



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 147 (as enacted)
Sponsor: Senator Erika Geiss
Senate Committee: Civil Rights, Judiciary, and Public Safety
House Committee: Judiciary

PUBLIC ACT 31 of 2023

Date Completed: 4-2-24

RATIONALE

The passage of Proposal 22-3 codified an individual right to reproductive freedom in the Michigan Constitution, including the right to carry out all decisions concerning pregnancy and abortion (see **BACKGROUND**). The Elliot-Larsen Civil Rights Act (ELCRA) prohibits an employer from treating an individual affected by pregnancy differently than another individual who is not so affected; however, the ELCRA previously specified that this prohibition did not apply in the case of an employee undergoing a nontherapeutic abortion not intended to save the life of the mother. Some people believed that the exemption from the prohibition conflicted with Proposal 22-3's right to abortion access and so it was recommended that the exemption be deleted.

CONTENT

The bill amended the ELCRA to delete a provision that specified that the prohibition against an employer treating an individual affected by pregnancy, childbirth, or a related medical condition differently from another individual did not apply in the case of a nontherapeutic abortion not intended to save the life of the mother.

The bill took effect February 13, 2024.

Specifically, the ELCRA prohibits an employer from treating an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work.

For the purposes of the prohibition above, the Act previously specified that a medical condition related to pregnancy or childbirth did not include nontherapeutic abortion not intended to save the life of the mother. The bill deleted this provision.

In addition, the ELCRA previously specified that "sex" included pregnancy, childbirth, or a medical condition related to pregnancy or childbirth that did not include a nontherapeutic abortion not intended to save the life of the mother. Instead, under the bill, "sex" includes pregnancy, childbirth, or a medical condition related to pregnancy or childbirth or the termination of a pregnancy.

MCL 37.2201 & 37.2202

BACKGROUND

Proposal 22-3

During the 2022 election cycle, a group called Reproductive Freedom for All circulated petitions and collected enough signatures for a proposed constitutional amendment to be

placed on the 2022 November general election ballot. The amendment, which became Proposal 22-3, establishes an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allows the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibits State discrimination in enforcement of the right; prohibits the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the amendment; and invalidates State laws that conflict with the proposed amendment.¹ Proposal 22-3 passed with 56.66% of electors in favor.²

Abortion's Legal Background

In 1973, the United States Supreme Court issued its decision in *Roe v. Wade*, in which the Court struck down a Texas law making abortion illegal except when necessary to save the mother's life. Following this decision, the abortion ban under Section 14 of the Michigan Penal Code went dormant. In June 2022, the US Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe* on the grounds that the US Constitution makes no reference to abortion, and the right is not implicitly protected by any constitutional provision, including the Fourteenth Amendment. Following the *Dobbs* decision, Michigan's abortion ban went back into effect; however, a lawsuit was filed seeking to block the enforcement of the law and that lawsuit resulted in a court of claims judge ruling that the abortion ban was unconstitutional. Proposal 22-3 guaranteed the right to abortion access before fetal viability and the Michigan Legislature has repealed many conflicting laws since the Proposal took effect, including the abortion ban under Section 14 of the Michigan Penal Code.

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

According to the Guttmacher Institute, a research organization focused on advancing sexual and reproductive health, approximately 25% of women in the United States will have an abortion by the age of 45.³ Those that have an abortion indicate that they do so because they otherwise could not continue to work, attend school, or care for their children or loved ones. Regardless of the reason, Proposal 22-3 enshrined in the State Constitution a right to abortion access. Similarly, Title VII of the Federal Civil Rights Act prohibits an individual from being fired for having or considering having an abortion. Given the rights granted under Proposal 22-3, Michigan's civil rights laws needed amending to agree with Title VII of the Federal Civil Rights Act.

Opposing Argument

Proposal 22-3 enshrined the right to abortion access; however, testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety indicates that the bill's amendment could go further than guaranteeing that right. By removing the language that specified that the prohibition against an employer treating an individual affected by pregnancy differently from another individual did not apply in the case of an elective abortion, the bill could require some employers to provide health insurance coverage for elective abortions. This requirement could conflict with an employer's First Amendment right to freedom of religion, especially an

¹ "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.

² "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: https://mielections.us/election/results/2022GEN_CENR.html. Retrieved on 2-28-2023.

³ Guttmacher Institute, *Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, 2017.

employer that was a religious institution or an employer that had within its mission statement religious beliefs. An employer should not have to support financially an employee's decision to get an elective abortion.

Response: The bill does not require an employer to provide health insurance benefits for elective abortions.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Cory Savino, PhD

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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.