

# HOUSE BILL No. 5997

April 25, 2006, Introduced by Reps. Baxter, Stahl, Palmer, Nitz, Marleau, Caul, Robertson, Emmons, Garfield, Vander Veen, Jones, Moore, Elsenheimer, Hummel, Brandenburg, Stakoe, Gosselin, Mortimer, Casperson, Drolet, Wenke, Pastor, LaJoy, Green, Huizenga, Hildenbrand, Hoogendyk, Ward, Caswell, Taub and David Law and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 17015 (MCL 333.17015), as amended by 2002 PA  
685.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 17015. (1) Subject to subsection (10), a physician shall  
2 not perform an abortion otherwise permitted by law without the  
3 patient's informed written consent, given freely and without  
4 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 pregnancy  
8 for a purpose other than to increase the probability of a live  
9 birth, to preserve the life or health of the child after live

1 birth, or to remove a dead fetus. Abortion does not include the use  
2 or prescription of a drug or device intended as a 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 under contract to provide services on behalf of, a  
7 local health department who meets 1 or more of the licensing  
8 requirements listed in subdivision (f).

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

15 (e) "Medical service" means the provision of a treatment,  
16 procedure, medication, examination, diagnostic test, assessment, or  
17 counseling, including, but not limited to, a pregnancy test,  
18 ultrasound, pelvic examination, or an abortion.

19 (f) "Qualified person assisting the physician" means another  
20 physician or a physician's assistant licensed under this part or  
21 part 175, a fully licensed or limited licensed psychologist  
22 licensed under part 182, a professional counselor licensed under  
23 part 181, a registered professional nurse or a licensed practical  
24 nurse licensed under part 172, or a social worker ~~registered~~  
25 **LICENSED** under part 185.

26 (g) "Probable gestational age of the fetus" means the  
27 gestational age of the fetus at the time an abortion is planned to

1 be performed.

2 (h) "Provide the patient with a physical copy" means  
3 confirming that the patient accessed the internet website described  
4 in subsection (5) and received a printed valid confirmation form  
5 from the website and including that form in the patient's medical  
6 record or giving a patient a copy of a required document by 1 or  
7 more of the following means:

8 (i) In person.

9 (ii) By registered mail, return receipt requested.

10 (iii) By parcel delivery service that requires the recipient to  
11 provide a signature in order to receive delivery of a parcel.

12 (iv) By facsimile transmission.

13 (3) Subject to subsection (10), a physician or a qualified  
14 person assisting the physician shall do all of the following not  
15 less than 24 hours before that physician performs an abortion upon  
16 a patient who is a pregnant woman:

17 (a) Confirm that, according to the best medical judgment of a  
18 physician, the patient is pregnant, and determine the probable  
19 gestational age of the fetus. **IF THE GESTATIONAL AGE OF THE FETUS**  
20 **IS DETERMINED TO BE 20 WEEKS OR MORE, ORALLY INFORM THE PATIENT**  
21 **THAT THE FETUS MAY EXPERIENCE PAIN DURING THE PERFORMANCE OF THE**  
22 **ABORTION, PROVIDE THE PATIENT WITH A WRITTEN SUMMARY DEVELOPED BY**  
23 **THE DEPARTMENT THAT DOCUMENTS THE MEDICAL INFORMATION SUPPORTING**  
24 **THE ORAL STATEMENT THAT THE FETUS MAY EXPERIENCE PAIN, AND INFORM**  
25 **THE PATIENT OF ANY MEDICAL INTERVENTION THE PHYSICIAN OR A**  
26 **QUALIFIED PERSON ASSISTING THE PHYSICIAN USES, OR OF A SPECIFIC**  
27 **INTERVENTION HE OR SHE WOULD USE IN THE PATIENT'S PARTICULAR CASE,**

1 **TO MITIGATE THE PAIN EXPERIENCED BY THE FETUS DURING THE ABORTION.**

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

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

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

8 (iii) Information about how to obtain pregnancy prevention  
9 information through the department of community health.

