

Act No. 124
Public Acts of 1996
Approved by the Governor
March 12, 1996
Filed with the Secretary of State
March 13, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. McManus, Horton, Green, Rocca, Goschka, Whyman, Ryan, Gnodtke, Hammerstrom, Lowe, Gernaat, Middaugh, Dalman, Voorhees, Jaye, Baade, Harder, Griffin, Olshove, Geiger, Ciaramitaro, McBryde, Mathieu, Sikkema, Byl, Gustafson, Rhead, Weeks, Kaza, Bodem, Cropsey, Porreca, Owen, DeMars, Palamara, Walberg, DeLange, Randall, London, Jellema, Kukuk, Perricone, Llewellyn and Gagliardi

ENROLLED HOUSE BILL No. 5458

AN ACT to amend Act No. 280 of the Public Acts of 1939, entitled as amended "An act to protect the welfare of the people of this state; to provide general assistance, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to prescribe certain duties of certain other state departments, officers, and agencies; to make an appropriation; to prescribe penalties for the violation of the provisions of this act; and to repeal certain parts of this act on specific dates," as amended, being sections 400.1 to 400.119b of the Michigan Compiled Laws, by adding sections 109d and 109e.

The People of the State of Michigan enact:

Section 1. Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.119b of the Michigan Compiled Laws, is amended by adding sections 109d and 109e to read as follows:

Sec. 109d. (1) The legislature finds that the use of medicaid funds for elective abortions has been clearly rejected by the people of Michigan through Act No. 59 of the Public Acts of 1987, initiated by the citizens under the rights of the people reserved in the Michigan constitution, approved by a majority of this legislature, affirmed by the citizens at large through a statewide referendum, and sustained by the Michigan supreme court.

(2) In light of evidence that abortion providers, in conjunction with third party payors, may have devised and implemented plans for reimbursing services in violation of the intent of Act No. 59 of the Public Acts of 1987, the legislature finds the enactment of section 109e a necessary clarification of, and enforcement mechanism for, Act No. 59 of the Public Acts of 1987.

(3) The legislature finds that any practice of separating or unbundling services directly related to the performance of an abortion for the purposes of seeking medicaid reimbursement, with those funds thereby subsidizing in whole or in

part the cost of performing an abortion, is an inappropriate use of taxpayer funds in light of Act No. 59 of the Public Acts of 1987.

(4) Recognizing that certain services related to performing an abortion can also be part of legitimate and routine obstetric care, section 109e should not be construed to affect diagnostic testing or other nonabortion procedures. Only physicians who actually perform abortions, and particularly those who perform abortions but do not provide prenatal care or obstetric services, should view themselves as potentially affected by section 109e. Unacceptable requests for reimbursement include those services which would not have been performed, but for the preparation and performance of a planned or requested abortion.

Sec. 109e. (1) As used in this section:

(a) "Abortion" means 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 or health of the child after live birth, or to remove a dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) "Health care professional" means an individual licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

(c) "Health facility or agency" means a health facility or agency licensed under article 17 of Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

(2) A health care professional or a health facility or agency shall not seek or accept reimbursement for the performance of an abortion knowing that public funds will be or have been used in whole or in part for the reimbursement in violation of section 109a of Act No. 280 of the Public Acts of 1939, being section 400.109a of the Michigan Compiled Laws, as added by Act No. 59 of the Public Acts of 1987.

(3) A person who violates this section is liable for a civil fine of up to \$10,000.00 per violation. The department of community health shall investigate an alleged violation of this section and the attorney general, in cooperation with the department of community health, may bring an action to enforce this section.

(4) Nothing in this section restricts the right of a health care professional to discuss abortion or abortion services with a patient who is pregnant.

(5) This section does not create a right to an abortion.

(6) Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.