

REPRINT

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5548**

(As Passed the Senate November 29, 2000)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17015 (MCL 333.17015), as added by 1993 PA
133.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17015. (1) Subject to subsection ~~—(7)—~~ (10), a physi-
2 cian shall not perform an abortion otherwise permitted by law
3 without the patient's informed written consent, given freely and
4 without coercion.

5 (2) For purposes of this section:

6 (a) "Abortion" means the intentional use of an instrument,
7 drug, or other substance or device to terminate a woman's preg-
8 nancy for a purpose other than to increase the probability of a
9 live birth, to preserve the life or health of the child after
10 live birth, or to remove a dead fetus. Abortion does not include

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1 the use or prescription of a drug or device intended as a
2 contraceptive.

3 (b) "Fetus" means an individual organism of the species homo
4 sapiens in utero.

5 (c) "Local health department representative" means a person
6 employed by, or ~~contracted~~ UNDER CONTRACT to provide services
7 on behalf of, a local health department who meets ~~any~~ 1 OR MORE
8 of the licensing requirements listed in ~~subsection (2)(e)~~
9 SUBDIVISION (E).

10 (d) "Medical emergency" means that condition which, on the
11 basis of the physician's good faith clinical judgment, so compli-
12 cates the medical condition of a pregnant woman as to necessitate
13 the immediate abortion of her pregnancy to avert her death or for
14 which a delay will create serious risk of substantial and irre-
15 versible impairment of a major bodily function.

16 (e) "Qualified person assisting the physician" means another
17 physician or a physician's assistant licensed under this part or
18 part 175, a fully licensed or limited licensed psychologist
19 licensed under part 182, a professional counselor licensed under
20 part 181, a registered professional nurse or a licensed practical
21 nurse licensed under part 172, or a social worker registered ~~in~~
22 ~~this state under article 16 of the occupational code, Act No. 299~~
23 ~~of the Public Acts of 1980, being sections 339.1601 to 339.1610~~
24 ~~of the Michigan Compiled Laws~~ UNDER PART 185.

25 (f) "Probable gestational age of the fetus" means the gesta-
26 tional age of the fetus at the time an abortion is planned to be
27 performed. ~~, as determined by the attending physician.~~

1 (G) "PROVIDE THE PATIENT WITH A PHYSICAL COPY" MEANS
2 CONFIRMING THAT THE PATIENT ACCESSED THE INTERNET WEBSITE
3 DESCRIBED IN SUBSECTION (5) AND RECEIVED A PRINTED VALID CONFIR-
4 MATION FORM FROM THE WEBSITE AND INCLUDING THAT FORM IN THE
5 PATIENT'S MEDICAL RECORD OR GIVING A PATIENT A COPY OF A REQUIRED
6 DOCUMENT BY 1 OR MORE OF THE FOLLOWING MEANS:

7 (i) IN PERSON.

8 (ii) BY REGISTERED MAIL, RETURN RECEIPT REQUESTED.

9 (iii) BY PARCEL DELIVERY SERVICE THAT REQUIRES THE RECIPIENT
10 TO PROVIDE A SIGNATURE IN ORDER TO RECEIVE DELIVERY OF A PARCEL.

11 (iv) BY FACSIMILE TRANSMISSION.

12 (3) Subject to subsection ~~-(7)-~~ (10), a physician or a qual-
13 ified person assisting the physician shall do all of the follow-
14 ing not less than 24 hours before that physician performs an
15 abortion upon a PATIENT WHO IS A pregnant woman:

16 (a) Confirm that, according to the best medical judgment of
17 a physician, the patient is pregnant, and determine the probable
18 gestational age of the fetus.

19 (b) Orally describe, in language designed to be understood
20 by the ~~pregnant woman~~ PATIENT, taking into account her age,
21 level of maturity, and intellectual capability, each of the
22 following:

23 (i) The probable gestational age of the fetus she is
24 carrying.

25 (ii) Information about what to do and whom to contact should
26 medical complications arise from the abortion.

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1 (iii) Information about how to obtain pregnancy prevention
2 information through the department of ~~public~~ COMMUNITY health.

