



**House
Legislative
Analysis
Section**

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ABORTION: 24-HOUR WAIT

House Bill 4260
Sponsor: Rep. Jessie Dalman
Committee: Public Health

Complete to 4-21-93

A SUMMARY OF HOUSE BILL 4260 AS INTRODUCED 2-17-93

The bill would amend the Public Health Code to require that before performing an abortion, physicians give prospective women patients certain information (including a picture of a fetus) 24 hours before the abortion, and obtain the patient's written consent to the abortion and acknowledgment that she had received the required information. Physicians (and qualified assistants) who failed to comply with the bill's requirements would be subject to disciplinary sanctions.

Information requirements. More specifically, at least 24-hours before an abortion, the physician (or a qualified person assisting him or her) would have to do all of the following, either at the health facility where the abortion was to be performed or somewhere else:

- * confirm that the pregnant woman was indeed pregnant;
- * tell the woman who would perform the abortion;
- * verbally give the woman, in appropriate language, information about the probable gestational age of the fetus, information on what to do and whom to contact if medical complications arose after the abortion, and information on how to get contraceptive information from the Department of Public Health (DPH);
- * give the woman a written summary, provided or approved by the DPH, of the abortion procedure; and
- * give the woman a copy of a medically accurate picture and description (provided by the DPH) of a fetus at the gestational age nearest the probable gestational age of the woman's fetus.

- In addition, before performing an abortion, a physician would be required to:
- * tell the woman that she had the right to decide not to have the abortion;
 - * tell the woman, in appropriate language, the specific risks, if any, of the abortion procedure and the specific risks of continuing the pregnancy;
 - * get the woman's signature, on a form prepared or approved by the DPH, consenting to the abortion and acknowledging that she had received the required information; and
 - * give the woman a copy of the written acknowledgement and consent form.

Other physician duties and restrictions, penalties. Physicians would be prohibited from performing legal abortions without the patient's "informed written consent, given freely and without coercion." Physicians would be required to keep a copy of the acknowledgement and consent form with the woman's medical record, and the required information could not be disclosed to the woman in the presence of another patient. The

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duty imposed by the bill upon physicians to inform patients would not require disclosure of information beyond what a "reasonably well-qualified" licensed physician would have.

Physicians (and any qualified people assisting physicians) who failed to comply with the bill's requirements could have their licenses denied, revoked, suspended, or limited, or could be placed on probation, reprimanded, fined, or be required to make restitution.

Exemption. If a medical emergency (defined in the bill) existed, a physician could perform an abortion without giving the required information or obtaining the required signature. In such cases, physicians would have to keep a written record identifying ("with specificity") the reasons for the emergency abortion.

Requirements for the Department of Public Health. Under the bill, the Department of Public Health would be required to produce a number of documents, including:

- * fetal pictures and descriptions of fetal development,
- * an "acknowledgement and consent form,"
- * descriptions of abortion procedures and complications of abortion and "live birth,"
- * statements regarding adverse psychological effects of abortion, and
- * identification of certain public services regarding counseling for adverse psychological effects of abortion, for carrying the pregnancy to term and keeping the baby, and for giving the baby up for adoption.

More specifically, the bill would require the department to do the following:

(1) produce, using curriculum materials from the Michigan Model for Comprehensive School Health Education (in use for the sixth grade on January 1, 1992), a series of pictures of the developing fetus that reflected the actual size of the fetus at four-week intervals from the fourth through the twenty-eighth week of gestation;

(2) accompany each picture of a fetus with a printed, non-technical description (in English and Spanish) of the "probable anatomical and physiological characteristics of the fetus at that particular state of gestational development";

(3) produce an acknowledgment and consent form (specified in the bill) or approve one that would include places for the signatures of both the pregnant woman and the doctor, the name of the abortion procedure, and the number of weeks the woman was pregnant.

(4) based on the various abortion procedures, produce written summaries that;
(a) described medical abortion procedures recognized by the DPH;
(b) identified physical complications that had been statistically associated with each abortion procedure and with live birth;

(c) said that some women feel depressed, guilty, or angry after an abortion or experienced disturbed sleep or a loss of interest in sex or work, and said that if these symptoms occurred intensely or persistently the woman should seek professional help;

(d) said that not all of the risks of abortion or childbirth may apply to the particular woman and referred her to her physician for "more personalized" information;

(e) identified a number of public services, including those to help women who experienced "adverse psychological effects" after an abortion, to help women who decided to give birth and keep their babies, and to help women place their babies up for adoption or foster homes.

In identifying complications of abortion and live birth, the department would be required to consider the annual statistical report required under the Public Health Code and would have to consult with the federal Center for Disease Control, the American College of Obstetricians and Gynecologists, The Michigan State Medical Society, "or any other source that the department determine[d] appropriate."

