



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4949 (Substitute H-1 as passed by the House)
House Bill 4951 (Substitute H-1 as passed by the House)
House Bill 4953 (as passed by the House)
House Bill 4954 (as passed by the House)
House Bill 4955 (Substitute H-1 as passed by the House)
House Bill 4956 (as passed by the House)
Sponsor: Representative Laurie Pohutsky (H.B. 4949)
Representative Kara Hope (H.B. 4951)
Representative Christine Morse (H.B. 4953)
Representative Felicia Brabec (H.B. 4954)
Representative Natalie Price (H.B. 4955)
Representative Julie M. Rogers (H.B. 4956)

House Committee: Health Policy
Senate Committee: Committee of the Whole

Date Completed: 11-2-23

INTRODUCTION

The bills would amend, repeal, or codify certain provisions related to abortion in various acts and modify Michigan Compiled Law (MCL) references to reflect such changes. Specifically, House Bill 4949 (H-1) would largely codify Section 28 of Article I of the State Constitution of 1963. House Bill 4951 (H-1) would delete sentencing guidelines related to felonies for disclosing confidential information pertaining to abortion, performing, or assisting in a partial birth abortion, and abortion resulting in death.

House Bill 4949 is tie-barred to Senate Bill 474. House Bill 4951 is tie-barred to Senate Bill 474 and House Bill 4949. House Bill 4953 is tie-barred to House Bill 4949. House Bill 4954 is tie-barred to House Bill 4949. House Bill 4955 is tie-barred to Senate Bill 474. (Generally, Senate Bill 474 would repeal Sections 2835, 2836, 2837, 17014, 17015, 17015a, 17017, 17515, 17517, and 22224 (see **BACKGROUND**), among other things.)

BRIEF FISCAL IMPACT

House Bills 4949 (H-1) and House Bill 4951 (H-1) could result in a potential increase in litigation costs for the Attorney General but also could increase civil filing fee revenue that supports various State departments. It also could result in fewer arrests and convictions, which would reduce costs for State and local governments in relation to law enforcement, courts, and corrections facilities. Additionally, under House Bill 4949 (H-1) local health departments could lose funding due to the loss of grant award priority, but the fiscal impact on any given unit likely would be of moderate magnitude. House Bills 4953, 4954, 4955, and 4956 would have no fiscal impact on the State or local units of government.

MCL 762.10d et al (H.B. 4949)
600.5711 (H.B. 4953)
388.1606 (H.B. 4954)
339.1801 (H.B. 4955)
780.621 (H.B. 4956)

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Ellyn Ackerman
Ryan Bergan
Joe Carrasco, Jr.
Elizabeth Raczkowski
Cory Savino, PhD; Michael Siracuse

CONTENT

House Bill 4949 (H-1) would create a new Act to do the following:

- **Codify Section 28 of Article I of the State Constitution of 1963.**
- **Prohibit a governmental entity from violating Section 28 of Article I of the State Constitution of 1963.**
- **Specify that an individual or entity could bring a civil action for injunctive relief, damages, or any other appropriate remedy for a violation of Section 28 or Article I of the State Constitution of 1963.**
- **Repeal Section 323 of the Michigan Penal Code, which specifies that any person who administers to a woman pregnant with a quick child any medicine, drugs, or instrument with the intention to terminate the pregnancy could be charged with manslaughter.**
- **Repeal the Legal Birth Definition Act which defines legal birth and legal personhood (see BACKGROUND).**
- **Repeal Public Act 360 of 2002, which prioritizes the allocation of funding through grants or contracts for educational and other programs and services pertaining to family planning and reproductive health services.**
- **Repeal the Abortion Insurance Opt-Out Act, which requires the purchase of coverage for elective abortion in a health care plan to be an optional rider only with an additional premium and requires notice to employees for whom elective abortion coverage is purchased by their employer.**

House Bill 4951 (H-1) would amend the Code of Criminal Procedure to delete specified sentencing guidelines related to the provision of abortion services.

House Bill 4953 would amend the Revised Judicature Act to modify an MCL reference to reflect the change proposed by House Bill 4949 (H-1).

House Bill 4954 would amend the State School Aid Act to modify an MCL reference to reflect the change proposed by House Bill 4949 (H-1).

House Bill 4955 (H-1) would amend the Occupational Code to delete an MCL reference to reflect a repeal proposed by Senate Bill 474 (H-1).

House Bill 4956 would amend Public Act 213 of 1965, which provides for setting aside convictions in certain criminal cases, to modify an MCL reference to reflect the change proposed under House Bill 4949 (H-1)

House Bill 4949 and House Bill 4951 are described in greater detail below.

House Bill 4949 (H-1)

Under the bill, as provided in Section 28 of Article I of the State Constitution of 1963, the following would apply:

- Every individual would have a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, but not limited to, prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.
- An individual's right to reproductive freedom would not be denied, burdened, nor infringed upon unless justified by a compelling State interest achieved by the least restrictive means.