10 (c) Provide the patient with a physical copy of the written  
11 summary described in subsection (11)(b) that corresponds to the  
12 procedure the patient will undergo and is provided by the  
13 department of community health. If the procedure has not been  
14 recognized by the department, but is otherwise allowed under  
15 Michigan law, and the department has not provided a written summary  
16 for that procedure, the physician shall develop and provide a  
17 written summary that describes the procedure, any known risks or  
18 complications of the procedure, and risks associated with live  
19 birth and meets the requirements of subsection (11)(b)(iii) through  
20 (vii).

21 (d) Provide the patient with a physical copy of a medically  
22 accurate depiction, illustration, or photograph and description of  
23 a fetus supplied by the department of community health pursuant to  
24 subsection (11)(a) at the gestational age nearest the probable  
25 gestational age of the patient's fetus.

26 (e) Provide the patient with a physical copy of the prenatal  
27 care and parenting information pamphlet distributed by the

1 department of community health under section 9161.

2 (4) The requirements of subsection (3) may be fulfilled by the  
3 physician or a qualified person assisting the physician at a  
4 location other than the health facility where the abortion is to be  
5 performed. The requirement of subsection (3)(a) that a patient's  
6 pregnancy be confirmed may be fulfilled by a local health  
7 department under subsection (18). The requirements of subsection  
8 (3) cannot be fulfilled by the patient accessing an internet  
9 website other than the internet website described in subsection (5)  
10 that is maintained through the department.

11 (5) The requirements of subsection (3)(c) through (e) may be  
12 fulfilled by a patient accessing the internet website maintained  
13 and operated through the department and receiving a printed, valid  
14 confirmation form from the website that the patient has reviewed  
15 the information required in subsection (3)(c) through (e) at least  
16 24 hours before an abortion being performed on the patient. The  
17 website shall not require any information be supplied by the  
18 patient. The department shall not track, compile, or otherwise keep  
19 a record of information that would identify a patient who accesses  
20 this website. The patient shall supply the valid confirmation form  
21 to the physician or qualified person assisting the physician to be  
22 included in the patient's medical record to comply with this  
23 subsection.

24 (6) Subject to subsection (10), before obtaining the patient's  
25 signature on the acknowledgment and consent form, a physician  
26 personally and in the presence of the patient shall do all of the  
27 following:

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

4 (b) Orally describe, in language designed to be understood by  
5 the patient, taking into account her age, level of maturity, and  
6 intellectual capability, each of the following:

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

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

15 (7) To protect a patient's privacy, the information set forth  
16 in subsection (3) and subsection (6) shall not be disclosed to the  
17 patient in the presence of another patient.

18 (8) Before performing an abortion on a patient who is a  
19 pregnant woman, a physician or a qualified person assisting the  
20 physician shall do all of the following:

21 (a) Obtain the patient's signature on the acknowledgment and  
22 consent form described in subsection (11)(c) confirming that she  
23 has received the information required under subsection (3).

24 (b) Provide the patient with a physical copy of the signed  
25 acknowledgment and consent form described in subsection (11)(c).

26 (c) Retain a copy of the signed acknowledgment and consent  
27 form described in subsection (11)(c) and, if applicable, a copy of

1 the pregnancy certification form completed under subsection  
2 (18)(b), in the patient's medical record.

3 (9) This subsection does not prohibit notifying the patient  
4 that payment for medical services will be required or that  
5 collection of payment in full for all medical services provided or  
6 planned may be demanded after the 24-hour period described in this  
7 subsection has expired. A physician or an agent of the physician  
8 shall not collect payment, in whole or in part, for a medical  
9 service provided to or planned for a patient before the expiration  
10 of 24 hours from the time the patient has done either or both of  
11 the following, except in the case of a physician or an agent of a  
12 physician receiving capitated payments or under a salary  
13 arrangement for providing those medical services:

14 (a) Inquired about obtaining an abortion after her pregnancy  
15 is confirmed and she has received from that physician or a  
16 qualified person assisting the physician the information required  
17 under subsection (3)(c) and (d).

18 (b) Scheduled an abortion to be performed by that physician.

