

Michigan

Northland Family Planning Center v. Michigan, No. 24-000011-MM (Mich. Ct. Cl. 2024) (granting a preliminary injunction to temporarily lift the 24-hour mandatory waiting period before a person may receive an abortion and blocking mandates to give patients illustrations of fetuses.) Judge Sima Patel's opinion reinforces Michigan's constitutional right to an abortion approved in November of 2022 and reduces "burdens that patients experience seeking abortion care[.]"

Const. Art I. § 28. Right to reproductive freedom.

Sec. 28.

(1) Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care. An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.

Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.

(2) The state shall not discriminate in the protection or enforcement of this fundamental right.

(3) The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

(4) For the purposes of this section:

A state interest is "compelling" only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision-making.

"Fetal viability" means: the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(5) This section shall be self-executing. Any provision of this section held invalid shall be severable from the remaining portions of this section.

[MCLS Const. Art. I, § 28](#)

§ 333.26101. New Definitions.

Sec. 1.

As used in this act:

(a) A state interest is "compelling" as that term is described in section 28 of article I of the state constitution of 1963.

(b) "Fetal viability" means that term as defined in section 28 of article I of the state constitution of 1963.

(c) "Governmental entity" means any of the following:

- (i) This state and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces.
- (ii) A county, city, village, township, school district, or other political subdivision of this state.
- (iii) An agency, department, court, board, commission, or council of a political subdivision described in subparagraph (ii).
- (iv) An official of any of the entities described in subparagraph (i), (ii), or (iii).

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26103. New Constitutional right to reproductive freedom.

Sec. 3.

(1) As provided in section 28 of article I of the state constitution of 1963, the following apply in this state:

(a) Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, but not limited to, prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

(b) An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.

(c) Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.

(d) The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including, but not limited to, miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

(2) In determining whether an abortion is medically indicated to protect the life or physical or mental health of a pregnant individual under subsection (1)(c), the attending health care professional may consider any factor that the attending health care professional considers relevant to the well-being of the pregnant individual, including, but not limited to, the pregnant individual's age and physical, emotional, psychological, and familial considerations.

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26105. New Violation of constitutional right to reproductive freedom; civil action; costs and attorney fees.

Sec. 5.

(1) An individual or entity, or the individual's or entity's legal representative, who alleges a violation of the individual's or entity's rights under section 28 of article I of the state constitution of

1963 or section 3 by a governmental entity may bring a civil action for injunctive relief, damages, or any other appropriate remedy, in the appropriate state or federal court.

(2) The attorney general may enforce section 3 through a civil action for injunctive relief, damages, or any other appropriate remedy.

(3) A court shall award reasonable costs and attorney fees to a plaintiff who prevails in an action brought under this section.

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26107. New Governmental entity violation of constitutional right to reproductive freedom; prohibition.

Sec. 7.

A governmental entity shall not violate section 28 of article I of the state constitution of 1963.

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.1071 Short title; definitions.

Sec. 1.

(1) This act shall be known and may be cited as the "born alive infant protection act".

(2) As used in this act:

(a) "Abortion" means that term as defined in section 17015 of the public health code, 1978 PA 368, MCL 333.17015.

(b) "Live birth" means the complete expulsion or extraction of a product of conception from its mother, regardless of the duration of the pregnancy, that after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, shows any evidence of life, including, but not limited to, 1 or more of the following:

(i) Breathing.

(ii) A heartbeat.

(iii) Umbilical cord pulsation.

(iv) Definite movement of voluntary muscles.

History: 2002, Act 687, Eff. Mar. 31, 2003

§ 333.1071. Amended Short title; definitions.

Sec. 1.

(1) This act may be cited as the "born alive infant protection act".

(2) As used in this act:

(a) "Abortion" means a medical treatment that is intended to terminate a diagnosable intrauterine pregnancy for a purpose other than to produce a live birth. Abortion does not include the use or

prescription of a drug or device that prevents pregnancy or a medical treatment used to remove a dead fetus or embryo whose death was the result of a spontaneous abortion.

(b) "Live birth" means the complete expulsion or extraction of a product of conception from its mother, regardless of the duration of the pregnancy, that after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, shows any evidence of life, including, but not limited to, 1 or more of the following:

(i) Breathing.

(ii) A heartbeat.

(iii) Umbilical cord pulsation.

(iv) Definite movement of voluntary muscles.