3 (c) ~~Preceded by an explanation that the patient has the~~
4 ~~option to review or not review the written summary, present to~~
5 ~~the patient~~ PROVIDE THE PATIENT WITH A PHYSICAL COPY OF the
6 written summary described in subsection ~~(8)(b)~~ (11)(B) that
7 corresponds to the procedure the patient will undergo and is pro-
8 vided by the department of ~~public~~ COMMUNITY health. ~~or~~
9 ~~approved by the department of public health under subsection~~
10 ~~(8)(e).~~

11 (d) ~~Preceded by an explanation that the patient has the~~
12 ~~option to review or not review the depiction and description,~~
13 ~~provide~~ PROVIDE the patient with a PHYSICAL copy of a medically
14 accurate depiction, ILLUSTRATION, OR PHOTOGRAPH and description
15 of a fetus supplied by the department of ~~public~~ COMMUNITY
16 health pursuant to subsection ~~(8)(a)~~ (11)(A) at the gestational
17 age nearest the probable gestational age of the patient's fetus.

18 (e) Provide the patient with a PHYSICAL copy of the prenatal
19 care and parenting information pamphlet distributed by the
20 department of ~~public~~ COMMUNITY health under section 9161.

21 (4) The requirements of subsection (3) may be fulfilled by
22 the physician or a qualified person assisting the physician at a
23 location other than the health facility where the abortion is to
24 be performed. ~~The physician or qualified person assisting the~~
25 ~~physician may refer the patient to a local health department to~~
26 ~~have a pregnancy confirmed as required under subsection (3)(a),~~
27 ~~and to obtain the information required under subsection (3)(c)~~

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1 ~~and subsection (3)(d).~~ THE REQUIREMENT OF SUBSECTION (3)(A) THAT
2 A PATIENT'S PREGNANCY BE CONFIRMED MAY BE FULFILLED BY A LOCAL
3 HEALTH DEPARTMENT UNDER SUBSECTION (18). THE REQUIREMENTS OF
4 SUBSECTION (3) CANNOT BE FULFILLED BY THE PATIENT ACCESSING AN
5 INTERNET WEBSITE OTHER THAN THE INTERNET WEBSITE DESCRIBED IN
6 SUBSECTION (5) THAT IS MAINTAINED THROUGH THE DEPARTMENT.

7 (5) THE REQUIREMENTS OF SUBSECTION (3)(C) THROUGH (E) MAY BE
8 FULFILLED BY A PATIENT ACCESSING THE INTERNET WEBSITE MAINTAINED
9 AND OPERATED THROUGH THE DEPARTMENT AND RECEIVING A PRINTED,
10 VALID CONFIRMATION FORM FROM THE WEBSITE THAT THE PATIENT HAS
11 REVIEWED THE INFORMATION REQUIRED IN SUBSECTION (3)(C) THROUGH
12 (E) AT LEAST 24 HOURS BEFORE AN ABORTION BEING PERFORMED ON THE
13 PATIENT. THE WEBSITE SHALL NOT REQUIRE ANY INFORMATION BE SUP-
14 PLIED BY THE PATIENT. THE DEPARTMENT SHALL NOT TRACK, COMPILE,
15 OR OTHERWISE KEEP A RECORD OF INFORMATION THAT WOULD IDENTIFY A
16 PATIENT WHO ACCESSES THIS WEBSITE. THE PATIENT SHALL SUPPLY THE
17 VALID CONFIRMATION FORM TO THE PHYSICIAN OR QUALIFIED PERSON
18 ASSISTING THE PHYSICIAN TO BE INCLUDED IN THE PATIENT'S MEDICAL
19 RECORD TO COMPLY WITH THIS SUBSECTION.

20 (6) ~~(5)~~ Subject to subsection ~~(7)~~ (10), before
21 ~~performing an abortion~~ OBTAINING THE PATIENT'S SIGNATURE ON THE
22 ACKNOWLEDGMENT AND CONSENT FORM, a physician PERSONALLY AND IN
23 THE PRESENCE OF THE PATIENT shall do all of the following:

24 (a) Provide the patient with the physician's name and inform
25 the patient of her right to withhold or withdraw her consent to
26 the abortion at any time before performance of the abortion.