- Notwithstanding the above, the State could regulate the provision of abortion care after fetal viability, provided that in no circumstance must the State prohibit an abortion that, in the professional judgment of an attending health care professional, was medically indicated to protect the life or physical or mental health of the pregnant individual.
- The State could not penalize, prosecute, or otherwise take adverse action against an individual based on the individual's actual, potential, perceived, or alleged pregnancy outcomes, including, but not limited to, miscarriage, stillbirth, or abortion.
- The State could not penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising the individual's right to reproductive freedom with the individual's voluntary consent.

"Fetal viability" would mean the point in pregnancy when, in the professional judgement of any attending health care professional and based on the particular facts of the case, there is significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.

A State interest being "compelling" would mean only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision-making

In determining whether an abortion was medically indicated to protect the life or physical or mental health of a pregnant individual under the bill, the attending health care professional could consider any factor that the attending health care professional considered relevant to the well-being of the pregnant individual, including, but not limited to, the pregnant individual's age and physical, emotional, psychological, and familial considerations.

The bill would specify that a governmental entity could not violate Section 28 of Article I of the State Constitution of 1963. "Governmental entity" would mean any of the following:

- The State and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces.
- A county, city, village, township, school district, or other political subdivision of the State.
- A county, city, village, township, school district, or other political described above.
- An official of any of the entities described above.

An individual or entity, or the individual's or entity's legal representative, who alleged a violation of the individual's or entity's rights under Section 28 of Article I of the State Constitution of 1963 or by a governmental entity could bring a civil action for injunctive relief, damages, or any other appropriate remedy, in the appropriate State or Federal court. The Attorney General could enforce governmental entity prohibition through a civil action for injunctive relief, damages, or any other appropriate remedy. A court would have to award reasonable costs and attorney fees to a plaintiff who prevailed in an action brought under the bill. A court would have to award reasonable costs and attorney fees to a plaintiff who prevailed in an action brought under these provisions.

Senate Bill 4951 (H-1)

The Code of Criminal Procedure prescribes the following sentencing guidelines for felony convictions for violations of Section 2835(9) of the Public Health Code and Sections 750.90(h) and 750.323 of the Michigan Penal Code:

Violation	Category	Class	Statutory Max
Disclosing confidential information – abortion (Section 2835(9))	Public Trust	C	3
Performing or assisting in performance of partial birth abortion (750.90(h))	Person	C	2
Abortion resulting in death (750.323)	Person	C	15

The bill would delete these sentencing guidelines.

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

Additionally, the Legal Birth Definition Act was held unconstitutional by the U.S. 6th Circuit Court of Appeals, affirming the U.S. District Court's decision in *Northland Family Planning v Cox*⁵.

Section 17014 of the Public Health Code provides Legislative findings related to the enactment of Sections 17015 and 17515. Section 17015 prohibits a physician from performing an abortion otherwise permitted without the patient's informed written consent. Section 17015a generally requires a physician to orally screen a patient for coercion to abort a pregnancy. Section 17017 previously prohibited a physician from prescribing an abortion without personally performing a physical examination on the patient. Sections 17515 and 17517 require a physician to comply with the provisions described above before performing an abortion.

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.

⁵ 487 F.3d 323.

Section 2835 of the Code requires a physician who performs an abortion to report such to the DHHS and prescribes the information that the report must include, such as the age of the individual at the time of the abortion, the individual's race, and the individual's general residence; however, the report cannot contain identifying information of the individual. Section 2836 of the Code generally requires all remains resulting from abortions to be disposed of by interment or cremation and allows the disposal to occur without the supervision of a funeral director. Section 2837 of the Code requires a written report to the DHHS for each patient who comes into a physician's care and who suffers a physical complication or death resulting from an abortion. Section 22224 of the Code specifies that a health facility required to be licensed as a freestanding surgical outpatient facility due to performance of abortions at the facility does not need to obtain a certificate of need to be granted a license.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

House Bill 4949 is a companion bill to Senate Bill 593 and House Bill 4951 is a companion bill to Senate Bill 475.

FISCAL IMPACT

House Bill 4949 (H-1)

Some of the language included within the bill package would create causes of action, while other language would eliminate civil causes of action or civil fines. (See analysis for House Bills 4949 & 4950.) Civil filing fee revenue and civil fine revenue contribute to the Civil Filing Fee Fund (CFFF) and the Justice System Fund (JSF). The CFFF is distributed to a number of different judicial restricted funds, judges retirement, and the Court Fee fund. The CFFF distributed to \$30.4 million to these areas in Fiscal Year (FY) 2021-22. The JSF is also distributed to several different restricted funds and departments, including judicial restricted funds, the State Police, and the Department of Corrections. The JSF distributed \$33.1 million to these areas in FY 2021-22. The impacts on both funds as a result of the bills are expected to be minor. It is not clear if the impact would positive or negative.

House Bill 4953

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

House Bill 4954

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

House Bill 4955 (H-1)

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

House Bill 4956

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

ANALYSIS\S2324\s4949sa

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.