History: 2002, Act 687, Eff. Mar. 31, 2003 ;-- Am. 2023, Act 206, Eff. Feb. 13, 2024

Mich. Comp. Laws Serv § 333.1072. Legislative findings. Sec. 2.

The legislature finds all of the following:

(a) The state has a paramount interest in protecting all individuals.

(b) If an abortion results in the live birth of a newborn, the newborn is a legal person for all purposes under the law.

(c) A woman's right to terminate pregnancy ends when the pregnancy is terminated. It is not an infringement on a woman's right to terminate her pregnancy for the state to assert its interest in protecting a newborn whose live birth occurs as the result of an abortion.

Mich. Comp. Laws Serv. § 333.1073. Abortion resulting in live birth; surrender of newborn to emergency service provider; medical care; report; confidentiality of newborn's mother and father; transmission of information to newborn's mother.

Sec. 3.

(1) If an abortion results in a live birth and, after being informed of the newborn's live birth, the newborn's mother expresses a desire not to assume custody and responsibility for the newborn, by refusing to authorize all necessary life sustaining medical treatment for the newborn or releasing the newborn for adoption, the newborn shall be considered a newborn who has been surrendered to an emergency service provider under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20. The procedures of the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, shall be followed in regard to the custody and care of the newborn.

(2) If an abortion performed in a hospital setting results in a live birth, the physician attending the abortion shall provide immediate medical care to the newborn, inform the mother of the live birth, and request transfer of the newborn to a resident, on-duty, or emergency room physician who shall provide medical care to the newborn. If an abortion performed in other than a hospital setting results in a live birth, a physician attending the abortion shall provide immediate medical care to the newborn and call 9-1-1 for an emergency transfer of the newborn to a hospital that shall provide medical care to the newborn.

(3) A live birth described in this act shall be reported as required in section 2822 of the public health code, 1978 PA 368, MCL 333.2822.

(4) If a newborn is considered a newborn who has been surrendered to an emergency service provider under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, as provided in subsection (1), the identity of the newborn's mother and father becomes confidential and shall not be revealed, either orally or in writing.

(5) The attending physician who transfers care of a live newborn under this section to another physician or a 9-1-1 emergency responder shall transmit to the mother of the newborn any information provided to the attending physician by the emergency service provider who received custody of the newborn under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, as provided in section 3 of the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.3.

Mich. Comp. Laws Serv. § 333.1083. Perinate as legally born person; immunity.

Sec. 3.

(1) A perinate shall be considered a legally born person for all purposes under the law.

(2) A physician or an individual performing an act, task, or function under the delegatory authority of a physician is immune from criminal, civil, or administrative liability for performing any procedure that results in injury or death of a perinate while completing the delivery of the perinate under any of the following circumstances:

(a) If the perinate is being expelled from the mother's body as a result of a spontaneous abortion.

(b) If in that physician's reasonable medical judgment and in compliance with the applicable standard of practice and care, the procedure was necessary in either of the following circumstances:

(i) To save the life of the mother and every reasonable effort was made to preserve the life of both the mother and the perinate.

(ii) To avert an imminent threat to the physical health of the mother, and any harm to the perinate was incidental to treating the mother and not a known or intended result of the procedure performed.

Mich. Comp. Laws Serv. § 333.1084. Existing right, privilege, or protection.

Sec. 4.

Nothing in this act shall abrogate any existing right, privilege, or protection under criminal or civil law that applies to an embryo or fetus.

§ 333.1085. Definitions.

Sec. 5.

As used in this act:

(a) "Anatomical part" means any portion of the anatomy of a human being that has not been severed from the body, but not including the umbilical cord or placenta.

(b) "Imminent threat to the physical health" means a physical condition that if left untreated would result in substantial and irreversible impairment of a major bodily function.

(c) "Live" means demonstrating 1 or more of the following biological functions:

(i) A detectable heartbeat.

(ii) Evidence of breathing.

(iii) Evidence of spontaneous movement.

(iv) Umbilical cord pulsation.

(d) “Perinate” means a live human being at any point after which any anatomical part of the human being is known to have passed beyond the plane of the vaginal introitus until the point of complete expulsion or extraction from the mother’s body.

(e) “Physician” means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

[MCLS § 333.1085](#)

Mich. Comp. Laws Serv. § 333.1299. Violation as misdemeanor; prosecution. Sec. 1299.

(1) A person who violates a provision of this code for which a penalty is not otherwise provided is guilty of a misdemeanor.