1 (b) Orally describe, in language designed to be understood
2 by the ~~pregnant woman~~ PATIENT, taking into account her age,
3 level of maturity, and intellectual capability, each of the
4 following:

5 (i) The specific risk, if any, to the patient of the compli-
6 cations that have been associated with the procedure the patient
7 will undergo, based on the patient's particular medical condition
8 and history as determined by the physician.

9 (ii) The specific risk of complications, IF ANY, to the
10 patient if she chooses to continue the pregnancy based on the
11 patient's particular medical condition and history as determined
12 by a physician.

13 ~~-(c) Obtain the patient's signature, on a form prepared or~~
14 ~~approved by the department, consenting to the abortion and~~
15 ~~acknowledging that she has received the information required in~~
16 ~~subsection (3), along with the explanations that she has the~~
17 ~~option to review or not review the written summary described in~~
18 ~~subsection (3)(c) and the depictions and descriptions described~~
19 ~~in subsection (3)(d). The physician shall retain a copy of the~~
20 ~~acknowledgment and consent form, and where applicable, the certi-~~
21 ~~fication form completed under subsection (15), in the patient's~~
22 ~~medical record.~~

23 ~~-(d) Provide the patient with a copy of the written acknowl-~~
24 ~~edgment and consent form described in subsection (8)(c), or~~
25 ~~approved by the department under subsection (8)(e).~~

26 (7) ~~-(6)-~~ To protect a ~~woman's~~ PATIENT'S privacy, the
27 information set forth in subsection (3) and subsection ~~-(5)-~~ (6)

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1 shall not be disclosed to the ~~woman~~ PATIENT in the presence of
2 another patient.

3 (8) BEFORE PERFORMING AN ABORTION ON A PATIENT WHO IS A
4 PREGNANT WOMAN, A PHYSICIAN OR A QUALIFIED PERSON ASSISTING THE
5 PHYSICIAN SHALL DO ALL OF THE FOLLOWING:

6 (A) OBTAIN THE PATIENT'S SIGNATURE ON THE ACKNOWLEDGMENT AND
7 CONSENT FORM DESCRIBED IN SUBSECTION (11)(C) CONFIRMING THAT SHE
8 HAS RECEIVED THE INFORMATION REQUIRED UNDER SUBSECTION (3).

9 (B) PROVIDE THE PATIENT WITH A PHYSICAL COPY OF THE SIGNED
10 ACKNOWLEDGMENT AND CONSENT FORM DESCRIBED IN SUBSECTION (11)(C).

11 (C) RETAIN A COPY OF THE SIGNED ACKNOWLEDGMENT AND CONSENT
12 FORM DESCRIBED IN SUBSECTION (11)(C) AND, IF APPLICABLE, A COPY
13 OF THE PREGNANCY CERTIFICATION FORM COMPLETED UNDER SUBSECTION
14 (18)(B), IN THE PATIENT'S MEDICAL RECORD.

15 (9) A PHYSICIAN SHALL NOT REQUIRE OR OBTAIN PAYMENT FOR AN
16 ABORTION RELATED MEDICAL
17 SERVICE PROVIDED TO A PATIENT WHO HAS INQUIRED ABOUT AN ABORTION
18 OR SCHEDULED AN ABORTION UNTIL THE EXPIRATION OF THE 24-HOUR
19 PERIOD REQUIRED IN SUBSECTION (3).

20 (10) ~~-(7)-~~ If the attending physician, utilizing his or her
21 experience, judgment, and professional competence, determines
22 that a medical emergency exists and necessitates performance of
23 an abortion before the requirements of subsections (1), (3), and
24 ~~-(5)-~~ (6) can be met, the physician is exempt from the require-
25 ments of subsections (1), (3), and ~~-(5)-~~ (6), may perform the
26 abortion, and shall maintain a written record identifying with
27 specificity the medical factors upon which the determination of
the medical emergency is based.

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1 (11) ~~(8)~~ The department of ~~public~~ COMMUNITY health shall
2 do each of the following:

3 (a) Produce medically accurate depictions, ILLUSTRATIONS, OR
4 PHOTOGRAPHS of the development of a human fetus ~~which reflect~~
5 THAT INDICATE BY SCALE the actual size of the fetus at ~~4-week~~
6 2-WEEK intervals from the fourth week through the twenty-eighth
7 week of gestation. ~~, using curriculum materials from the~~
8 ~~Michigan model for comprehensive school health education for~~
9 ~~grade 6, phase IV, lesson 22 in use on January 1, 1992.~~ Each
10 depiction, ILLUSTRATION, OR PHOTOGRAPH shall be accompanied by a
11 printed description, in nontechnical English, ~~Aramaic~~ ARABIC,
12 and Spanish, of the probable anatomical and physiological charac-
13 teristics of the fetus at that particular state of gestational
14 development.

