



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



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4446 (Substitute H-1 as passed by the Senate)

Sponsor: Representative Dave Robertson

House Committee: Health Policy

Senate Committee: Health Policy

Date Completed: 12-12-05

RATIONALE

Public Act 133 of 1993 amended the Public Health Code to require a physician to give a patient considering abortion certain medically accurate information, including a depiction of a fetus, at least 24 hours before obtaining her consent to undergo the procedure. (Litigation regarding the constitutionality of the informed consent provisions ensued, delaying implementation until 1999. Those provisions have been amended several times since then, and are described below in further detail.)

The Code does not require a woman to receive an ultrasound before having an abortion, although, reportedly, many abortion providers do perform them to confirm the pregnancy, determine the gestational age of the fetus, and identify potential complications. It has been suggested that, if an ultrasound is performed before an abortion, the patient should be given an opportunity to view the ultrasound image before the procedure.

CONTENT

The bill would amend the Public Health Code to do the following:

- Require a physician or a qualified person assisting the physician to give the patient an opportunity to view the ultrasound image, if an ultrasound were performed before an abortion.**
- Require the Department of Community Health (DCH) to make available on its website a list of health care providers that offered to perform free ultrasounds.**

The Code prohibits a physician from performing an otherwise legal abortion

without the patient's informed written consent, given freely and without coercion. Before performing an abortion, the physician or a qualified person assisting the physician must obtain the patient's signature on an acknowledgement and consent form developed by the DCH confirming that the physician or qualified assistant has done the following at least 24 hours earlier:

- Confirmed the patient's pregnancy and determined the probable gestational age of the fetus.
- Orally described, in language designed to be understood by the patient, the probable gestational age of the fetus, and information about what to do and whom to contact should medical complications arise from the abortion.
- Given the patient a physical copy of a written summary of the procedure she will undergo.
- Given the patient a physical copy of a medically accurate depiction, illustration, or photograph and description of a fetus at the gestational age nearest the probable gestational age of the patient's fetus.
- Given the patient a physical copy of a prenatal care and parenting information pamphlet.

(Under the Code, "provide the patient with a physical copy" means confirming that the patient gained access to the DCH's website, described below, and received a printed valid confirmation form from the website and including that form in the patient's medical record, or giving a patient a copy of a required document in person; by registered mail, return receipt requested; by parcel delivery service that requires the recipient to provide a signature in order to receive delivery; or by fax.)

Under the bill, if at any time before an abortion was performed, a patient underwent an ultrasound examination or a physician determined that ultrasound imaging would be used during the course of a patient's abortion, the physician or a qualified person assisting the physician would have to give the patient an opportunity to view, or not to view, an active ultrasound image of the fetus. The physician or assisting person also would have to offer to give the patient a physical picture of the ultrasound image of the fetus before the abortion was performed.

(Under the Code, "qualified person assisting the physician" means a licensed physician, physician's assistant, psychologist, counselor, social worker, or practical nurse, or a registered professional nurse.)

The Code requires the DCH to develop and maintain an internet website that allows a patient considering an abortion to review the written summary of the procedure, the medically accurate depiction of a fetus, and the prenatal care and parenting information pamphlet (which all must be supplied by the DCH). After the patient views the information, the DCH must assure that she can print a confirmation form from the website verifying the time and date the information was reviewed. The confirmation form is valid for 14 days after it is printed.

The bill would require the DCH to include on the website a list of health care providers, facilities, and clinics that offered to perform ultrasounds free of charge. The list would have to be organized geographically and would have to include the name, address, and telephone number of each provider, facility, and clinic.

MCL 333.17015

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.)

Supporting Argument

The opportunity to view an ultrasound image would provide an invaluable supplement to the information women already are required to receive to make a truly informed choice, and perhaps deter some women from choosing abortion. Reportedly, some abortion providers, who have a financial

interest in patients' decisions, have discouraged patients from looking at ultrasound screens, or have refused requests to see them. Under the bill, the decision to view the image, as well as the decision to have an abortion, would remain with the patient.

Women who obtain abortions often experience extreme long-term guilt, sorrow, and grief afterward. If viewing an ultrasound image resulted in fewer abortions, the bill could save children's lives and spare women the anguish of abortion's negative repercussions.

Opposing Argument

Under existing informed consent provisions, women already receive sufficient information to make appropriate choices. This information includes a depiction of a fetus of the same gestational age, rendering the bill's requirement redundant. Moreover, nothing in the Code prohibits a woman from asking to view an ultrasound or an abortion provider from allowing her to see it.

Most women who choose abortion do not do so lightly. The bill could compound the anguish accompanying an already agonizing decision. Instead, the State should work to prevent unintended pregnancies by improving education, and access to and affordability of contraception and family planning services.

Response: The bill's requirement would not be redundant. The image of *her* fetus, as opposed to the generic depiction allowed under the existing law, could have more bearing on a woman's decision.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would likely lead to a small increase in administrative cost for the State. The Department of Community Health would bear a small increase in cost associated with compiling and maintaining a list of available ultrasound providers on its website.

Fiscal Analyst: David Fosdick

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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.