(2) A prosecuting attorney having jurisdiction and the attorney general knowing of a violation of this code, a rule promulgated under this code, or a local health department regulation the violation of which is punishable by a criminal penalty may prosecute the violator.

Mich. Comp. Laws Serv. § 333.17015. Informed consent; definitions; duties of physician or assistant; location; disclosure of information; view of ultrasound; medical emergency necessitating abortion; duties of department; physician’s duty to inform patient; validity of consent or certification form; right to abortion not created; prohibition; portion of act found invalid; duties of local health department; confidentiality. Sec. 17015.

(1) Subject to subsection (10), a physician shall not perform an abortion otherwise permitted by law without the patient’s informed written consent, given freely and without coercion to abort.

(2) For purposes of this section and section 17015a:

(a) “Abortion” means the intentional use of an instrument, drug, or other substance or device to terminate a woman’s pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) “Coercion to abort” means an act committed with the intent to coerce an individual to have an abortion, which act is prohibited by section 213a of the Michigan penal code, 1931 PA 328, [MCL 750.213a](#).

(c) “Domestic violence” means that term as defined in section 1 of 1978 PA 389, [MCL 400.1501](#).

(d) “Fetus” means an individual organism of the species homo sapiens in utero.

(e) “Local health department representative” means a person who meets 1 or more of the licensing requirements listed in subdivision (h) and who is employed by, or under contract to provide services on behalf of, a local health department.

(f) “Medical emergency” means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(g) “Medical service” means the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including, but not limited to, a pregnancy test, ultrasound, pelvic examination, or an abortion.

(h) “Qualified person assisting the physician” means another physician or a physician’s assistant licensed under this part or part 175, a fully licensed or limited licensed psychologist licensed under part 182, a professional counselor licensed under part 181, a registered professional nurse or a licensed practical nurse licensed under part 172, or a social worker licensed under part 185.

(i) “Probable gestational age of the fetus” means the gestational age of the fetus at the time an abortion is planned to be performed.

(j) “Provide the patient with a physical copy” means confirming that the patient accessed the internet website described in subsection (5) 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 by 1 or more of the following means:

(i) In person.

(ii) By registered mail, return receipt requested.

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

(iv) By facsimile transmission.

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

(a) Confirm that, according to the best medical judgment of a physician, the patient is pregnant, and determine the probable gestational age of the fetus.

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

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

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

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

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

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

(e) Provide the patient with a physical copy of the prenatal care and parenting information pamphlet distributed by the department of community health under section 9161.

(f) Provide the patient with a physical copy of the prescreening summary on prevention of coercion to abort described in subsection (11)(i).

(4) The requirements of subsection (3) may be fulfilled by the physician or a qualified person assisting the physician at a location other than the health facility where the abortion is to be performed. The requirement of subsection (3)(a) that a patient's pregnancy be confirmed may be fulfilled by a local health department under subsection (18). The requirements of subsection (3) cannot be fulfilled by the patient accessing an internet website other than the internet website that is maintained and operated by the department under subsection (11)(g).

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

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

(a) Provide the patient with the physician's name, confirm with the patient that the coercion to abort screening required under section 17015a was performed, and inform the patient of her right to withhold or withdraw her consent to the abortion at any time before performance of the abortion.

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

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

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

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

(8) If at any time before the performance of an abortion, a patient undergoes an ultrasound examination, or a physician determines that ultrasound imaging will be used during the course of a patient's abortion, the physician or qualified person assisting the physician shall provide the patient with the opportunity to view or decline to view an active ultrasound image of the fetus, and offer to provide the patient with a physical picture of the ultrasound image of the fetus before the performance of the abortion. After the expiration of the 24-hour period prescribed under subsection (3) but before performing an abortion on a patient who is a pregnant woman, a physician or a qualified person assisting the physician shall do all of the following:

- (a)** Obtain the patient's signature on the acknowledgment and consent form described in subsection (11)(c) confirming that she has received the information required under subsection (3).
- (b)** Provide the patient with a physical copy of the signed acknowledgment and consent form described in subsection (11)(c).
- (c)** Retain a copy of the signed acknowledgment and consent form described in subsection (11)(c) and, if applicable, a copy of the pregnancy certification form completed under subsection (18)(b), in the patient's medical record.

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

- (a)** Inquired about obtaining an abortion after her pregnancy is confirmed and she has received from that physician or a qualified person assisting the physician the information required under subsection (3)(c) and (d).
- (b)** Scheduled an abortion to be performed by that physician.