15 (b) ~~Develop~~ SUBJECT TO SUBDIVISION (G), DEVELOP, draft,
16 and print, in nontechnical English, ~~Aramaic~~ ARABIC, and
17 Spanish, written standardized summaries, based upon the various
18 medical procedures used to abort pregnancies, that do each of the
19 following:

20 (i) Describe, individually and on separate documents, those
21 medical procedures used to perform abortions in this state that
22 are recognized by the department.

23 (ii) Identify the physical complications that have been
24 associated with each procedure described in subparagraph (i) and
25 with live birth, as determined by the department. In identifying
26 these complications, the department shall consider the annual
27 statistical report required under section 2835(6), AND SHALL CON-
SIDER STUDIES CONCERNING COMPLICATIONS THAT HAVE BEEN PUBLISHED
IN A PEER REVIEW MEDICAL JOURNAL, WITH PARTICULAR ATTENTION PAID
TO THE DESIGN OF THE STUDY, and shall

1 consult with the ~~United States center~~ FEDERAL CENTERS for
2 disease control, the American college of obstetricians and
3 gynecologists, the Michigan state medical society, or any other
4 source that the department determines appropriate FOR THE
5 PURPOSE.

6 (iii) State that as the result of an abortion, some women
7 may experience depression, feelings of guilt, sleep disturbance,
8 loss of interest in work or sex, or anger, and that if these
9 symptoms occur and are intense or persistent, professional help
10 is recommended.

11 (iv) State that not all of the ~~risks~~ COMPLICATIONS listed
12 in subparagraph (ii) may pertain to that particular patient and
13 refer the patient to her physician for more personalized
14 information.

15 (v) Identify services available through public agencies to
16 assist the patient during her pregnancy and after the birth of
17 her child, should she choose to give birth and maintain custody
18 of her child.

19 (vi) Identify services available through public agencies to
20 assist the patient in placing her child in an adoptive or foster
21 home, should she choose to give birth but not maintain custody of
22 her child.

23 (vii) Identify services available through public agencies to
24 assist the patient and provide counseling should she experience
25 subsequent adverse psychological effects from the abortion.

26 (c) Develop, draft, and print, in nontechnical English,
27 ~~Aramaic~~ ARABIC, and Spanish, an acknowledgment and consent form

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1 that includes only the following language above a signature line
2 for the patient:

3 "I, _____, hereby authorize
4 Dr. _____ ("the physician") and any assistant
5 designated by the physician to perform upon me the follow-
6 ing operation(s) or procedure(s):

7 _____
8 (Name of operation(s) or procedure(s))
9 _____

10 I understand that I am approximately _____ weeks
11 pregnant. I consent to an abortion procedure to termi-
12 nate my pregnancy. I understand that I have the right
13 to withdraw my consent to the abortion procedure at any
14 time prior to performance of that procedure. I acknowl-
15 edge THAT AT LEAST 24 HOURS BEFORE THE SCHEDULED
16 ABORTION I have received A PHYSICAL COPY OF EACH OF the
17 following:

18 (a) A ~~copy of a~~ medically accurate depiction, ILLUSTRATION, OR PHOTOGRAPH of a fetus at the probable gestational age of
19 the fetus I am carrying. ~~, preceded by an explanation that I~~
20 ~~have the option to review or not review the depiction.~~

22 (b) A WRITTEN description of the medical procedure that will
23 be used to perform the abortion. ~~, preceded by an explanation~~
24 ~~that I have the option to review or not review the description.~~

25 (c) ~~Information pertaining to potential risks and complica-~~
26 ~~tions that have been associated with abortion and with live~~
27 ~~birth.~~ A PRENATAL CARE AND PARENTING INFORMATION PAMPHLET. IF

