

THE SOCIAL WELFARE ACT (EXCERPT)
Act 280 of 1939

400.109a Abortion as service provided with public funds to welfare recipient; prohibition; exception; policy.

Sec. 109a. Notwithstanding any other provision of this act, an abortion shall not be a service provided with public funds to a recipient of welfare benefits, whether through a program of medical assistance, general assistance, or categorical assistance or through any other type of public aid or assistance program, unless the abortion is necessary to save the life of the mother. It is the policy of this state to prohibit the appropriation of public funds for the purpose of providing an abortion to a person who receives welfare benefits unless the abortion is necessary to save the life of the mother.

History: Add. 1987, Act 59, Eff. Dec. 12, 1988.

Constitutionality: The Michigan Supreme Court considered an argument by plaintiffs in *Doe v Department of Social Services*, 439 Mich 650 (1992), that the state's refusal to pay for a therapeutic abortion violates the equal protection guarantee of the Michigan Constitution. Plaintiffs argued that S 400.109a provides unequal treatment to two classes of indigent, pregnant women — those who choose childbirth and those who chose abortion. The trial court in the case granted defendant's motion for summary disposition and dismissed the suit. The court of appeals reversed, 187 Mich App 493 (1991), concluding that (1) the equal protection guarantee in the Michigan Constitution provided greater protection than the corresponding guarantee in the federal constitution and (2) that the statute directly interferes with the women's right to an abortion. The Michigan Supreme Court reversed the court of appeals, holding that (1) there is no evidence of an intent in the Michigan Constitution to provide broader protection than its federal counterpart and (2) the state's decision to fund childbirth, but not abortion, does not impinge upon the exercise of a fundamental right. The Michigan Supreme Court, in upholding the validity of the statute under rational basis test, concluded that Michigan's Constitution permits the state to fund childbirth expenses even though it does not fund abortions.

Compiler's note: This added section was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On June 17, 1987, the initiative petition was approved by an affirmative vote of the majority of the Senators elect and filed with the Secretary of State. On June 23, 1987, the initiative petition was approved by an affirmative vote of the majority of the Members elect of the House of Representatives and filed with the Secretary of State. The Legislature did not vote pursuant to Const 1963, art 4, § 27, to give immediate effect to this enactment.

In *Frey v Director, Department of Social Services*, 162 Mich App 586; 413 NW2d 54 (1987), the Michigan Court of Appeals held that Const 1963, art 4, § 27, applies to initiative laws and that without the required two-thirds vote of each house of the Legislature, as provided by Const 1963, art 4, § 27, Act 59 of 1987 could not take effect until the expiration of 90 days from the end of the session at which it was passed.

In affirming the decision of the Court of Appeals in *Frey*, the Michigan Supreme Court held that when a law is proposed by initiative and enacted by the Legislature without change or amendment within forty days as required by Const 1963, art 2, § 9, it takes effect ninety days after the end of the session in which it was passed unless two-thirds of the members of each house of the Legislature, as provided by art 4, § 27, vote to give the law immediate effect. Act 59 of 1987, not having received votes in favor of immediate effect by two-thirds of the elected members of each house, may not take effect until ninety days after the end of the session in which it was enacted. *Frey v Director, Department of Social Services*, 429 Mich 315; 414 NW2d 873 (1987).

On March 1, 1988, petitions to invoke the power of referendum with regard to Act 59 of 1987 were filed with the Secretary of State. On April 13, 1988, the Board of State Canvassers certified the validity of a sufficient number of petition signatures to invoke the referendum. In a letter opinion to C. Patrick Babcock, Director, Department of Social Services, dated March 28, 1988, the Attorney General addressed the following question: "[I]f the filing of petitions, which include, if they are valid, a sufficient number of signatures to properly invoke a referendum, stays the effective date of Act 59 of 1987, which will otherwise become effective on March 30, 1988?" The Attorney General concluded that "when a petition seeking referendum, which on its face meets legal requirements, is filed the signatures appearing on that petition are presumed valid and the statute at issue is stayed or suspended until either the petitions are found to be invalid or a vote of the people occurs."

Act 59 of 1987, as enacted by the Legislature, was submitted to the people by referendum petition and approved by a majority of the votes cast at the general election held November 8, 1988. The Board of State Canvassers officially declared the vote to be 1,959,727 (for) and 1,486,371 (against) on December 2, 1988.

Popular name: Act 280