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

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

- (a)** Produce medically accurate depictions, illustrations, or photographs of the development of a human fetus that indicate by scale the actual size of the fetus at 2-week intervals from the fourth week through the twenty-eighth week of gestation. Each depiction, illustration, or photograph shall be accompanied by a printed description, in nontechnical English, Arabic, and Spanish, of the probable anatomical and physiological characteristics of the fetus at that particular state of gestational development.
- (b)** Subject to subdivision (e), develop, draft, and print, in nontechnical English, Arabic, and Spanish, written standardized summaries, based upon the various medical procedures used to abort pregnancies, that do each of the following:
 - (i)** Describe, individually and on separate documents, those medical procedures used to perform abortions in this state that are recognized by the department.
 - (ii)** Identify the physical complications that have been associated with each procedure described in subparagraph (i) and with live birth, as determined by the department. In identifying these complications, the department shall consider the annual statistical report required under section 2835, and shall consider studies

concerning complications that have been published in a peer review medical journal, with particular attention paid to the design of the study, and shall consult with the federal centers for disease control and prevention, the American congress of obstetricians and gynecologists, the Michigan state medical society, or any other source that the department determines appropriate for the purpose.

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

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

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

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

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

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

“I, _____, voluntarily and willfully hereby authorize Dr. _____ (“the physician”) and any assistant designated by the physician to perform upon me the following operation(s) or procedure(s):

(Name of operation(s) or procedure(s))

A. I understand that I am approximately _____ weeks pregnant. I consent to an abortion procedure to terminate my pregnancy. I understand that I have the right to withdraw my consent to the abortion procedure at any time before performance of that procedure.

B. I understand that it is illegal for anyone to coerce me into seeking an abortion.

C. I acknowledge that at least 24 hours before the scheduled abortion I have received a physical copy of each of the following:

- 1.** A medically accurate depiction, illustration, or photograph of a fetus at the probable gestational age of the fetus I am carrying.
- 2.** A written description of the medical procedure that will be used to perform the abortion.
- 3.** A prenatal care and parenting information pamphlet.

D. If any of the documents listed in paragraph C were transmitted by facsimile, I certify that the documents were clear and legible.

E. I acknowledge that the physician who will perform the abortion has orally described all of the following to me:

- 1.** The specific risk to me, if any, of the complications that have been associated with the procedure I am scheduled to undergo.
- 2.** The specific risk to me, if any, of the complications if I choose to continue the pregnancy.

F. I acknowledge that I have received all of the following information:

- 1.** Information about what to do and whom to contact in the event that complications arise from the abortion.
- 2.** Information pertaining to available pregnancy related services.

G. I have been given an opportunity to ask questions about the operation(s) or procedure(s).

H. I certify that I have not been required to make any payments for an abortion or any medical service before the expiration of 24 hours after I received the written materials listed in paragraph C, or 24 hours after the time and date listed on the confirmation form if the information described in paragraph C was viewed from the state of Michigan internet website.”

(d) Make available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery, and to any person upon request, the copies of medically accurate depictions, illustrations, or photographs described in subdivision (a), the written standardized summaries described in subdivision (b), the acknowledgment and consent form described in subdivision (c), the prenatal care and parenting information pamphlet described in section 9161, the pregnancy certification form described in subdivision (f), and the materials regarding coercion to abort described in subdivision (i).

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

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

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

(h) Include on the informed consent internet website operated under subdivision (g) a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge. The list shall be organized geographically and shall include the name, address, and telephone number of each health care provider, facility, and clinic.

(i) After considering the standards and recommendations of the joint commission on accreditation of healthcare organizations, the Michigan domestic and sexual violence prevention and treatment board, the Michigan coalition to end domestic and sexual violence or successor organization, and the American medical association, do all of the following:

(i) Develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a notice that is required to be posted in facilities and clinics under section 17015a. The notice shall be at least 8-1/2 inches by 14 inches, shall be printed in at least 44-point type, and shall contain at a minimum all of the following:

(A) A statement that it is illegal under Michigan law to coerce a woman to have an abortion.

(B) A statement that help is available if a woman is being threatened or intimidated; is being physically, emotionally, or sexually harmed; or feels afraid for any reason.

(C) The telephone number of at least 1 domestic violence hotline and 1 sexual assault hotline.