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1 ANY OF THE ABOVE LISTED DOCUMENTS WERE TRANSMITTED BY FACSIMILE,
2 I CERTIFY THAT THE DOCUMENTS WERE CLEAR AND LEGIBLE. I ACKNOWL-
3 EDGE THAT THE PHYSICIAN WHO WILL PERFORM THE ABORTION HAS ORALLY
4 DESCRIBED ALL OF THE FOLLOWING TO ME:

5 (i) THE SPECIFIC RISK TO ME, IF ANY, OF THE COMPLICATIONS
6 THAT HAVE BEEN ASSOCIATED WITH THE PROCEDURE I AM SCHEDULED TO
7 UNDERGO.

8 (ii) THE SPECIFIC RISK TO ME, IF ANY, OF THE COMPLICATIONS
9 IF I CHOOSE TO CONTINUE THE PREGNANCY.

10 I ACKNOWLEDGE THAT I HAVE RECEIVED ALL OF THE FOLLOWING
11 INFORMATION:

12 (d) Information about what to do and whom to contact in the
13 event that complications arise from the abortion.

14 (e) Information pertaining to available pregnancy related
15 services.

16 ~~-(f) A prenatal care and parenting information pamphlet.-~~

17 I have been given an opportunity to ask questions about the
18 operation(s) or procedure(s). ~~-, and freely and voluntarily sign~~
19 ~~this form~~ I CERTIFY THAT I HAVE NOT BEEN REQUIRED TO MAKE ANY
20 PAYMENTS FOR AN ABORTION OR ANY ABORTION RELATED MEDICAL SERVICE
21 BEFORE THE EXPIRATION OF 24 HOURS AFTER I RECEIVED THE
22 WRITTEN MATERIALS LISTED IN PARAGRAPHS (A), (B), AND (C) ABOVE,
23 OR 24 HOURS AFTER THE TIME AND DATE LISTED ON THE CONFIRMATION
24 FORM IF PARAGRAPHS (A), (B), AND (C) WERE VIEWED FROM THE INTER-
25 NET WEBSITE DESCRIBED IN SUBSECTION (5).".

26 (d) Make available to physicians through the Michigan board
of medicine and the Michigan board of osteopathic medicine and

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1 surgery, ~~all local health departments,~~ and any person upon
2 request the copies of medically accurate depictions, ILLUSTRATIONS, OR PHOTOGRAPHS described in subdivision (a), the standardized written summaries described in subdivision (b), the acknowledgment and consent form described in subdivision (c), the prenatal care and parenting information pamphlet described in section 9161, and the PREGNANCY certification form described in subdivision (f).

9 (e) ~~Approve an alternative written summary or acknowledgment and consent form submitted by a physician for department of public health approval pursuant to this subsection, if the proposed summary or acknowledgment and consent form contains information substantially similar to the information described in subdivisions (b) and (c).~~ THE DEPARTMENT SHALL NOT DEVELOP WRITTEN SUMMARIES FOR ABORTION PROCEDURES UNDER SUBDIVISION (B) THAT UTILIZE MEDICATION THAT HAS NOT BEEN APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOR USE IN PERFORMING AN ABORTION.

18 (f) Develop, draft, and print a certification form to be signed by a local health department representative at the time and place a patient ~~is provided the information described in subsection (3)~~ HAS A PREGNANCY CONFIRMED, as requested by the patient, verifying the date and time the ~~information is provided to that patient~~ PREGNANCY IS CONFIRMED.

24 (G) DEVELOP AND MAINTAIN AN INTERNET WEBSITE THAT ALLOWS A PATIENT CONSIDERING AN ABORTION TO REVIEW THE INFORMATION REQUIRED IN SUBSECTION (3)(C) THROUGH (E). AFTER THE PATIENT REVIEWS THE REQUIRED INFORMATION, THE DEPARTMENT SHALL ASSURE

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1 THAT A CONFIRMATION FORM CAN BE PRINTED BY THE PATIENT FROM THE
2 INTERNET WEBSITE THAT WILL VERIFY THE TIME AND DATE THE INFORMA-
3 TION WAS REVIEWED. A CONFIRMATION FORM PRINTED UNDER THIS SUBDI-
4 VISION BECOMES INVALID 14 DAYS AFTER THE DATE AND TIME PRINTED ON
5 THE CONFIRMATION FORM.

