects to pregnant individuals. Therefore, these Sections should not be repealed.

Opposing Argument

Abortion is usually unnecessary because individuals who want an abortion would not undergo one if they had a support system. According to testimony before the Senate Committee on Health Policy, a survey of post-abortive women found that 86% of these women would not have had their abortion if only one person had been willing to help them. The State should, therefore, focus on ways to support women and families throughout their pregnancies. Repealing Sections 14, 15, and 40 is unnecessary because these laws make abortion services easier to obtain.

Opposing Argument

Some believe Sections 14, 15, and 40 can work within the framework of Proposal 22-3 and can continue to serve a limited purpose since Proposal 22-3 charges the Legislature with prescribing some details of how abortion procedures should operate. According to testimony before the Senate Committee on Health Policy, these sections still would apply to abortions performed on full-term fetuses with healthy mothers, so these sections should not be invalidated.

Opposing Argument

According to testimony before the Senate Committee on Health Policy, repealing Sections 14, 15, and 40 also would eliminate the requirement that doctors must give out prescriptions for the distribution of drugs that induce abortion. Repealing these sections could cause an increase in the illegal production, sale, and distribution of homemade drugs intended to produce abortion. Since the repeal of these sections may result in poorer healthcare for women, they should not be repealed.

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.