(ii) Develop, draft, and print or make available in printable format, in nontechnical English, Arabic, and Spanish, a prescreening summary on prevention of coercion to abort that, at a minimum, contains the information required under subparagraph (i) and notifies the patient that an oral screening for coercion to abort will be conducted before her giving written consent to obtain an abortion.

(iii) Develop, draft, and print screening and training tools and accompanying training materials to be utilized by a physician or qualified person assisting the physician while performing the coercion to abort screening required under section 17015a. The screening tools shall instruct the physician or qualified person assisting the physician to orally communicate information to the patient regarding coercion to abort and to document the findings from the coercion to abort screening in the patient's medical record.

(iv) Develop, draft, and print protocols and accompanying training materials to be utilized by a physician or a qualified person assisting the physician if a patient discloses coercion to abort or that domestic violence is occurring, or both, during the coercion to abort screening. The protocols shall instruct the physician or qualified person assisting the physician to do, at a minimum, all of the following:

(A) Follow the requirements of section 17015a as applicable.

(B) Assess the patient's current level of danger.

(C) Explore safety options with the patient.

(D) Provide referral information to the patient regarding law enforcement and domestic violence and sexual assault support organizations.

(E) Document any referrals in the patient's medical record.

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

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

(14) A completed certification form described in subsection (11)(f) that is signed by a local health department representative is presumed valid. The presumption created by this subsection

may be rebutted by evidence that establishes, by a preponderance of the evidence, that the physician who relied upon the certification had actual knowledge that the certificate contained a false or misleading statement or signature.

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

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

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

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

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

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

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

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

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

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

§ 333.17016. Performance of partial-birth abortion prohibited.

Sec. 17016.

(1) Except as otherwise provided in subsection (2), a physician or an individual performing an act, task, or function under the delegatory authority of a physician shall not perform a partial-birth abortion, even if the abortion is otherwise permitted by law.

(2) A physician or an individual described in subsection (1) may perform a partial-birth abortion if the physician or other individual reasonably believes that performing the partial-birth abortion is necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury and that no other medical procedure will accomplish that purpose.

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

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

(5) As used in this section:

(a) "Abortion" means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion does not include a procedure to complete a spontaneous abortion or the use or prescription of a drug or device intended as a contraceptive.

(b) "Fetus" means an individual organism of the species homo sapiens at any time before complete delivery from a pregnant woman.

(c) "Partial-birth abortion" means an abortion in which the physician or individual acting under the delegatory authority of the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

[MCLS § 333.17016](#)

§ 333.26101. New Definitions.

Sec. 1.

As used in this act:

(a) A state interest is "compelling" as that term is described in section 28 of article I of the state constitution of 1963.

(b) "Fetal viability" means that term as defined in section 28 of article I of the state constitution of 1963.

(c) "Governmental entity" means any of the following:

(i) This state and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces.

(ii) A county, city, village, township, school district, or other political subdivision of this state.

(iii) An agency, department, court, board, commission, or council of a political subdivision described in subparagraph (ii).

(iv) An official of any of the entities described in subparagraph (i), (ii), or (iii).

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26103. New Constitutional right to reproductive freedom.

Sec. 3.

(1) As provided in section 28 of article I of the state constitution of 1963, the following apply in this state:

(a) Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, but not limited to, prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

(b) An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.

(c) Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.

(d) The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including, but not limited to, miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

(2) In determining whether an abortion is medically indicated to protect the life or physical or mental health of a pregnant individual under subsection (1)(c), the attending health care professional may consider any factor that the attending health care professional considers relevant to the well-being of the pregnant individual, including, but not limited to, the pregnant individual's age and physical, emotional, psychological, and familial considerations.

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26105. New Violation of constitutional right to reproductive freedom; civil action; costs and attorney fees.

Sec. 5.

(1) An individual or entity, or the individual's or entity's legal representative, who alleges a violation of the individual's or entity's rights under section 28 of article I of the state constitution of 1963 or section 3 by a governmental entity may bring a civil action for injunctive relief, damages, or any other appropriate remedy, in the appropriate state or federal court.

(2) The attorney general may enforce section 3 through a civil action for injunctive relief, damages, or any other appropriate remedy.

(3) A court shall award reasonable costs and attorney fees to a plaintiff who prevails in an action brought under this section.

History: 2023, Act 286, Eff. Feb. 13, 2024

§ 333.26107. New Governmental entity violation of constitutional right to reproductive freedom; prohibition.

Sec. 7.