The department would have to make copies of these documents available to physicians through either the Michigan Board of Medicine (for medical doctors) or the Michigan Board of Osteopathic Medicine and Surgery (for osteopathic doctors). The department also would have to approve alternative written summaries and forms submitted to the department for approval if they contained information substantially similar to that described in the bill.

The bill would require "an acknowledgement and consent form that include[d] only the following language above a signature line for the patient":

*I, _____, hereby authorize Dr. _____ ("the physician")
and any assistant designated by the physician to perform upon me the following
operation(s) or procedure(s):*

(name of operation(s) or procedure(s) as described in the attached summary.)

*I understand that I am approximately _____ weeks pregnant. I have received the
attached summary, and I consent to an abortion procedure to terminate my
pregnancy. I understand that I have the right to withdraw my consent to the
abortion procedure at any time prior to performance of that procedure. I
acknowledge I have received the following:*

- (A) A copy of a medically accurate depiction of a fetus at the probable
gestational age of the fetus I am carrying.*
- (B) A description of the medical procedure that will be used to perform the
abortion.*
- (C) Information pertaining to potential risks and complications that have been
associated with abortion and with live birth.*
- (D) Information about what to do and whom to contact in the event that
complications arise from abortion.*
- (E) Information pertaining to available pregnancy related services.*

*I have been given an opportunity to ask questions about the operation(s) or
procedure(s), and freely and voluntarily sign this form.*

Legislative findings. The bill would say that the legislature recognized that under federal constitutional law, states were allowed to enact "persuasive" measures which favored

childbirth over abortion even if those measures did not further a health interest. The bill also would say that its provisions nevertheless were "designed to provide objective, truthful information" and were not intended to be "persuasive." Finally, the bill would say that the legislature found that enactment of the bill was "essential" for "all of the following reasons":

(A) *The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice regarding abortion.*

(B) *The decision to obtain an abortion is an important and often stressful one, and it is in the state's interest that the decision be made with full knowledge of its nature and consequences.*

(C) *Enactment [of the bill] is necessary to ensure that, before an abortion, a woman is provided information regarding her available alternatives, and to ensure that a woman gives her voluntary and informed consent to an abortion.*

(D) *The receipt of accurate information about abortion and its alternatives is essential to the physical and psychological well-being of a woman considering an abortion.*

(E) *Because many abortions in this state are performed in clinics devoted solely to providing abortions, women who seek abortions at these facilities normally do not have a prior patient-physician relationship with the physician performing the abortion nor do these women continue a patient-physician relationship with the physician after the abortion. In many instances, the woman's only actual contact with the physician performing the abortion occurs simultaneously with the abortion procedure, with little opportunity to receive counsel concerning her decision. Consequently, certain safeguards are necessary to protect a woman's opportunity to select the option best suited to her particular situation.*

(F) *This state has an interest in protecting women and, subject to United States constitutional limitations and supreme court decisions, this state has an interest in protecting the fetus.*

(G) *Providing a woman with factual, medical, and biological information about the fetus she is carrying is essential to safeguard the state's interests described [above]. The dissemination of the information [required by the bill] is necessary due to the irreversible nature of the act of abortion and the often stressful circumstances under which the abortion decision is made.*

(H) *The safeguards that will best protect a woman seeking advice concerning abortion include the following:*

(i) *Private, individual counseling, including dissemination of certain information, as the woman's individual circumstances dictate, that affect her decision of whether to choose an abortion.*

(ii) *A 24-hour waiting period between a woman's receipt of that information provided to assist her in making an informed decision, and the actual performance of an abortion, if she elects to undergo an abortion. A 24-hour waiting period affords a woman, in light of the*

information provided by the physician or a qualified person assisting the physician, an opportunity to reflect on her decision and to seek counsel of family and friends in making her decision.

(I) The safeguards identified [above] advance a woman's interests in the exercise of her discretion to choose or not to choose an abortion, and are justified by the objectives and interests of this state to protect the health of a pregnant woman and, subject to United States constitutional limitations and supreme court decisions, to protect the fetus.

Definitions. The bill would define "abortion" to mean "the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life and health of the child after live birth, or to remove a dead fetus." "Abortion" would not include the use of prescription drugs or devices intended as contraceptives.

"Medical emergency" would mean "that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."

"Qualified" people "assisting the physician" would include other physicians, physician's assistants, licensed psychologists, licensed professional counselors, licensed registered nurses, and registered social workers.

Other provisions. The bill would specify that it did not create a right to an abortion and would reaffirm that illegal abortions were prohibited.

Written consent forms required by the bill would be presumed valid, though this presumption could be rebutted by a preponderance of evidence that consent had been obtained "through fraud, negligence, deception, misrepresentation, coercion, or duress."

If one part of the bill were invalidated in court, the other parts would remain in effect unless the court determined they also were inoperable.

MCL 333.16221 et al.