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

1           (11) The department of community health shall do each of the  
2 following:

3           (a) Produce medically accurate depictions, illustrations, or  
4 photographs of the development of a human fetus that indicate by  
5 scale the actual size of the fetus at 2-week intervals from the  
6 fourth week through the twenty-eighth week of gestation. Each  
7 depiction, illustration, or photograph shall be accompanied by a  
8 printed description, in nontechnical English, Arabic, and Spanish,  
9 of the probable anatomical and physiological characteristics of the  
10 fetus at that particular state of gestational development.

11           (b) Subject to subdivision (g), develop, draft, and print, in  
12 nontechnical English, Arabic, and Spanish, written standardized  
13 summaries, based upon the various medical procedures used to abort  
14 pregnancies, that do each of the following:

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

18           (ii) Identify the physical complications that have been  
19 associated with each procedure described in subparagraph (i) and  
20 with live birth, as determined by the department. In identifying  
21 these complications, the department shall consider the annual  
22 statistical report required under section 2835(6), and shall  
23 consider studies concerning complications that have been published  
24 in a peer review medical journal, with particular attention paid to  
25 the design of the study, and shall consult with the federal centers  
26 for disease control, the American college of obstetricians and  
27 gynecologists, the Michigan state medical society, or any other

1 source that the department determines appropriate for the purpose.

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

7 (iv) State that not all of the complications listed in  
8 subparagraph (ii) may pertain to that particular patient and refer  
9 the patient to her physician for more personalized information.

10 (v) Identify services available through public agencies to  
11 assist the patient during her pregnancy and after the birth of her  
12 child, should she choose to give birth and maintain custody of her  
13 child.

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

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

21 (c) Develop, draft, and print, in nontechnical English,  
22 Arabic, and Spanish, an acknowledgment and consent form that  
23 includes only the following language above a signature line for the  
24 patient:

25 "I, \_\_\_\_\_, hereby authorize Dr.  
26 \_\_\_\_\_ ("the physician") and any assistant designated  
27 by the physician to perform upon me the following operation(s) or

1 procedure(s):

2

3 \_\_\_\_\_  
 (Name of operation(s) or procedure(s))

4 \_\_\_\_\_

5 I understand that I am approximately \_\_\_\_\_ weeks pregnant. I  
 6 consent to an abortion procedure to terminate my pregnancy. I  
 7 understand that I have the right to withdraw my consent to the  
 8 abortion procedure at any time prior to performance of that  
 9 procedure. I acknowledge that at least 24 hours before the  
 10 scheduled abortion I have received a physical copy of each of the  
 11 following:

12 (a) A medically accurate depiction, illustration, or  
 13 photograph of a fetus at the probable gestational age of the fetus  
 14 I am carrying.

15 (b) A written description of the medical procedure that will  
 16 be used to perform the abortion.

17 **(C) IF I AM 20 WEEKS OR MORE PREGNANT, A WRITTEN SUMMARY THAT**  
 18 **DOCUMENTS THE MEDICAL EVIDENCE THAT THE FETUS MAY EXPERIENCE PAIN**  
 19 **DURING THE PROCEDURE.**

20 **(D) —(e)—** A prenatal care and parenting information pamphlet.  
 21 If any of the above listed documents were transmitted by facsimile,  
 22 I certify that the documents were clear and legible. I acknowledge  
 23 that the physician who will perform the abortion has orally  
 24 described all of the following to me:

25 (i) The specific risk to me, if any, of the complications that  
 26 have been associated with the procedure I am scheduled to undergo.

27 (ii) The specific risk to me, if any, of the complications if I

1 choose to continue the pregnancy.

2 (iii) IF I AM 20 WEEKS OR MORE PREGNANT, THE MEDICAL  
3 INTERVENTION, IF ANY, THAT THE PHYSICIAN INTENDS TO USE DURING THE  
4 PROCEDURE TO MITIGATE THE PAIN EXPERIENCED BY THE FETUS.

5 I acknowledge that I have received all of the following  
6 information:

7 (E) ~~(d)~~ Information about what to do and whom to contact in  
8 the event that complications arise from the abortion.

9 (F) ~~(e)~~ Information pertaining to available pregnancy  
10 related services.