A governmental entity shall not violate section 28 of article I of the state constitution of 1963.

History: 2023, Act 286, Eff. Feb. 13, 2024

Mich. Comp. Laws Serv. § 333.2689. Abortion; consideration. Sec. 2689.

A person shall not perform or offer to perform an abortion where part or all of the consideration for the performance is that the embryo, or fetus, whether alive or dead, may be used for research or study.

Mich. Comp. Laws Serv. § 333.2835. “Physical complication” defined; report of abortion; form, transmittal, and contents of report; prohibited information; destruction of reports; annual statistical report; use of statistical reports; prohibited disclosures; violation; penalty; release of reports or contents to department of licensing and regulatory affairs. Sec. 2835.

(1) As used in this section and section 2837, “physical complication” means a physical condition occurring during or after an abortion that, under generally accepted standards of medical practice, requires medical attention. Physical complication includes, but is not limited to, infection, hemorrhage, cervical laceration, or perforation of the uterus.

(2) A physician who performs an abortion shall report the performance of that procedure to the department on forms prescribed and provided by the department. A physician shall transmit a report required under this subsection to the director within 7 days after the performance of the abortion.

(3) Each report of an abortion required under subsection (2) shall contain only the following information and no other information:

- (a) The age of the individual at the time of the abortion.
- (b) The marital status of the individual at the time of the abortion.
- (c) The race and, if applicable, Hispanic ethnicity of the individual.
- (d) The city or township, county, and state in which the individual resided at the time of the abortion.
- (e) The name and address of the facility and the type of facility in which the abortion was performed.
- (f) The source of referral to the physician performing the abortion.
- (g) The number of previous pregnancies carried to term.
- (h) The number of previous pregnancies ending in spontaneous abortion.
- (i) The number of previous pregnancies terminated by abortion.
- (j) The method used before the abortion to confirm the pregnancy, the period of gestation in weeks of the present pregnancy, and the first day of the last menstrual period.
- (k) The method used to perform the abortion.
- (l) The weight of the embryo or fetus, if determinable.
- (m) Whether the fetus showed evidence of life when separated, expelled, or removed from the individual.
- (n) The date of performance of the abortion.
- (o) The method and source of payment for the abortion.
- (p) A physical complication or death resulting from the abortion and observed by the physician or reported to the physician or his or her agent before the report required under subsection (2) is transmitted to the director.
- (q) The physician’s signature and his or her state license number.

(4) The report required under subsection (2) shall not contain the name of the individual, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information system file with data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of an individual obtaining or seeking to obtain an abortion shall not be maintained.

(5) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for 5 years after the date the report is received.

(6) The department shall make available annually in aggregate a statistical report summarizing the information submitted in each individual report required by this section. The department shall specifically summarize aggregate data regarding all of the following in the annual statistical report:

- (a)** The period of gestation in 4-week intervals from 5 weeks through 28 weeks.
- (b)** Abortions performed on individuals aged 17 and under.
- (c)** Physical complications reported under subsection (3)(p) and section 2837.

(7) The reports required under this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics.

(8) Except as otherwise provided in subsection (10), the department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required by this section in a manner or fashion so as to permit the person or entity to whom the report is disclosed to identify in any way the individual who is the subject of the report, the identity of the physician who performed the abortion, or the name or address of a facility in which an abortion was performed.

(9) A person who discloses confidential identifying information in violation of this section, section 2834(6), or section 2837 is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$5,000.00, or both.

(10) The department may release the reports or the contents of the reports required by this section to the department of licensing and regulatory affairs for regulatory purposes only. The department of licensing and regulatory affairs or an employee of the department of licensing or regulatory affairs shall not disclose to a person or entity outside of the department of licensing and regulatory affairs the reports or the contents of the reports required by this section in a manner or fashion so as to permit the person or entity to whom the report is disclosed to identify

in any way the individual who is the subject of the report, the identity of the physician who performed the abortion, or the name or address of a facility in which an abortion was performed.

Mich. Comp. Laws Serv. § 333.2836. Disposal of fetal remains.

(1) All fetal remains resulting from abortions shall be disposed of by interment or cremation as those terms are defined in section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522, or by incineration by a person other than a cemetery registered under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. Unless the mother has provided written consent for research on the fetal remains under section 2688, a physician who performs an abortion shall arrange for the final disposition of the fetal remains resulting from the abortion. Disposal of fetal remains resulting from an abortion may occur without the supervision of a funeral director.

