

HOUSE BILL NO. 5444

October 20, 2021, Introduced by Reps. Carra, Steven Johnson, Paquette, Reilly, Brann, LaFave and Meerman and referred to the Committee on Health Policy.

A bill to require testing for a fetal heartbeat before the performance of an abortion; to place certain requirements and restrictions on the performance of an abortion if a fetal heartbeat is detected; to provide for the powers and duties of certain state and local governmental officers and entities; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "fetal heartbeat protection act".

1 (2) The intent of this act is to protect unborn living human
2 beings with beating hearts from being victims of abortion and for
3 other purposes.

4 Sec. 2. As used in this act:

5 (a) "Abortion" means the intentional use of an instrument,
6 drug, or other substance or device to terminate a woman's pregnancy
7 for a purpose other than to increase the probability of a live
8 birth, to preserve the life or health of the child after live
9 birth, or to remove a dead fetus.

10 (b) "Conception" means fertilization.

11 (c) "Contraceptive" means a drug, device, or chemical that
12 prevents conception.

13 (d) "Fetal heartbeat" means cardiac activity or the steady and
14 repetitive rhythmic contraction of the fetal heart within the
15 gestational sac.

16 (e) "Fetus" means human offspring developing during pregnancy
17 from the moment of conception, including the embryonic stage of
18 development.

19 (f) "Gestational age" means the age of an unborn living human
20 being as calculated from the first day of the last menstrual period
21 of the pregnant woman carrying the unborn living human being.

22 (g) "Gestational sac" means the structure that comprises the
23 extraembryonic membranes that envelop the fetus and that is
24 typically visible by ultrasound after the fourth week of pregnancy.

25 (h) "Intrauterine pregnancy" means a pregnancy in which the
26 fetus is attached to the placenta within the uterus of the pregnant
27 woman.

28 (i) "Medical emergency" means a condition that, in a
29 physician's good-faith medical judgment and based on the facts

1 known to the physician at the time, so endangers the life of the
2 pregnant woman or poses a serious risk of the substantial and
3 irreversible impairment of a major bodily function of the pregnant
4 woman as to necessitate the immediate performance or inducement of
5 an abortion.

6 (j) "Physician" means that term as defined in sections 17001
7 and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and
8 333.17501.

9 (k) "Pregnancy" means the human female reproductive condition
10 that begins with conception, when the woman is carrying the
11 developing human offspring, and that is calculated from the first
12 day of the last menstrual period of the woman.

13 (l) "Standard medical practice" means the degree of skill,
14 care, and diligence that an obstetrician of ordinary learning,
15 judgement, and skill would employ in like circumstances, including
16 employing the appropriate means of detecting a fetal heartbeat
17 depending on the estimated gestational age of the unborn living
18 human being and the condition of the woman and her pregnancy.

19 (m) "Unborn living human being" means an individual of the
20 species *Homo sapiens in utero*.

21 Sec. 3. (1) Subject to subsection (2), before performing an
22 abortion on a pregnant woman, a person shall determine whether a
23 fetal heartbeat is detectable in the unborn living human being the
24 pregnant woman is carrying. The person shall record in the pregnant
25 woman's medical record the estimated gestational age of the unborn
26 living human being, the method used to test for a fetal heartbeat,
27 the date and time of the test, and the result of the test.

28 (2) The person shall make the determination described in
29 subsection (1) in accordance with the person's good-faith

1 understanding of standard medical practice.

2 Sec. 4. (1) Except as otherwise provided in this section, a
3 person shall not knowingly perform an abortion on a pregnant woman
4 without first determining under section 3 whether the unborn living
5 human being the pregnant woman is carrying has a detectable fetal
6 heartbeat.

7 (2) It is not a violation of subsection (1) if any of the
8 following apply:

9 (a) The person performing the abortion is a physician who
10 believes that a medical emergency exists that prevents compliance
11 with subsection (1). A physician who performs an abortion under
12 this subdivision shall note both of the following in the pregnant
13 woman's medical record and shall maintain a copy of the notations
14 in the physician's own records for at least 7 years after the
15 notations are made:

16 (i) The physician's belief that a medical emergency
17 necessitating the abortion existed.

18 (ii) The medical condition of the pregnant woman that prevented
19 compliance with subsection (1).

20 (b) The person performing the abortion tested for the presence
21 of a fetal heartbeat under section 3 and the test did not reveal a
22 fetal heartbeat.

23 (3) Except as otherwise provided in subsection (4), a person
24 who violates this section is guilty of a felony and shall be
25 punished by imprisonment for not less than 2 years or more than 4
26 years.

27 (4) A person who violates this section is guilty of a felony
28 and shall be punished by imprisonment for not less than 6 years or
29 more than 15 years if the violation causes the death of the

1 pregnant woman.

2 (5) A pregnant woman on whom an abortion is performed in
3 violation of this section is not guilty of any of the following:

4 (a) Violating this section.

5 (b) Attempting to violate this section.

6 (c) Conspiring to commit a violation of this section.

7 Sec. 5. (1) Except in the case of a medical emergency that
8 prevents compliance with this section, a person who detects a fetal
9 heartbeat under section 3 in an unborn living human being that a
10 pregnant woman is carrying shall not perform an abortion on the
11 pregnant woman without first complying with all of the following
12 not less than 24 hours before the person performs the abortion:

13 (a) Inform the pregnant woman in writing that the unborn
14 living human being the pregnant woman is carrying has a fetal
15 heartbeat.