11 I have been given an opportunity to ask questions about the  
12 operation(s) or procedure(s). I certify that I have not been  
13 required to make any payments for an abortion or any medical  
14 service before the expiration of 24 hours after I received the  
15 written materials listed in paragraphs (a), (b), ~~and~~ (c), AND (D)  
16 above, or 24 hours after the time and date listed on the  
17 confirmation form if paragraphs (a), (b), ~~and~~ (c), AND (D) were  
18 viewed from the state of Michigan internet website.".

19 (d) Make available to physicians through the Michigan board of  
20 medicine and the Michigan board of osteopathic medicine and  
21 surgery, and any person upon request the copies of medically  
22 accurate depictions, illustrations, or photographs described in  
23 subdivision (a), the standardized written summaries described in  
24 subdivision (b), the acknowledgment and consent form described in  
25 subdivision (c), the prenatal care and parenting information  
26 pamphlet described in section 9161, and the pregnancy certification

1 form described in subdivision (f).

2 (e) The department shall not develop written summaries for  
3 abortion procedures under subdivision (b) that utilize medication  
4 that has not been approved by the United States food and drug  
5 administration for use in performing an abortion.

6 (f) Develop, draft, and print a certification form to be  
7 signed by a local health department representative at the time and  
8 place a patient has a pregnancy confirmed, as requested by the  
9 patient, verifying the date and time the pregnancy is confirmed.

10 (g) Develop and maintain an internet website that allows a  
11 patient considering an abortion to review the information required  
12 in subsection (3)(c) through (e). After the patient reviews the  
13 required information, the department shall assure that a  
14 confirmation form can be printed by the patient from the internet  
15 website that will verify the time and date the information was  
16 reviewed. A confirmation form printed under this subdivision  
17 becomes invalid 14 days after the date and time printed on the  
18 confirmation form.

19 (12) A physician's duty to inform the patient under this  
20 section does not require disclosure of information beyond what a  
21 reasonably well-qualified physician licensed under this article  
22 would possess.

23 (13) A written consent form meeting the requirements set forth  
24 in this section and signed by the patient is presumed valid. The  
25 presumption created by this subsection may be rebutted by evidence  
26 that establishes, by a preponderance of the evidence, that consent  
27 was obtained through fraud, negligence, deception,

1 misrepresentation, coercion, or duress.

2 (14) A completed certification form described in subsection  
3 (11)(f) that is signed by a local health department representative  
4 is presumed valid. The presumption created by this subsection may  
5 be rebutted by evidence that establishes, by a preponderance of the  
6 evidence, that the physician who relied upon the certification had  
7 actual knowledge that the certificate contained a false or  
8 misleading statement or signature.

9 (15) This section does not create a right to abortion.

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

12 (17) If any portion of this act or the application of this act  
13 to any person or circumstances is found invalid by a court, that  
14 invalidity does not affect the remaining portions or applications  
15 of the act that can be given effect without the invalid portion or  
16 application, if those remaining portions are not determined by the  
17 court to be inoperable.

18 (18) Upon a patient's request, each local health department  
19 shall:

20 (a) Provide a pregnancy test for that patient to confirm the  
21 pregnancy as required under subsection (3)(a) and determine the  
22 probable gestational stage of the fetus. The local health  
23 department need not comply with this subdivision if the  
24 requirements of subsection (3)(a) have already been met.

25 (b) If a pregnancy is confirmed, ensure that the patient is  
26 provided with a completed pregnancy certification form described in  
27 subsection (11)(f) at the time the information is provided.

1           (19) The identity and address of a patient who is provided  
2 information or who consents to an abortion pursuant to this section  
3 is confidential and is subject to disclosure only with the consent  
4 of the patient or by judicial process.

5           (20) A local health department with a file containing the  
6 identity and address of a patient described in subsection (19) who  
7 has been assisted by the local health department under this section  
8 shall do both of the following:

9           (a) Only release the identity and address of the patient to a  
10 physician or qualified person assisting the physician in order to  
11 verify the receipt of the information required under this section.

12           (b) Destroy the information containing the identity and  
13 address of the patient within 30 days after assisting the patient  
14 under this section.