(2) This section does not require a physician to discuss the final disposition of the fetal remains with the mother before performing the abortion, nor does it require a physician to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion.

Mich. Comp. Laws Serv. § 333.2837. Physical complication or death resulting from abortion; report.

Sec. 2837.

(1) A physician shall file a written report with the department regarding each patient who comes under the physician's professional care and who suffers a physical complication or death that is a primary, secondary, or tertiary result of an abortion.

(2) The department shall summarize aggregate data from the reports required under subsection (1) for purposes of inclusion into the annual statistical report on abortion required under section 2835.

(3) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for 5 years after the date the report is received.

(4) The department shall develop and distribute a standardized form for the report required under subsection (1). The department shall not include on the standardized reporting form the name or address of the patient who is the subject of the report or any other information that could reasonably be expected to identify the patient who is the subject of the report. The department shall include on the standardized form a statement specifying the time period within which a report must be transmitted under section 2835(2).

Mich. Comp. Laws Serv. § 722.903. Consent to abortion on minor; petition for waiver of parental consent.

Sec. 3

(1) Except as otherwise provided in this act, a person shall not perform an abortion on a minor without first obtaining the written consent of the minor and 1 of the parents or the legal guardian of the minor.

(2) If a parent or the legal guardian is not available or refuses to give his or her consent, or if the minor elects not to seek consent of a parent or the legal guardian, the minor may petition the probate court pursuant to section 4 for a waiver of the parental consent requirement of this section.

**Mich. Comp. Laws Serv. § 722.904. The Parental Rights Restoration Act
Jurisdiction of probate court; confidential and expeditious proceedings; granting waiver of parental consent; reporting suspected child abuse; duties of probate court on disclosure of sexual abuse; “child abuse” and “sexual abuse” defined.**

Sec. 4.

(1) The probate court has jurisdiction of proceedings related to a minor’s petition for a waiver of parental consent.

(2) Proceedings held pursuant to this act shall be completed with confidentiality and sufficient expedition to provide an effective opportunity for the minor to provide self-consent to an abortion, in accordance with all of the following:

(a) The probate court shall, upon its first contact with a minor seeking a waiver of parental consent under this act, provide the minor with notice of the minor’s right to all of the following:

(i) Confidentiality of the proceedings, including the right to use initials in the petition.

(ii) Court appointment of an attorney or guardian ad litem.

(iii) Assistance with preparing and filing the petition.

(b) A minor may file a petition for waiver of parental consent in the probate court of the county in which the minor resides. For purposes of this act, the county in which the minor resides means the county in which the minor’s residence is located or the county in which the minor is found.

(c) Upon request of the minor, the probate court shall provide the minor with assistance in preparing and filing the petition for waiver of parental consent.

(d) A minor may file a petition for waiver of parental consent under this act on her own behalf or through a next friend. The minor may use initials or some other means of assuring confidentiality in the petition.

(e) Upon request of the minor, the probate court shall appoint an attorney or guardian ad litem within 24 hours to represent the minor in proceedings under this section.

- (f) A minor is not required to pay a fee for proceedings under this section.
- (g) A hearing on a petition for waiver of parental consent under this act shall be held within 72 hours, excluding Sundays and holidays, after the petition is filed and shall be closed to the public. All records of proceedings related to the petition for waiver of parental consent under this act are confidential.
- (h) The probate court that hears the petition for waiver of parental consent shall issue and make a part of the confidential record its specific findings of fact and conclusions of law in support of its ruling either on the record or in a written opinion.
- (i) A written order granting or denying a petition for waiver of parental consent filed pursuant to this act shall be issued within 48 hours, excluding Sundays and holidays, after the hearing on the petition is held.

(3) The probate court shall grant a waiver of parental consent if it finds either of the following:

- (a) The minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian.
- (b) The waiver would be in the best interests of the minor.

(4) A minor who is denied a waiver under this section may appeal the probate court's decision to the court of appeals. Appeal proceedings shall be expedited and confidential. The notice of appeal shall be filed within 24 hours of the issuance of the order denying the petition. The appeal shall be perfected within 72 hours, excluding Sundays and holidays, from the filing of the notice of appeal.

(5) The confidentiality requirements of this section do not prevent the probate court from reporting suspected child abuse under section 4 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.624 of the Michigan Compiled Laws.