6 (12) ~~-(9)-~~ A physician's duty to inform the patient under
7 this section does not require disclosure of information beyond
8 what a reasonably well-qualified physician licensed under this
9 article would possess.

10 (13) ~~-(10)-~~ A written consent form meeting the requirements
11 set forth in this section and signed by the ~~pregnant woman~~
12 PATIENT is presumed valid. The presumption created by this sub-
13 section may be rebutted by evidence that establishes, by a pre-
14 ponderance of the evidence, that consent was obtained through
15 fraud, negligence, deception, misrepresentation, coercion, or
16 duress.

17 (14) ~~-(11)-~~ A completed certification form described in sub-
18 section ~~-(8)(f)-~~ (11)(F) that is signed by a local health depart-
19 ment representative is presumed valid. The presumption created
20 by this subsection may be rebutted by evidence that establishes,
21 by a preponderance of the evidence, that the physician who relied
22 upon the certification had actual knowledge that the certificate
23 contained a false or misleading statement or signature.

24 (15) ~~-(12)-~~ This section does not create a right to
25 abortion.

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1 (16) ~~—(13)—~~ Notwithstanding any other provision of this
2 section, a person shall not perform an abortion that is
3 prohibited by law.

4 (17) ~~—(14)—~~ If any portion of this act or the application of
5 this act to any person or circumstances is found invalid by a
6 court, that invalidity ~~—shall—~~ DOES not affect the remaining por-
7 tions or applications of the act ~~—which—~~ THAT can be given effect
8 without the invalid portion or application, ~~—provided—~~ IF those
9 remaining portions are not determined by the court to be
10 inoperable.

11 (18) ~~—(15)—~~ Upon ~~an individual's~~ A PATIENT'S request, each
12 local health department shall:

13 (a) Provide a pregnancy test for that ~~individual~~ PATIENT
14 TO CONFIRM THE PREGNANCY AS REQUIRED UNDER SUBSECTION (3)(A) and
15 determine the probable gestational stage of ~~a confirmed~~
16 ~~pregnancy~~ THE FETUS. THE LOCAL HEALTH DEPARTMENT NEED NOT
17 COMPLY WITH THIS SUBDIVISION IF THE REQUIREMENTS OF SUBSECTION
18 (3)(A) HAVE ALREADY BEEN MET.

19 ~~—(b) Preceded by an explanation that the individual has the~~
20 ~~option to review or not review the written summaries, provide the~~
21 ~~summaries described in subsection (8)(b) that are recognized by~~
22 ~~the department as applicable to the individual's gestational~~
23 ~~stage of pregnancy.~~

24 ~~—(c) Preceded by an explanation that the individual has the~~
25 ~~option to review or not review the depiction and description,~~
26 ~~provide the individual with a copy of a medically accurate~~
27 ~~depiction and description of a fetus described in subsection~~

1 ~~(8)(a) at the gestational age nearest the probable gestational~~
2 ~~age of the patient's fetus.~~

3 (B) ~~(d) Ensure~~ IF A PREGNANCY IS CONFIRMED, ENSURE that
4 the ~~individual~~ PATIENT is provided with a completed PREGNANCY
5 certification form described in subsection ~~(8)(f)~~ (11)(F) at
6 the time the information is provided.

7 (19) ~~(16)~~ The identity and address of a patient who is
8 provided information or who consents to an abortion pursuant to
9 this section is confidential and is subject to disclosure only
10 with the consent of the patient OR BY JUDICIAL PROCESS.

11 (20) ~~(17) The identity and address of a patient who is pro-~~
12 ~~vided information or who consents to an abortion pursuant to this~~
13 ~~section is confidential and is subject to disclosure only with~~
14 ~~the consent of the patient or by judicial process.~~ A local
15 health department with a file containing the identity and address
16 of a patient described in ~~this~~ subsection (19) who has been
17 assisted by the local health department under this section shall
18 do both of the following:

19 (a) Only release the identity and address of the patient to
20 a physician or qualified person assisting the physician in order
21 to verify the receipt of the information required under this
22 section.

23 (b) Destroy the information containing the identity and
24 address of the patient within 30 days after assisting the patient
25 under this section.