16 (b) Inform the pregnant woman, to the best of the person's
17 knowledge, of the statistical probability of bringing the unborn
18 living human being possessing a detectable fetal heartbeat to term
19 based on gestational age.

20 (c) Obtain the signature of the pregnant woman on a form
21 acknowledging that she has received information from the person
22 that the unborn living human being she is carrying has a fetal
23 heartbeat and that she is aware of the statistical probability of
24 bringing the unborn living human being that she is carrying to
25 term.

26 (2) The requirements described in subsection (1) are in
27 addition to any other informed consent requirement that is required
28 by law to perform an abortion.

29 (3) Except as otherwise provided in subsection (4), a person

1 who violates this section is guilty of a felony punishable by
2 imprisonment for not more than 2 years.

3 (4) A person who violates this section is guilty of a felony
4 punishable by imprisonment for not more than 6 years if the
5 violation causes the death of the pregnant woman.

6 Sec. 6. (1) Except as otherwise provided in this section, a
7 person shall not knowingly perform an abortion on a pregnant woman
8 who is carrying an unborn living human being whose fetal heartbeat
9 has been detected under section 3.

10 (2) It is not a violation of subsection (1) if any of the
11 following apply:

12 (a) The person performing the abortion is a physician who
13 performs a medical procedure that, in the physician's reasonable
14 medical judgment, is designed or intended to prevent the death of
15 the pregnant woman or to prevent a serious risk of the substantial
16 and irreversible impairment of a major bodily function of the
17 pregnant woman. A physician who performs a medical procedure
18 described in this subdivision shall declare in writing that the
19 medical procedure is necessary, to the best of the physician's
20 reasonable medical judgment, to prevent the death of the pregnant
21 woman or to prevent a serious risk of the substantial and
22 irreversible impairment of a major bodily function of the pregnant
23 woman. In the document, the physician shall specify the pregnant
24 woman's medical condition that the medical procedure is asserted to
25 address and the medical rationale for the physician's conclusion
26 that the medical procedure is necessary to prevent the death of the
27 pregnant woman or to prevent a serious risk of the substantial and
28 irreversible impairment of a major bodily function of the pregnant
29 woman. The physician shall place the document in the pregnant

1 woman's medical record and shall maintain a copy of the document in
2 the physician's own records for at least 7 years after the date the
3 document is created.

4 (b) The person performing the abortion tested for the presence
5 of a fetal heartbeat under section 3 and the test did not reveal a
6 fetal heartbeat.

7 (3) Except as otherwise provided in subsection (4), a person
8 who violates this section is guilty of a felony and shall be
9 punished by imprisonment for not less than 2 years or more than 4
10 years.

11 (4) A person who violates this section is guilty of a felony
12 and shall be punished by imprisonment for not less than 6 years or
13 more than 15 years if the violation causes the death of the
14 pregnant woman.

15 (5) A pregnant woman on whom an abortion is performed in
16 violation of this section is not guilty of any of the following:

17 (a) Violating this section.

18 (b) Attempting to violate this section.

19 (c) Conspiring to commit a violation of this section.

20 Sec. 7. (1) A person who performs an abortion on a pregnant
21 woman in violation of section 4 or 6, fails to provide a pregnant
22 woman with the information required under section 5, or fails to
23 obtain the signature of a pregnant woman as required by section 5,
24 is liable to the pregnant woman in a civil action for all of the
25 following:

26 (a) At the pregnant woman's election at any time before final
27 judgment, damages in the amount of \$10,000.00 or the amount
28 determined by the trier of fact.

29 (b) Reasonable attorney fees.

1 (c) Court costs.

2 (2) An action brought under this section is subject to the
3 same defenses and requirements of proof as an action for wrongful
4 death under section 2922 of the revised judicature act of 1961,
5 1961 PA 236, MCL 600.2922, except for any requirement of a live
6 birth.

7 Sec. 8. (1) This act only applies to intrauterine pregnancies.

8 (2) This act does not prohibit the sale, use, prescription, or
9 administration of a drug, device, or chemical for contraceptive
10 purposes.

11 (3) Nothing in this act shall be construed as authorizing any
12 abortion that is illegal under any other provision of state law.

13 (4) Nothing in this act shall be construed to repeal or amend,
14 explicitly or by implication, any provision of law prohibiting or
15 regulating abortion, including, but not limited to, section 14, 15,
16 322, or 323 of the Michigan penal code, 1931 PA 328, MCL 750.14,
17 750.15, 750.322, and 750.323.

18 (5) This act does not prohibit a person from being charged
19 with, convicted of, or sentenced for any other violation of law
20 arising out of the same transaction as the violation of this act in
21 addition to being charged with, convicted of, or sentenced for the
22 violation of this act.

23 (6) This act only applies to abortions that intentionally,
24 knowingly, or recklessly cause the death of an unborn living human
25 being.

26 (7) If any court issues an order or judgment that restores,
27 expands, or clarifies the authority of this state to prohibit or
28 regulate abortion or an amendment to the United States Constitution
29 is adopted that restores, expands, or clarifies the authority of

1 this state to prohibit or regulate abortion, the attorney general
2 may apply to the appropriate state or federal court for 1 or more
3 of the following:

4 (a) A declaration that a section in this act is
5 constitutional.

6 (b) A judgment or order lifting an injunction against the
7 enforcement of a section of this act.

8 (8) If the attorney general fails to apply for the relief
9 described in subsection (7) within 30 days after an event described
10 in that subsection occurs, a county prosecutor may apply to the
11 appropriate state or federal court for the relief described in that
12 subsection.

13 Enacting section 1. This act takes effect 90 days after the
14 date it is enacted into law.