(6) If a minor who is seeking a waiver of parental consent reveals to the probate court that she is the victim of sexual abuse, and that her pregnancy is, or may be, the result of sexual abuse, the probate court shall immediately do all of the following:

- (a) Report the suspected sexual abuse to the department of social services or a law enforcement agency pursuant to the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.
- (b) Inform the minor that there are laws designed to protect her, including all of the following provisions of chapter XIIA of the probate code, Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws:
 - (i) That a law enforcement officer may without court order take the minor into temporary protective custody if, after investigation, the officer has reasonable grounds to conclude that the minor's health, safety, or welfare would be endangered by leaving her in the custody of her parent or legal guardian.
 - (ii) That the juvenile division of the probate court may, upon learning of the suspected sexual abuse, immediately hold a preliminary inquiry to determine

whether a petition for court jurisdiction should be filed or whether other action should be taken.

(iii) That the juvenile court shall appoint an attorney to represent the minor in protective proceedings.

(iv) That after a petition has been filed, the juvenile court may order that the minor be placed with someone other than her parent or legal guardian pending trial or further court order if such placement is necessary to avoid substantial risk to the minor's life, physical health, or mental well-being.

(7) As used in this section, "child abuse" and "sexual abuse" mean those terms as defined in section 2 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.622 of the Michigan Compiled Laws.

Mich. Comp. Laws Serv. § 722.905. Medical emergency abortion.

Sec. 5.

The requirements of Section 3 do not apply to an abortion performed pursuant to a medical emergency.

Mich. Comp. Laws Serv. § 722.906. Residency of minor.

Sec. 6.

The requirements of this act apply regardless of whether the minor is a resident of this state.

Mich. Comp. Laws Serv. § 722.907. Violation as misdemeanor; failure to obtain parental consent or copy of waiver as evidence in civil action; exemplary damages.

Sec. 7.

(1) A person who intentionally performs an abortion in violation of this act is guilty of a misdemeanor.

(2) A person's failure to obtain either parental consent pursuant to this act or a copy of a waiver granted under section 4 before performing an abortion on a minor is prima facie evidence in appropriate civil actions of his or her failure to obtain informed consent to perform the abortion or of his or her interference with family relations. A court shall not construe the law of this state to preclude exemplary damages in a civil action related to violations of this act.

Mich. Comp. Laws Serv. § 722.908. Right to abortion not created; prohibited conduct.

Sec. 8.

(1) This act does not create a right to an abortion.

(2) Notwithstanding any other provision of this act, a person shall not perform an abortion that is prohibited by law.

Mich. Comp. Laws Serv. § 750.90h. Section to be known as “partial-birth abortion ban act”; prohibited conduct; violation as felony; penalty; exception; civil action; section construed; definitions.

Sec. 90h.

- (1) This section shall be known and may be cited as the “partial-birth abortion ban act”.
- (2) Except as provided in subsection (3), a physician, an individual performing an act, task, or function under the delegatory authority of a physician, or any other individual who is not a physician or not otherwise legally authorized to perform an abortion who knowingly performs a partial-birth abortion and kills a human fetus is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$50,000.00, or both.
- (3) It is not a violation of subsection (2) if in the physician’s reasonable medical judgment a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury.
- (4) The spouse of the mother at the time of the partial-birth abortion or either parent of the mother if the mother had not attained the age of 18 at the time of the partial-birth abortion may file a civil action against the physician or individual described in subsection (2) for a violation of this section unless the pregnancy is a result of the plaintiff’s criminal conduct or the plaintiff consented to the partial-birth abortion. A plaintiff who prevails in a civil action brought under this section may recover both of the following:
 - (a) Actual damages, including damages for emotional distress.
 - (b) Treble damages for the cost of the partial-birth abortion.
- (5) A woman who obtains or seeks to obtain a partial-birth abortion is not a conspirator to commit a violation of this section.
- (6) This section does not create a right to abortion.
- (7) Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.
- (8) Nothing in this section shall be construed to repeal or amend, explicitly or by implication, any provision of law prohibiting or regulating abortion, including, but not limited to, section 14, 15, 322, or 323.
- (9) As used in this section:
 - (a) “Partial-birth abortion” means an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother, or in

the case of breech presentation, any part of the fetal trunk past the naval is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, and performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

(b) "Physician" means an individual licensed by this state to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

Mich. Comp. Laws Serv. § 750.322. Manslaughter; willful killing of unborn quick child. Sec. 322.

Willful killing of unborn quick child—The willful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter.